

Peter Verhaeghe ◊ ●
Edwin Vermulst ◊ ●
Marco Slotboom ◊ ● □
Folkert Graafsma ◊ ●
Peter Kugel ◊ ● ·
Juhi Dion Sud ◊ ● ■
Joris Cornelis ◊ ●
Partners



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Your Ref: **Email:** [\[CONFIDENTIAL\]@vvgb-law.com](mailto:[CONFIDENTIAL]@vvgb-law.com) **Date:** 17 April 2024
[\[CONFIDENTIAL\]@vvgb-law.com](mailto:[CONFIDENTIAL]@vvgb-law.com)

Subject: AD0047 – Anti-dumping investigation concerning certain excavators imported into the United Kingdom from the People's Republic of China – Comments on the Addendum to the Statement of Essential Facts by the Sany Group

Dear Madam, Sir,

In the context of the above-mentioned investigation, we refer to the Addendum to the Statement of Essential Facts ("Addendum to the SEF") of 10 April 2025, by which the Trade Remedies Authority ("TRA") provided "*updates*" to the SEF published on 25 November 2024 following the inclusion of the Caterpillar Group in the sample of Chinese exporting producers.¹ Interested parties were invited to comment on the Addendum to the SEF by today, 17 April 2025.²

Our client – *i.e.*, Sany Heavy Machinery Ltd. ("Sany Kunshan"), Shanghai Sany Heavy Machinery Co., Ltd. ("Sany Shanghai"), and Sany Heavy Machinery (UK) Ltd. ("Sany UK"), collectively referred to as "the Sany Group" – is grateful for the opportunity to provide its views on the Addendum to the SEF.

In these comments, the Sany Group would like to raise some procedural concerns.

1. Request for additional disclosure

According to the Addendum to the SEF, the final margins for the Sany Group "*will be published as part of the Final Recommendation as the changes resulting from the SEF comments are still being worked through*".³ However, paragraph 23 of the Addendum to the SEF states that "*the TRA has revised the approach taken for calculating a reasonable level of profit, which has been applied for all sampled exporters, and has resulted in changes to the margins that were calculated for the SEF.*" Moreover, paragraph 39 of the Addendum to the SEF states that "*the TRA has, to date, made changes to the dumping calculations relating to AS&G costs and profit*

¹ Case AD0047 - Certain excavators from China, Addendum to the SEF, paras. 2-5.

² Case AD0047 - Certain excavators from China, Addendum to the SEF, para. 6.

³ Case AD0047 - Certain excavators from China, Addendum to the SEF, paras. 42 and 56.

and export price." The Sany Group understands that these methodological changes may directly and substantially affect its anti-dumping duty rate.

In this connection, the Sany Group recalls that, pursuant to Regulation 62(1) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019:

"Before making a final affirmative or final negative determination [...], the TRA must –

- (a) *publish a statement (a "statement of essential facts") which sets out (i) the final determination that it intends to make ("intended final determination"); (ii) a summary of the facts considered by the TRA during the investigation; (iii) those facts referred to in sub-paragraph (ii) that formed the basis of the intended final determination; and*
- (b) *inform interested parties who have supplied information that has been considered by the TRA (i) how it has used the information supplied by that party in making the intended final determination; and (ii) of the details of the TRA's analysis forming the basis of the intended final determination." [Emphasis added].*

Similarly, Article 6.9 of the WTO Anti-Dumping Agreement ("ADA") provides that, "**before a final determination is made,"** investigating authorities must "inform" interested parties of the "essential facts" under consideration forming the basis of the intended final determination.⁴ Article 6.9 ADA further clarifies that "*[s]uch disclosure should take place in sufficient time for the parties to defend their interests."*⁵

In interpreting Article 6.9 ADA (and its parallel anti-subsidy provision, Article 12.8 of the WTO Agreement on Subsidies and Countervailing Measures ("SCMA")), WTO panels and the Appellate Body clarified that:

- (i) The "*disclosure of the data underlying a dumping determination alone may not enable an interested party to defend its interests, unless that interested party was also informed of the methodology applied by the investigating authority to determine the margin of dumping and considerations*";⁶ and

⁴ [Underlining added].

⁵ [Underlining added]. See also, Panel Report, *China – Broiler Products* (Art. 21.5 – US), paras. 7.369-7.371, citing Panel Reports, *China – X-Ray Equipment*, para. 7.400 and *Russia – Commercial Vehicles*, para. 7.254, citing in turn Appellate Body Report, *China – GOES*, para. 240.

⁶ See, for example, Appellate Body Report, *Russia – Commercial Vehicles*, para. 5.218, citing Appellate Body Report, *China–HP–SSST (Japan/EU)*, para. 5.131. [Underlining added]. See also, *China – Broiler Products*, para. 7.91, where the Panel held that the "*disclosure of the formulas applied is necessary to enable the respondent to comment on the completeness and correctness of the conclusions the investigating authority reached from the facts being considered, provide additional information or correct perceived errors, and comment on or make arguments as to the proper interpretation of those facts.*"

- (ii) *"If new "essential facts", i.e., facts that bring about a change in the authority's findings relating to subsidization, [dumping], injury or causation, are incorporated into the record after the issuance of the preliminary determination, then that determination by definition could not satisfy the disclosure obligation in Article 12.8 [SCMA and/or Article 6.9 ADA]."*⁷

To ensure compliance with the "active disclosure obligation"⁸ set out in Article 6.9 ADA, the national anti-dumping laws of many jurisdictions (such as the European Union) explicitly provide that, while "disclosure shall not prejudice any subsequent decision which may be taken", "where such a decision is based on any different facts and considerations they shall be disclosed as soon as possible."⁹

Based on the above, and since the TRA appears to have revised and changed the methodology for calculating the Sany Group's anti-dumping duty rate since the publication of the original SEF, our client kindly and respectfully requests to be provided with a supplementary disclosure detailing all methodological changes and adjustments affecting its margins before the publication of the Final Recommendation, so as to be able to properly exercise its rights of defence.

2. Other procedural concerns

Article 5.10 of the WTO Anti-Dumping Agreement ("ADA") stipulates that:

"Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation."

As confirmed by different WTO panels, Article 5.10 ADA "preserves predictability for the interested parties in an investigation" by ensuring that when an investigation is initiated, interested parties are not left in the uncertainty about the outcome of the investigation for more than one year "and in no case more than 18 months".¹⁰

Since the present investigation was initiated on 15 November 2023, and given the apparent absence of any "special circumstances", the Sany Group was hoping for this investigation to be

⁷ See, for example, Panel Report, *Mexico – Olive Oil*, para. 7.110.

⁸ See, for example, Panel Report, *China – Broiler Products (Art. 21.5 – US)*, paras. 7.369-7.371, citing Panel Reports, *China – X-Ray Equipment*, para. 7.400 and *Russia – Commercial Vehicles*, para. 7.254, citing in turn Appellate Body Report, *China – GOES*, para. 240.

⁹ Article 20(4), second subparagraph, of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, [2016] OJ (L 176), p. 21, as amended, available [here](#).

¹⁰ See, for example, Panel Report, *Pakistan - BOPP Film (UAE)*, para. 7.471, citing Panel Report, *Morocco – Hot-Rolled Steel (Turkey)*, para.7.74. [Underlining added].

completed within a year (*i.e.*, by November 2024). However, this was not the case. Indeed, this investigation has now been ongoing for over seventeen months.

The Sany Group was thus surprised to learn that, notwithstanding this delay, the TRA agreed to consider the data provided by the Caterpillar Group in March 2025,¹¹ *i.e.*, when – also according to the first timeline published by the TRA – the present investigation was meant to have already been concluded.¹²

In principle, the Sany Group agrees that investigating authorities can consider relevant additional data whenever this does not impact the timely completion of an investigation. However, our client is concerned that the decision to include the Caterpillar Group in the sample of Chinese exporting producers at such a late stage of the proceeding may impact the Sany Group's ability to exercise its fundamental rights of defence.

In this connection, the Sany Group notes that the TRA accepted to consider the Caterpillar Group's data (i) more than sixteen months after the initiation of the investigation, (ii) nearly fifteen months after the deadline to register as interested parties in the proceeding, (iii) nearly thirteen months after the deadline for submitting questionnaire replies, (iv) nearly four months after the publication of the SEF, and (iv) nearly three months after the publication of the Provisional Affirmative Determination.

The Sany Group further notes that, according to the TRA's website, the right of interested parties to request a reassessment of the TRA's final determination is dependent on "*whether a reassessment could be completed within any applicable WTO deadlines*."¹³

Therefore, particularly if the Sany Group's request to be provided with an additional disclosure is rejected, our client is concerned that its due process rights may be compromised by the delays that affected the timely completion of the present investigation and the decision to include the Caterpillar Group in the sample at such a late stage of the proceeding.

Our client nevertheless trusts that any delay that affected the timely completion of the investigation (and which clearly cannot be attributed to our client) will not undermine the possibility for the Sany Group to properly exercise its fundamental rights of defence and to have

¹¹ Case AD0047 - Certain excavators from China, Note to the File of 18 March 2025; and Addendum to the SEF, para. 3.

¹² Case AD0047 - Certain excavators from China, External Timeline of 15 November 2023, available at <<https://www.trade-remedies.service.gov.uk/public/case/AD0047/submission/229454b7-68ae-4ac6-9413-681a8e08ec5d/>>.

¹³ Guidance "The TRA's investigation process" (updated on 22 November 2024), available at <<https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/the-tras-investigation-process#legal-framework>>. [Underlining added].

a meaningful opportunity to understand and comment upon the methodology and dumping calculations relied upon by the TRA to establish its anti-dumping duty rate.

3. Conclusion

We thank you for your consideration of these comments.

Please do not hesitate to contact us should you have any questions and/or comments.

Yours faithfully,

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