

21 January 2025

Trade Remedies Authority
North Gate House
21-23 Valpy Street
Reading
Berkshire
RG1 1AF

via UK Trade Remedies Services

OPEN

Dear Mesdames,
Dear Sirs,

Re: AD0047 – Response to comments by Caterpillar, Finning UK and LiuGong on Statement of Essential Facts and Provisional Affirmative Determination
Our client: JCB Heavy Products Limited ("Applicant")

We refer to certain interested parties' comments on the UK Trade Remedies Authority's ("TRA") Statement of Essential Facts ("SEF") and Provisional Affirmative Determination ("PAD") in the captioned investigation ("**Investigation**"), as uploaded to the public file on 13 January 2025.

As an initial point, the majority of the interested parties' comments pertain to the initiation of the Investigation, the existence a particular market situation ("**PMS**") in China, the scope of the Investigation, and the TRA's findings on injury, causation, and UK economic interest test ("**EIT**").¹ The Applicant has already commented on these aspects throughout this Investigation.²

That said, the Applicant considers it important to respond briefly to certain comments made by Caterpillar (Xuzhou) Ltd. ("**Caterpillar China**") and its dealer Finning UK Ltd. ("**Finning**") (Section 1),³ as well as by the LiuGong group ("**LiuGong**") (Section 2).⁴

1. Caterpillar China and Finning's comments are out of time and should be rejected

1. Caterpillar China and Finning came forward in December 2024, 13 months after the initiation of the Investigation. The Applicant wishes to respond to three comments made by Caterpillar China and Finning.

¹ E.g., AD0047: SANY Group, Comments on the Statement of Essential Facts, 16 December 2024; AD0047: China Chamber of Commerce for Import and Export of Machinery and Electronic Products, Comments on TRA Statement of Facts, 16 December 2024; AD0047: LiuGong Group, Response to Statement of Essential Facts, 16 December 2024 ("**LiuGong SEF Comments**").

² E.g., AD0047: Applicant, Response to SANY's Comments on the Change to PCN Table, 6 September 2024; AD0047: Applicant, Comments on China Chamber of Commerce for Import and Export of Machinery and Electronic Products' submission, 11 October 2024.

³ AD0047: Caterpillar (Xuzhou) Ltd., Comments by Caterpillar (Xuzhou) Ltd. on the Provisional Determination, 13 January 2025 ("**Caterpillar PAD Comments**"); AD0047: Caterpillar (Xuzhou) Ltd., Comments by Caterpillar (Xuzhou) Ltd. on the Statement of Essential Facts, 13 January 2025 ("**Caterpillar SEF Comments**"); AD0047: Comments of Finning UK on the Provisional Affirmative Determination, 13 January 2025 ("**Finning PAD Comments**"); AD0047: Comments of Finning UK on the Statement of Essential Facts (SEF), 13 January 2025 ("**Finning SEF Comments**").

⁴ LiuGong SEF Comments.

2. First, Caterpillar China argues that it should be sampled as an exporting producer and be given an opportunity to submit a questionnaire response to the TRA.⁵
3. Caterpillar China's requests are manifestly out of time and should be rejected as such. The TRA publicly announced the initiation of the Investigation on 16 November 2023,⁶ and is required to complete the Investigation by 16 May 2025.⁷
4. The completion of the Investigation cannot be endangered by Caterpillar China's failure to come forward at the start of the Investigation (in particular as Caterpillar is present in the UK, including as a member of the UK Construction Equipment Association,⁸ and has "government affairs teams in key global locations"⁹).
5. Interested parties are not entitled to participate in an anti-dumping (or anti-subsidy) investigation "as and when they choose."¹⁰ There is also no indefinite right for an interested party to make submissions to the authority:¹¹ this right ceases to exist at some point in an investigation.¹²
6. In the present case, Caterpillar China and Finning's comments were submitted far too late to still have a meaningful impact on the outcome of the Investigation. Instead of trying to derail the Investigation by requesting the TRA to still consider their comments now, Caterpillar China and Finning should consider using the appropriate procedures after this Investigation has been concluded.
7. Second, Caterpillar China and Finning argue that the TRA should consider their position on the UK market for the purpose of the EIT.¹³ As noted, Caterpillar China and Finning's arguments are out of time and should be rejected for that reason alone.¹⁴
8. In any event, Caterpillar China and Finning's arguments omit the crucial point that Caterpillar is a global group that manufactures in-scope excavators ("**Excavators**") in multiple locations outside of China, most notably (but not limited to) the United States ("**U.S.**") and Brazil. UK customers can thus still purchase Caterpillar Excavators that are not subject to anti-dumping duties.
9. Third, Caterpillar China asks that anti-dumping duties be imposed on UK imports of Excavators "dispatched from" China, and not on Excavators "originating in" China.¹⁵
10. This proposal would result in such a large loophole in the anti-dumping duties that the duties would become irrelevant. As the applicable law and the TRA's practice confirm, anti-dumping duties are always imposed on imports based on the origin of the goods.¹⁶

⁵ Caterpillar SEF Comments, Sections 1 and 2.

⁶ See, e.g., TRA, Press release: TRA opens new investigations into excavators from China, 16 November 2023.

⁷ Art. 5.10, WTO Anti-dumping Agreement.

⁸ See Construction Equipment Association, Members, available at: <https://thecea.org.uk/member-network>.

⁹ See Caterpillar, Political Engagement: Advocacy Outside the U.S., available at: <https://www.caterpillar.com/en/company/governance/political-engagement.html>.

¹⁰ Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, WT/DS268/AB/R, para. 241; Panel Report, *EU – Footwear (China)*, WT/DS405/R, para. 7.604.

¹¹ Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 241.

¹² Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 242.

¹³ See *generally*, Finning UK SEF Comments.

¹⁴ See above, para. 3.

¹⁵ Caterpillar PAD Comments, p. 2.

¹⁶ See e.g., Regulation 3 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019; AD0021: TRA, Final Determination, 23 October 2023, para. 24; AD0012: TRA, Final Determination, 16 December 2022, para. 20.

2. LiuGong's comments on the TRA's dumping calculations should be rejected

11. The TRA sampled LiuGong as an exporting producer and, thus, calculated an individual anti-dumping duty for LiuGong.¹⁷ LiuGong commented on certain aspects of the TRA's dumping calculations. The Applicant wishes to respond to two comments made by LiuGong.
12. First, LiuGong argues that the TRA cannot, on the one hand, disregard LiuGong's costs because of a PMS in China while, on the other hand, use the profit margins that LiuGong realises on Excavator sales in China.¹⁸
13. That argument fails. The legal bases that lead the TRA to construct normal value using undistorted costs (grounded in provisions such as Articles 2.1, 2.2 and 2.2.1.1 of the World Trade Organisation ("**WTO**") *Anti-Dumping Agreement*) are distinct from the legal basis that requires the TRA to use actual profit margins when constructing normal value (grounded in Article 2.2.2 of the *Anti-Dumping Agreement*). As WTO case law shows, the TRA may find that it (a) should construct normal value using undistorted costs under provisions such as Articles 2.1, 2.2 and 2.2.1.1; and (b) use actual profits under Article 2.2.2 to construct normal value.¹⁹
14. Second, LiuGong argues that the TRA should use the profit margins from LiuGong's last audited income statement (i.e., covering all products produced by LiuGong) and not the profit margins calculated by the TRA on LiuGong's sales of Excavators.²⁰
15. As an initial point, LiuGong's argument is inconsistent with the principle set out in Article 2.2.2 of the *Anti-Dumping Agreement*, which provides that the TRA should – as it did – use a profit realised on sales of Excavators.
16. In support of this argument, LiuGong claims that European Union ("**EU**") and U.S. investigating authorities use Chinese exporters' actual profit margins to construct normal value. This is incorrect.
17. In fact, the EU and U.S. authorities do not use Chinese exporters' profit (or selling, general and administrative ("**SG&A**")) margins at all. Instead, they use profit (and SG&A) margins from representative country producers. For instance, in the EU anti-dumping case to which LiuGong refers, the EU authorities did not use the actual profit margin of a Chinese exporter,²¹ but of a producer in Türkiye.²² U.S. authorities follow the same approach.²³

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¹⁷ SEF, para. 28.

¹⁸ LiuGong SEF Comments, para. 103.

¹⁹ See, e.g., Appellate Body Report, *US – Hot-Rolled Steel*, para. 148; Panel Report, *US – OCTG (Korea)*, paras. 7.44-7.45.

²⁰ LiuGong SEF Comments, para. 107.

²¹ LiuGong SEF Comments, footnote 42.

²² Recital 67 to Commission Implementing Regulation (EU) 2021/983 of 17 June 2021 imposing a provisional anti-dumping duty on imports of aluminium converter foil originating in the People's Republic of China, OJ L 216, 18.6.2021, p. 142.

²³ LiuGong SEF Comments, para. 107.