



UK TRA Anti-Dumping Investigation of
Certain Excavators from the People's Republic of China
(AD0047)

**CCCME Comments on TRA Provisional Affirmative Determination and
Recommendation of Guarantee**

Submitted on Behalf of
China Chamber of Commerce for Import and Export of
Machinery and Electronic Products
("CCCME")

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I. INTRODUCTION

- [1] As mandated by the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (“CCCME”), we hereby submit the CCCME’s Comments on the TRA “Provisional Affirmative Determination and Recommendation of Guarantee” (hereinafter “TRA PAD”). The TRA PAD was published in the AD0047 public file on 20 December 2024; 3 January 2025 was fixed as the deadline for comments by interested parties.
- [2] Upon detailed review of the TRA PAD, the CCCME has found that, with only a few important exceptions as highlighted later herein, the factual findings and legal conclusions set out in the TRA PAD and notably with regard to the investigation’s crucial injury and causation issues, simply repeat, largely verbatim, the respective factual findings and legal conclusions set out in the TRA’s “Statement of Essential Facts” (“SEF”), published on 25 November 2024. Further, the CCCME recalls its 16 December “CCCME Comments on TRA Statement of Essential Facts”. Those CCCME Comments addressed in detail the procedural, substantive and legal insufficiencies of the SEF conclusions that are now merely repeated in the PAD and without any reference at all to the CCCME’s 16 December arguments demonstrating those insufficiencies.
- [3] To avoid duplicating the CCCME’s own arguments, the CCCME will now in partial response to the TRA PAD simply refer to its prior insufficiency arguments relating to the corresponding TRA SEF findings. However, certain other issues arising from the TRA PAD, including inconsistencies between certain provisions of the PAD and SEF, will be separately addressed herein. Not further addressed herein but necessarily recalled by the CCCME and hereby confirmed are the CCCME’s consistent contentions throughout this investigation regarding of the inadequacy of non-confidential disclosure by the UK industry of essential injury indicator data which the CCCME believes is essential for purposes of exercising its rights of defence in this investigation. In short, the CCCME would strongly urge the TRA to fully address all of these CCCME arguments before finalising a recommendation of provisional measures to the Secretary of State. Indeed, before submission of a final determination in this investigation, the CCCME believes that the SEF itself needs to be substantially revised and re-issued by the TRA to address the CCCME’s multiple concerns about its legal adequacy.¹

¹ For example, as the TRA SEF fails to address the CCCME arguments and supporting evidence already submitted to the TRA relating to injury and causation, the CCCME highlights WTO ADA Article 12.2.2, which requires the investigating authority, prior to imposition of a definitive anti-dumping duty, to provide interested parties with “all



II. CCCME COMMENTS

1. CCCME Comments on Identical TRA SEF and PAD Findings

[4] As indicated in the Introduction, the PAD does not refer at all to CCCME arguments already submitted to the TRA regarding key injury and causation findings set out in the SEF and now merely repeated in the PAD. To avoid repeating the CCCME’s own arguments as regards the respective PAD findings, the CCCME simply refers below to its specific arguments out in its 16 December 2024 “CCCME Comments on the TRA Statement of Essential Facts” (hereinafter “CCCME SEF Comments”). The prior CCCME arguments relate in particular to the TRA PAD findings and conclusions concerning:

- **Like goods assessment** (PAD §E6) – see CCCME SEF Comments paras. 9-16.
- **Injury Analysis:** PAD §H1 on use only of HMRC 8-digit commodity code as most appropriate source of information – see CCCME SEF Comments on reliable alternative sources of UK excavator industry information, paras. 17-25; PAD §H1.3.2 on profits analysis – see CCCME SEF Comments paras. 35-40; PAD §H1.3.3 on market share analysis – see CCCME SEF Comments paras. 27-34.
- **Causation and non-attribution:** PAD §H2.4 on third country imports and prices, and PAD §H3 on “dumped goods causing injury to UK industry” and on “other known factors and causation” (PAD paras. 489-495 and 496–500, respectively) – see CCCME SEF Comments paras. 41-54 and referenced Tables.

2. CCCME Comments on other elements of TRA PAD

- Alleged Price Suppression

[5] The CCCME also wishes to add comments regarding certain other PAD findings. For example, the CCCME is highly concerned regarding the sufficiency of the TRA PAD conclusions relating to alleged price suppression (PAD §H1.2.3). The CCCME does not find the TRA’s price suppression conclusion to be objective or adequately reasoned, as follows. While first confirming (PAD Table 14) that the UK industry was able to effectively increase its prices at a faster rate than increases in its cost of production though most of the injury period (except, to a very small degree, in the POI), the TRA reverts to a contrary general prior UK industry claim in its Application – which has not been

relevant information on the matters of fact and law and reasons which have led to the imposition of final measures In particular, the notice or report shall contain the information described in subparagraph 2.1, *as well as the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers...*” (CCCME emphasis) Also as regards revision of the TRA SEF, see the CCCME observations and query set out herein in para. 10.



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substantiated by subsequent data disclosures by the UK industry itself - about having to sell its excavators below its costs of production (PAD para. 386). Based on this industry claim in combination with a reference to the profit analysis set out in TRA PAD §H1.3.2, the TRA thus concludes that the evidence “would suggest significant price suppression” by lower-priced imports from China (PAD para. 388). However, and to the contrary, the cited evidentiary elements are not consistent and do not support a finding of significant price suppression.

- [6] In fact, the PAD in its separate analysis of profitability confirms that the profitability trend does not appear to be consistent with the price suppression findings in PAD §H1.2.3 – see PAD §H1.3.2 paras. 407-408. Indeed, the UK industry profitability progressively and significantly improved each year through the injury period up through the POI. In brief, the TRA’s reasoning to assert significant price suppression by the imports from China does not appear to be consistent with the disclosed facts. (See also below - para. 11 - concerning the TRA’s failure to take account of the CCCME’s arguments and supporting evidence that S. Korea exported its excavators to the UK in larger volumes and at lower prices than the imports from China throughout the whole of the injury period, hence making S. Korea, not China, the primary cause of any price suppression and related injury.)
- [7] Overall, an integrated assessment is essential to a properly reasoned conclusion on injury. As a starting point, and even if one accepts the UK industry claim that it was loss-making and selling below production costs at the start of the injury period, this could have had nothing to do with imports from China because the level of those imports was then negligible, i.e., comprising 2% or less of total UK market share². Moreover, after the first year of the injury period and even with an increase in imports from China, PAD Table 14 confirms that the UK industry sales prices increased progressively throughout the injury period and, in fact, stayed ahead of the increase in the average cost of production per unit through most of the injury period.
- [8] More broadly, the latest data set out in the PAD confirms that, across the whole of the injury period, i) domestic production capacity utilisation increased and total unit production for domestic sales increased 47% (PAD Table 20), ii) sales volumes increased by 43% while sales values increased 63% (PAD Tables 21 and 15), iii) average UK industry productivity increased 83% (PAD Table 22), and iv) perhaps most importantly, even if the import levels increased the UK industry’s profitability, ROI and cash flow situation improved considerably over the injury period up through the POI (PAD Tables 18 and 24)³.

² Private industry expert data submitted to the TRA.

³ The CCCME finds it curious that the TRA does not address the negative impact on UK industry profitability in the POI of the huge increase (+125%) of UK industry investments that year in relation to like goods (PAD Table 24). If these were investments, for example, to newly transition to electric excavators or to introduce other important technology advances or new models into the fleet, the actual sums invested could have been quite high



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- [9] When the injury indicator trends are assessed cumulatively and in light of the fact that the starting point in 2019 saw only a negligible level of imports and hence negligible UK market impact from Chinese excavators, the above PAD figures do not support a finding of material injury to the UK industry. Contrary to the UK industry claims, the PAD data appears to show instead that, overall, the trend of the commercial situation of the UK industry actually improved substantially over the injury period.
- Fact-finding errors in TRA SEF which are repeated in TRA PAD
- [10] As highlighted by the CCCME in its Comments on the TRA SEF, the TRA has made several crucial fact findings which bear directly on the TRA’s conclusions relating to the impact of the excavator imports from China on the injury allegedly suffered by the UK industry. The same fact-findings and conclusions are repeated in the TRA PAD, notably that 1) “dumped PRC imports ... were the main cause of injury to the UK industry during the injury period” and “[t]here were also no known other factors that broke the causal link.” (PAD para. 494), and 2) “PRC import prices were below that of imports from third countries throughout the injury period and in particular in the POI” and “[t]he TRA therefore determined that the impact of third country imports was not sufficient to break the causal link between the relevant goods [from China] and the injury suffered by the UK industry.” (PAD para. 500). However, these findings in the TRA SEF and PAD arise from the particular, restrictive manner of TRA analysis of excavator imports from third countries.
- [11] In fact, the TRA’s analysis of third country imports assesses volumes and prices of imports from not all important third country exporters of excavators to the UK. In particular, the TRA’s third country imports analysis totally fails to include excavator imports from the Republic of Korea (S. Korea). Based on the UK’s own HMRC OTS data and using the same 8-digit commodity code that the TRA has used throughout this investigation, the CCCME submitted to the TRA regarding the SEF and now confirms with respect to the TRA PAD that UK imports of excavators from S. Korea were both larger in volume than those from China and sold at significantly lower prices than the imports from China in each of the years of the injury period including the POI. The CCCME thus asserts that the TRA SEF/PAD findings that China was the main cause of any injury and that no other known factor broke the causal link to be in serious error and must be corrected.

and had a major negative impact on profitability in the POI. The impact of the major investment increase in the POI must therefore be addressed by the TRA. This point also serves to underscore the CCCME’s now frequent complaint during this investigation about the consistent absence throughout the TRA analyses of meaningful non-confidential absolute figures rather than purely indexing,



– Contradictory PAD and SEF Findings

[12] Further with regard to inconsistencies and contrary to the PAD's duplication of the great percentage of the prior factual findings set out in the SEF, the CCCME has noted that the TRA PAD contains two instances where, without any explanation, its data and findings contradict data and findings in the SEF. First, relating to the profitability situation of the UK industry, the PAD profit data set out in PAD Table 18 is wholly different and contrasting with the data set out in SEF Table 17, with the result that the PAD concludes that although there were losses in each year of the injury period, the level of losses were significantly lower in the POI and which trend would be inconsistent with the separate PAD price suppression finding (PAD para. 408; see also para. 6 above). Secondly, the cash flow figures across the injury period depicted in PAD Table 24 and conclusion at PAD para. 447 are inconsistent with the cash flow figures set out SEF Table 23 and conclusion at SEF para. 442.

[13] It is therefore essential for the TRA to indicate whether the SEF will be revised to take account of the later, different data set out in the TRA PAD. Moreover, any further changes in the respective data sets must be duly explained and disclosed for comment by interested parties in due time before a final TRA Recommendation is submitted to the Secretary of State.

– Additional New Data?

[14] Along the same lines of CCCME concern, the CCCME has noted that certain PAD provisions indicate that potential additional information may be secured by the TRA and/or obtained from interested parties and which "will be considered in the SEF and will be included in the TRA's final determination" (CCCME emphasis) (see PAD paras. 337, 409 and 437). However, because the SEF has already been published by the TRA (25 November), these latter PAD references do not make sense unless the SEF will indeed be revised and published in revised form so that interested parties will have an opportunity to make comments on the revised points.

[15] Of particular concern to the CCCME would be whether any different new data to be secured from the UK industry following the PAD, e.g., relating to profitability, would first be duly verified by the TRA and then be provided to all interested parties in appropriate non-confidential form for their comments. In any event, the UK industry has had this whole investigation to provide its data in the format requested originally by the TRA, so providing new data following the SEF and PAD is also likely to be out of time and should not be used by the TRA. As regards the SEF in particular, the CCCME would also recall its above legal point (para. 3 and footnote 2) following from WTO ADA Article 12.2.2, which requires investigating authorities to publish a final disclosure which covers all essential facts and reasoning (i.e., a SEF) which underlie an intended definitive imposition



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of anti-dumping duties and including reasons for accepting or rejecting relevant arguments of interested parties such as the CCCME in this investigation. The CCCME therefore requests the TRA to urgently confirm to all interested parties whether or not the TRA will be issuing a revised, all-inclusive SEF (presumably also to be consistent with PAD data and findings) and when.

– TRA PAD Non-inclusion of SEF Para. 317

- [16] Finally with regard to the PAD injury analysis, the CCCME notes the non-inclusion in the TRA PAD of the TRA SEF para 317, which stated that the published non-confidential versions of the information provided by interested parties during the course of this investigation “provide external readers with appropriate context.” In its CCCME SEF Comments, the CCCME explained the reasons why the CCCME took great exception to the TRA’s para. 317 “appropriate context” contention (CCCME SEF Comments, para. 5, regarding “Deficient Data Disclosure”). The CCCME also suggested methods to improve the transparency of non-confidential disclosures and gave reasons why the TRA’s preferred methodology of supporting its conclusions solely with reference to indexed data or via first-time disclosure of data not previously disclosed by the UK industry was not legally sufficient (CCCME SEF Comments paras. 6-7). The TRA’s non-inclusion of SEF para. 317 in the otherwise nearly completely duplicative TRA PAD is understood by the CCCME to confirm the CCCME’s argument that the UK industry’s non-confidential submissions throughout this investigation have not provided “adequate context” for other interested parties.
- [17] For all of the reasons referenced in these CCCME Comments on the TRA PAD, the CCCME therefore considers that the TRA has not made out a legally adequate case to justify a preliminary affirmative determination and recommendation that importers of Chinese excavators must provide a guarantee on those imports pending a final determination in this AD0047 investigation.

III. CONCLUSIONS

- [18] The CCCME is pleased to submit its Comments on the TRA Provisional Affirmative Determination and Recommendation of Guarantee (“TRA PAD”). Key conclusions of the CCCME include:
1. The TRA PAD published on 20 December largely duplicates verbatim the TRA’s injury and causation findings set out in the TRA Statement of Essential Facts (“TRA SEF”) published on 25 November 2024, but the TRA PAD fails to take into account any of the CCCME’s strong criticism of the legal sufficiency of the respective SEF findings as was set out in the 16 December CCCME Comments on the TRA SEF.



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2. The TRA's analysis of key injury indicators and related trends in the UK market is overly broad and imprecise while ignoring more precise data and expert market trends commentary that was made available to the TRA during the course of the investigation, thus causing the TRA's SEF analyses as repeated in the PAD to be both inadequate and non-objective under the relevant WTO ADA rules. There are also certain important inconsistencies between the TRA SEF and PAD which could have an important impact on the final conclusions relating to injury and causation.
3. The TRA's analyses of UK excavator imports and market effects bearing on the issues of causation of injury and non-attribution of other causative factors are defective for multiple reasons, including ignoring/not addressing directly conflicting trade data that has been earlier submitted by the CCCME and generated from reliable other international trade data resources using the identical commodity code, and also wholly failing to take into account the known fact, based on the UK's own import trade data (HMRC OTS), that excavator imports into the UK from S. Korea were throughout the whole of the injury period imported in larger volumes and at substantially lower prices than the Chinese excavators that are targeted by this anti-dumping investigation. This analytical failure duplicated in the PAD wholly undercuts the key TRA findings that imports from China are the main cause of injury allegedly suffered by the UK industry and that no other known factors break the causal link.
4. The CCCME expects the TRA to take due account of the CCCME's detailed arguments and supporting evidence demonstrating the insufficiency of the TRA's reasoning underlying the cited SEF/PAD injury and causation findings and to revise and disclose the revised elements of the SEF/PAD for comments by interested parties before TRA finalisation of a recommendation of provisional measures to the Secretary of State.

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The CCCME stands ready to reply to any TRA questions in follow-up to these CCCME Comments on the TRA PAD.



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