

**AS0046**

**ANTI-SUBSIDY INVESTIGATION CONCERNING IMPORTS OF  
CERTAIN EXCAVATORS ORIGINATING IN  
THE PEOPLE'S REPUBLIC OF CHINA**

**POST-CONSULTATION SUBMISSION  
OF  
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA**

**OPEN VERSION**

**12 February 2025**

## 1. **Introduction**

1. The present post-consultation submission provides the comments of the Government of the People's Republic of China ("GOC") elaborated in the consultation held on 6 February 2025 in the context of the anti-subsidy investigation concerning imports of certain excavators ("product concerned") originating in the People's Republic of China (Investigation No. AS0046) initiated on 15 November 2023. It should be read along with the GOC's submissions filed on 14 March 2024 and 9 January 2025.

## 2. **Product scope of the investigation**

2. The GOC asserts that XXL excavators with an operating weight reaching or exceeding 55 tons and electric excavators should be excluded from the product scope of this investigation, based on the following grounds:
  - The UK domestic industry, as confirmed by SEF, with its maximum production capacity capped at 40 tons, does not produce XXL excavators. The significant technical and functional disparities between XXL excavators and the largest UK-produced models preclude direct substitutability or competition, thereby rendering XXL excavators incapable of causing injury to the UK domestic industry.
  - The UK domestic industry neither produces nor sells electric excavators. Furthermore, electric and internal combustion engine (ICE) excavators are subject to distinct market segmentation, a fact acknowledged by the TRA. In addition, the inclusion of electric excavators undermines the UK's carbon neutrality goals, as many ongoing/future infrastructure projects mandate zero-emission equipment.
3. In light of the above, the GOC urges the TRA to exclude XXL excavators and

electric excavators from the scope of product under investigation. It aligns with legal requirements, factual evidence, and the UK's economic interests.

### 3. **Comments on Bank Acceptance Drafts Programme**

4. The GOC maintains its disagreement with the TRA's findings that bank acceptance drafts can be considered a subsidy in the form of interest-free short-term loans. The GOC re-emphasises that "[f]or the company that issues [them], a banker's acceptance is a way to pay for a purchase without borrowing to do so." (emphasis added).
5. The TRA failed to establish the necessary elements for bank acceptances to be considered a subsidy within the meaning of the Regulation are present.
6. Concerning the benefit element, the GOC notes that standard payment terms are subject to negotiations between the supplier and the buyer. Any disadvantage suffered by the seller of extending the payment term is thus priced into the underlying commercial agreement between the parties. Therefore, there is no benefit derived by the drawer of the bank acceptance.
7. Moreover, because the payees are the parties that finance the buyers, there is no government involvement in the transaction. The GOC submits that the suppliers are not public bodies so that there is no financial contribution by a government or public body within the meaning of the Regulation.
8. Concerning the specificity element, the websites referred to in the footnote of this paragraph demonstrate that bank acceptances are payment instruments, open to all companies regardless of business sectors and regions. <sup>1</sup>

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<sup>1</sup> E-bank Acceptance Draft | HSBC China, available [here](#); Bank Acceptance Draft (boc.cn), available [here](#); Bank Acceptance Draft Issuance | DBS CN Corporate Banking, available [here](#).

**4. Comments on alleged provision of electricity at LTAR**

9. The GOC appreciates that the TRA taking notes on the Chinese government conducting the marketization of electricity. However, its finds in the SEF does not fully capture the latest situation of electricity marketization. The GOC encourages direct transactions between power generators and electricity users, by which the prices are determined by the supply and demand on the market. The GOC re-submits that the ability to directly purchase electricity from power generators does not amount to a financial contribution or benefit.
10. Further, the GOC recalls that the TRA failed to address whether the industries that purchase/use electricity are limited to the excavator industry. The GOC submits that it does not impose any limitation on the consumption of electricity by law or policy. Indeed, all companies located in the same region are entitled to the same electricity rate, irrespective of the business sectors.
11. Thus, the conclusion of countervailability of the provision of electricity at LTAR is inconsistent with Articles 11.2 and 11.3 of the SCM Agreement in this case.

**5. Calculation error of the subsidy margin**

12. The GOC recalls that the TRA's methodology in calculation the subsidy margin of Sany Group is adding up amounts of subsidies attributable to the POI for each subsidy scheme by Sany Kunshan and Sany Shanghai respectively and by dividing these amounts by the combined total value of all goods to which the subsidy is attributable.
13. The GOC submits that the amount of subsidy shall be calculated in terms of the benefit to the recipient (underline added). The TRA's methodology violates regulation 24 of UK Dumping and Subsidisation Regulations in that, by not calculating the amount of countervailable subsidies in terms of the benefit conferred on each recipient.

14. As is the case in all anti-dumping investigations involving two (or more) related exporting producers located in the same country, the TRA should have first computed the subsidy margin of Sany Kunshan and Sany Shanghai separately for their respective exports of the product concerned to the UK during the POI. Then, the TRA should have computed a single subsidy margin for Sany Group by applying a weighted average of the individual subsidy margins of Sany Kunshan and Sany Shanghai.
15. The GOC maintains that the TRA's calculation of the subsidy margin for Sany Group contains evident errors and deviates from the requirements of UK domestic law. The GOC urges the TRA to rectify these inaccuracies.

## **6. Data disclosure**

16. According to the sampled Chinese exporting producers and the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME), the applicant submitted a privately published industry reports on the UK excavator industry which contains more focused and precise expert market data and trends commentary. The TRA provided neither the information nor a meaningful non-confidential summary to the interested parties which failed to provide sufficient transparency or understanding of the situation across the injury period.
17. In the meantime, the TRA's insufficient disclosure of the subsidy margin calculation (e.g., data sources, allocation methods, and adjustment factors) deprived affected enterprises of the ability to verify the rationality and accuracy of the calculations, further compromising their defense rights.
18. Thus, the GOC urges the TRA to fully disclose all relevant factual information and datasets to ensure procedural transparency; and safeguard the legitimate rights of interested parties to access critical evidence and mount effective defenses, in compliance with WTO rules and the UK's obligations under the

SCM Agreement.

**7. Pre-initiation consultations**

19. The GOC recalls that, in the present case, on 10 November 2023, the GOC received the Notification forwarded by the UK Embassy in Beijing. The Notification said that the TRA intended to initiate a countervailing investigation against the excavators from China on November 15th 2023, and invited GOC to conduct the pre-initiation consultations, but TRA did not provided the application along with the Notification. After receiving the notification, GOC immediately contacted TRA and told TRA that GOC accepted consultation invitation and strongly requested to conduct the pre-initiation consultation, and at the same time requested TRA to provide the application as soon as possible so that GOC could prepare for the consultations. Unfortunately, until the evening (8 p.m. Beijing time) of November 14th, TRA emailed the application to GOC and said that the investigation would be initiated on November 15 as the schedule. The GOC had no basis to consult in the absence of the Application. Thus, the GOC was denied a real opportunity for clarifying the situation and reaching a mutually agreed solution within the meaning of Article 13.1 of the SCM Agreement.
20. Article 13.1 of the SCM Agreement provides as follows:
- “As soon as possible after an application under Article 11 is accepted, and in any event before the initiation of any investigation, Members the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 2 of Article 11 and arriving at a mutually agreed solution.” (Emphasis added).*
21. The GOC does not consider that Article 13.1 of the SCM Agreement is a mere formality or a procedural obligation to ‘invite’ the exporting Member to consult while making it impossible to hold the consultations. Indeed, such an

interpretation is unlikely to be upheld by a WTO Panel.

22. As the GOC sees it, Article 13.1 of the SCM Agreement effectively serves the dual purpose of, on the one hand, allowing the exporting WTO Member to exercise its rights of defence and finding an amicable solution and, on the other hand, avoiding frivolous investigations and incorrect claims of injurious subsidization. Indeed, the evidence and views submitted prior to initiation by the exporting WTO Member need to be taken into account in order to determine whether the initiation of the investigation would be legally justified. As held by the Panel in *China – GOES*, “Article 13.1 of the SCM Agreement also suggests that an investigating authority is required to weigh the evidence submitted prior to initiation by an exporting Member, as a part of the process of ‘clarifying the situation’ as to the matters in Article 11.2 of the SCM Agreement.”<sup>2</sup>.
23. The obligation imposed by Article 13.1 is not an exercise which is met by inviting the exporting WTO Member in a manner that makes it impossible to conduct the consultations prior to the initiation of the case and to submit evidence which should have been considered prior to initiation. Thus, the GOC respectfully submits that the TRA acted inconsistently with Article 13.1 of the SCM Agreement because, even though the TRA seemingly invited the GOC for consultations, in the absence of a copy of the Application, the GOC was not provided with an effective opportunity to consult. Given the mandatory nature of Article 13.1 of the SCM Agreement, and the fact that pre-initiation illegalities cannot be rectified subsequently, the present investigation should be terminated forthwith.

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<sup>2</sup> Panel Report, *China – GOES*, footnote 74.