

# 中华人民共和国商务部

MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA  
2, DONG CHANG'AN STREET, BEIJING, CHINA 100731

**Non-Confidential**

## **The Comments on the Particular Market Situation in China's Certain Excavators Market regarding the Anti-dumping Investigation AD0047**

### **Submission of the GOC**

The government of the People's Republic of China (GOC) would like to make a comment on the allegations that whether a particular market situation (PMS) exists in the certain market in China.

#### **1. No PMS exists in the China's excavator market.**

The GOC notes the Article 7(4) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 stipulates that a “particular market situation” includes situations where—(1) prices are artificially low; (2) there is significant barter trade; (3) prices reflect non-commercial factors. The GOC submits that these situations do not exist in the China's excavator market.

#### **1.1 All types of Chinese excavator enterprises are equal competitors in the market.**

In accordance with the Company Law of China, in all corporate entities, the Board of Shareholders and the Board of Directors are bestowed with legal powers and rights to take corporate decisions regarding all the commercial activities, including the production of the goods concerned and main inputs/raw materials. The GOC is prohibited from interfering with decision-making and the operations of companies.

the GOC notes that, the SIEs or SOEs, as independent legal entities, have the same rights in the market and operate on commercial considerations with the aim of making

profit. Regardless of the scale and ownership pattern that a company may have, it is required to carry out business in accordance with the Company Law of China, free from interference from any other entities or individuals.

The GOC underlines that excavators and the upstream materials markets are open to all players or investors. They are transparent in terms of requirements and fully competitive in terms of opportunity. If a market provides potential opportunities for development and profit-making, market players will certainly evaluate relevant factors to decide whether or not enter into the market. This is to say entrance in or exit from the market is entirely the decision of the economic operators who are expected to carefully and prudentially weigh the risks and opportunities in order to materialize investment return.

## **1.2 Five-year plans are not government intervention.**

The primary purpose of China's five-year plan is to provide a framework guidance for economic and social development during the plan period. The plan is not self-executing and is not binding. The GOC does not interfere with business operations and pricing practices accordingly. The plan should not be considered to be government intervention. Five-year plan may be used by commercial enterprises to anticipate the direction of the economy and economic development so as to make informed investments according to the anticipated direction.

The GOC wishes to clarify that, all five-year plans and programs, “guidance”, “policies”.... etc. are merely guiding documents and therefore they do not have binding force. The purpose of the preparation of The Five-Year Plan is to clarify national strategic intent, define government priorities, and guide the behavior of business entities, and such strategic and visionary policy documents are widely available in countries around the world. The Five-Year Plan does not have a policy to enable excavator manufacturers to obtain subsidies, and therefore does not refer specifically to the excavator industry.

The white paper "Industrial Strategy - Building a Britain fit for the future", released by the UK government in November 2017, generally has the same intention and scope as the 14<sup>th</sup> Five-Year Plan. The GOC request TRA to determinate whether the white paper demonstrates that the UK government intervenes or controls business and would cause a PMS in the UK economy. Therefor, GOC requests TRA give equal treatment to China's five-year plans and this UK white paper rather than implement double standards.

In addition, according to settled WTO decisional practice, simple assertions, unsubstantiated by relevant and positive evidence, are insufficient to meet the

requirements of Article 5.2 ADA. Evidence for a positive PMS PRC excavator industry determination must be more than mere assertions and conjecture and include information and data establishing the facts with probative value and be related to the PMS determination in the Chinese excavator sector. Mere references to GOC policy documents and guidelines do not meet this high requisite standard of proof. These are policy guidance documents that are per se insufficient to justify a positive PMS finding. Concrete evidence of their practical implementation, if any, is required in support a PMS finding.

### **1.3 The price-setting is in accordance with the market signal.**

The GOC submits that the laws and regulations applicable to all companies operating in China – regardless of the products they produce or sectors they operate in – and excavator industry is no exception. Compliance with the laws and regulations ensures that a market player takes sound business decisions with a view to managing and operating its commercial activities, because these actions and decisions must reflect the supply and demand, ensure fair competition, and follow market forces.

According to Article 18 of the Price Law, when necessary, the government may guide or fix the prices for the following commodities and services:

- 1.a very small number of commodities that have a vital bearing on the development of the national economy and the well-being of the people;
- 2.a small number of commodities for which resources are scarce;
- 3.commodities placed under natural monopoly;
- 4.important public utilities; and
- 5.important public welfare services.

In addition, Article 6 of the Price Law states that commodity and service prices must be regulated by the market, i.e., freely set by the enterprise itself, with the exception of those products that fall under Article 18, and must follow the principles of fairness, lawfulness and good faith pursuant to Article 7 of the Price Law.

Further, Article 8 states that prices should be set in accordance with production and management costs and supply-and-demand within the given market.

Thus, the GOC does not interfere or control the price-setting of excavators and the main inputs used to produce them. To the contrary, prices are set by a company

taking into account of the market and all the elements that are closely connected with a company's cost and management. Indeed, the TRA can clearly assess that prices are set by the sampled exporting producer independently in line with its commercial decision and without the interference of any government authority.

#### **1.4 No barter trade in China's excavator market.**

China's domestic excavator market is not engaged in barter trade. Domestic excavator products are traded all in the normal trade course. The producers decided the price of the excavators according to the market factors. Domestic excavator sales are normal sales behaviors in the trade process.

## **2. Investigations on PMS should be in accordance with the WTO rules.**

Without prejudice to the above, the GOC submits that the investigations on PMS should be in accordance with the WTO rules.

### **2.1 Extensive interpretation of PMS does not comply with ADA.**

In accordance with the Anti-Dumping Agreement (ADA), the scope of PMS investigation should be directed to its purpose, which PMS should have a direct impact on the domestic sales price of the relevant products, thus affecting the comparability of domestic sales prices with export prices. It is to say, in order to prove dumping, a precondition is to prove PMS and the alleged dumping behaviour has a direct causation with the damage to domestic market. However, as published by the Ministry of Commerce of the People's Republic of China, The UK is the sixth largest economy in the world, with services industries accounting for 3/4 of GDP, while manufacturing only accounting for around 1/10<sup>1</sup>. It is clear from statistics that manufacturing is not of the UK's economic development's priority, therefore no direct causation can be formed without concrete evidence that it is the alleged dumping behaviour that damaged the UK's domestic manufacturing industry. Moreover, different economies are at different development stages and have their own economic characteristics. If the anti-dumping measures are extended to the evaluation of national systems and policies, and attribute competitiveness arising from the macro-political conditions and development environment to enterprises, such an extended scope of investigation would neither directly support the finding of a PMS nor be consistent with ADA.

### **2.2 The Inversion of burden of proof.**

---

<sup>1</sup> <http://ozs.mofcom.gov.cn/article/c/201905/20190502866379.shtml>

Although the terms of PMS and situations of PMS are stipulated in the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019, in Anti-dumping investigation AS0047, it has not been seen that the UK domestic producers claim the existence of PMS in the China's excavator market and submit reliable evidence.

According to Article 5 of ADA, *Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph(the application)*<sup>2</sup>. If the UK domestic industry or interested parties claim that a PMS exists in the China's excavator market, they should provide relevant sufficient evidences, instead of TRA asking the GOC to provide contrary evidence or information to prove that there is no PMS in China's excavator market against their simple assertion. This is a typical inversion of the burden of proof, which is inconsistent with the relevant provisions of ADA.

### **3. Conclusion.**

China has established a market economy in which the market force plays a decisive role in resource allocation. All kinds of enterprises are equal entities of market competition. There is no situations of PMS under the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 in China's excavator market. All types of Chinese excavator producers operate independently according to the price signal. The GOC has not intervened in the production, operation and pricing of these enterprises. The five-year plan does not belong to the government's intervention in enterprises. China's excavator market is fully open and free, and the price is determined by the market forces.

---

<sup>2</sup> Annex 2-Anti-Dumping Agreement