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Non-Confidential

The Comments on the Particular Market Situation in China's Boom Lifts Market regarding the Anti-dumping Investigation AD0075

Submission of the GOC

The government of the People's Republic of China (GOC) would like to make a comment on the allegations that a particular market situation (PMS) exists in the certain market in China and requests TRA to conduct the investigation according to WTO rules.

1. No PMS exists in the China's boom lifts 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 boom lifts market.

1.1 All types of Chinese boom lifts 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 boom lifts 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 Government guiding policies 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 behaviour 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 boom lifts manufacturers to obtain subsidies, and therefore does not refer specifically to the boom lifts industry.

In evaluating the nature and function of the Chinese five-year plans, TRA should apply consistent and objective criteria. In this respect, even though similar government plans of UK are not subject *per se* of the current investigation of TRA, they are still relevant context because perception of UK's own government plans would be relevant as to the criteria how China's five-year plan should be perceived.

UK has released the white paper "Industrial Strategy - Building a Britain fit for the future" in November 2017, and later in 2025 the UK's Modern Industrial Strategy and the UK's Trade Strategy. These UK government plans or strategies generally have similar, if not the same, nature, purpose as the 14th Five-Year Plan of China. For example, in the Foreword of the UK's Modern Industrial Strategy, it provides that the Modern Industrial Strategy "represents nothing less than a whole-government effort, with ambitious plans for eight high growth sectors". Moreover, the document specifies that the UK will support frontier industries, including "Advanced Manufacturing", by prioritizing "frontier manufacturing industries with the greatest growth potential"[1], partnering with industry to implement the Plan[2], reducing electricity costs for the energy-intensive manufacturer[3], committing up to £4.3 billion in funding for the Advanced Manufacturing sector, including up to 2.8 billion in R&D funding programmes over the next 5 years,[4] making targeted regulatory changes to boost growth in frontier industries[5], backing network of Industrial Strategy Zones with over £160 million in funding over 10 years to stimulate growth, etc. The UK's involvements also extent to clean energy industries[6], creative industries[7], defence[8], digital and technologies industries[9], finance industries[10], life sciences industries[11], and so on.

The UK government justifies these government strategies and plans as called upon by the market challenges. For example, according to the Business and Trade Select Committee of the UK Parliament, Government must articulate missions of grand challenges in a way that truly galvanises public, private and third sectors pulling together to do things differently, and the UK industrial strategy is designed to address the UK's economic challenges, because "market alone cannot manage this combination of challenges", and the government and private sectors together therefore

[1] The UK's Modern Industrial Strategy, p.118.
[2] Ibid.
[3] The UK's Modern Industrial Strategy, p.119.
[4] Ibid.
[5] Ibid.
[6] The UK's Modern Industrial Strategy, pp. 120-123.
[7] The UK's Modern Industrial Strategy, pp. 124-127.
[8] The UK's Modern Industrial Strategy, pp. 128-131.
[9] The UK's Modern Industrial Strategy, pp. 132-134.
[10] The UK's Modern Industrial Strategy, pp. 135-137.
[11] The UK's Modern Industrial Strategy, pp. 138-140.

"must form new partnerships" to address them.[12]

Since these UK's policy documents, which clearly identify concrete plans and financial support to boost certain industries, are not regarded by the UK government as non-market factors in the industry that would distort the market but a legitimate and justifiable means to address economic challenges that the market could not solve, the GOC requests the TRA, as part of the UK government agencies, to consistently and objectively apply the same evaluation criteria and approach on China's Five-Year Plan and other similar policy documents. TRA is obligated to take into consideration all relevant information before it and base its determination on objective assessment of the information, which include applying the same justification, criteria, and approach of the UK government in evaluation of its own government plan or strategy, and not to apply double standard in the current investigation.

In addition, according to past WTO decisional practice, simple assertions, unsubstantiated by relevant and positive evidence, are insufficient to meet the requirements of Article 5.2 of the WTO Anti-Dumping Agreement (ADA). Evidence for a positive PMS determination on PRC boom lifts industry 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 boom lifts sector. Mere references to GOC policy documents and guidelines and misrepresentation thereof 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 to support a PMS finding.

1.3 The price-setting is in accordance with the market conditions.

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 boom lifts 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

[12] Industrial Strategy, Seventh Report of Session 2024–25, Business and Trade Committee, published on 6 June 2025, page 1, & paras. 14-17, see: https://publications.parliament.uk/pa/cm5901/cmselect/cmbeis/727/report.html . (last checked on 20 March 2026)

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 boom lifts 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 boom lifts market.

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

2. Investigations and determinations on PMS should be in accordance with the WTO rules.

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

Rules relating to PMS is provided for in Article 2.2 of the ADA as follows:
“[,……] when, because of the particular market situation ,……, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with” not the domestic price of like products, but with export price of like products to a third country satisfying certain conditions or the constructed normal value. The ADA text is clear that, for disregarding domestic sales price in the determination of normal value, a finding of the existence of PMS *per se* by the investigating authority is not sufficient. The existence of PMS must be such that it does not permit a proper comparison of domestic prices with export prices for the determination of dumping margin.

PMS under Article 2.2 has been interpreted by Panel in *Australia — Anti-Dumping Measures on Paper*. The Panel found that a "particular market situation" is only relevant insofar as it has the effect of rendering domestic sales unfit to permit a proper comparison.[13] As to how to determine whether domestic prices permitted a proper comparison with export prices, the Panel in that case made it clear that the investigating authority was “obligated to assess the effect of the particular market situation on the domestic price in relation to *the effect on the export price*”[14], and “obligated to undertake the necessary additional examination to determine whether, *because of the particular market situation*, the domestic sales of *the individual exporters* do not permit a proper comparison of the domestic prices and the export prices”[15]. “If domestic sales *do* permit a proper comparison, then they cannot be disregarded as the basis for normal value, regardless of the existence of the particular market situation and its effects, whatever those may be.”[16] The Panel states that in such an exercise by the investigating authority, a fact-specific and case-by-case analysis of the particular market situation is necessarily called for.

GOC submits that the application in the current investigation does not contain evidences substantiating the existence of alleged PMS and that the price comparability is not permitted because of it. The TRA should apply proper methodology in examining whether the price comparability is not permitted because of the alleged PMS, and it should consider respondent-specific situation and evidences in its examination.

2.1 The application does not have sufficient evidence that the allege PMS does not permit price comparability

[13] Panel Report, *Australia — Anti-Dumping Measures on Paper*, para. 7.21.
[14] Panel Report, *Australia — Anti-Dumping Measures on Paper*, para. 7.90.
[15] Panel Report, *Australia — Anti-Dumping Measures on Paper*, para. 7.89. (emphasis added)
[16] Panel Report, *Australia — Anti-Dumping Measures on Paper*, para. 7.27.

The application alleged that there is PMS in China because the costs, prices, and company decisions are shaped by pervasive state and party intervention in the entire Chinese economy, which heavily impacts the production of boom lifts in particular. However, the application does not contain any evidences that how such alleged PMS, and in assuming if exists, does not permit proper comparison between domestic price and export price. In fact, the application completely ignored such a necessary step, and therefore the reliance on the alleged PMS to disregard domestic price in the establishment of normal value is without sufficient evidence, so is the subsequent establishment of the dumping margin. For this reason, the TRA should not initiate the investigation as provided for in Articles 5.2 and 5.3 of the ADA.

2.2 TRA should apply proper methodology in examining whether the price comparability is not permitted by the alleged PMS

2.2.1 TRA should not apply analytical methodology that rendering the examination void

In the Anti-dumping Investigation No. AD0047, TRA found the existence of PMS as a result of government influence and control in steel and key excavator component costs. The TRA then conducted an analysis of the effect of such PMS on price comparability and found that “domestic prices not being reflective of market conditions, while the export prices are affected by the market conditions within the UK”, and because that the prevailing conditions of competition differ between the UK market and Chinese market, the proper comparison between domestic price and export price is prevented. Such analytical approach and determination of the TRA would necessarily make the condition that PMS does not permit a proper comparison void, and is inconsistent with obligations under Article 2.2 of the ADA.

First, TRA’s determination in the investigation No. AD0047 is in essence based on the finding of PMS of distorted input costs in China and no such distortion in the UK. Since the investigating authority is required only to make PMS findings for the exporting country and companies, not for UK or UK companies (and third country exporters), the situation relied upon by the TRA for making the finding of “does not permit” proper comparison would be omnipresent for any and all investigations, and PMS finding would automatically lead rejecting of domestic price as normal value, thus making the condition under Article 2.2 of ADA for examination of the effect on proper comparability void.

Second, TRA stopped its analysis at the finding of alleged difference in conditions of competition in the UK and Chinese market, but failed to continue to analyse the issue in question, i.e., whether and how the comparison of the domestic price and export price of the responding exporters are made impermissible due to the alleged difference in the UK and Chinese markets. There is simply no analysis into this essential issue in question.

Third, TRA failed to the assess the effect of the alleged PMS on the UK market and export prices, which is indispensable in proper comparison analysis. TRA ignored the fact that the significant increase of market share in UK by the Chinese exports tend to imply that alleged lower costs of Chinese products also affect the export prices to UK leading to the increased competitiveness of the Chinese exporters in the UK market. The fact that multiple Chinese exporters exported the goods under investigation into the UK market creates not only competition between Chinese exporters and the UK domestic producers (and third country exporters), but also competition between these Chinese exporters whom are allegedly all affected by the PMS which would affect the export price to UK.

In the current investigation, TRA should not continue its erroneous and superficial analytical methodology that failed to properly examine the effect of PMS on both domestic price and export price and price comparability, which is in violation of the legal requirements in Article 2.2 of the ADA.

2.2.2 The effect of PMS on domestic prices and export prices and price comparability should be assessed case-by-case for each individual exporter

The Appellate Body has explained that Article VI:1 of the GATT 1994 and Article 2.1 of the ADA "address the pricing practice of an exporter",[17] and Article 2.2 and VI:1(b) "also point to the same direction" that dumping is exporter-specific.[18] The Appellate Body has further explained that "dumping" reflects the "pricing strategies in home and exporter markets" of the exporters,[19] and that "'dumping' is 'international price discrimination' reflecting the pricing practice of an exporting firm."[20]

Since the purpose of the comparison between domestic price and export price is to reveal pricing strategy in different markets by individual exporter or producer, not the general situation in the country or government behaviour, whether a "proper comparison" is "permitted" due to PMS under Article 2.2 would need to be assessed case-by-case for each individual exporter or producer, for the effect of PMS on the pricing strategy of each individual exporter in the domestic and export market.

[17] Appellate Body Report, *US – Stainless Steel (Mexico)*, para. 86.
[18] Appellate Body Report, *US – Stainless Steel (Mexico)*, para. 86.
[19] Appellate Body Report, *US – Stainless Steel (Mexico)*, para. 95.
[20] Appellate Body Report, *US – Stainless Steel (Mexico)*, footnote 208 to para 94.

This is consistent with the finding of the Panel in *Australia — Anti-Dumping Measures on Paper* that the effect of PMS on price comparability should be examined on exporter-specific basis.[21] Therefore, TRA would be required to collect and examine the relevant facts for each individual exporter and make exporter-specific determinations, instead of general determination for the country as a whole. And therefore, it is necessary for the TRA to collect and examine the relevant facts and data of each individual exporter, including for example their costs of production, domestic sales and export sales, their consideration and methodologies of pricing for products sold in Chinese markets and the UK markets, and how and the degree that the PMS factors are actually reflected, if any, in exporter's domestic prices and export prices.

GOC wishes to emphasize that in such examination, the phrase "because of the particular market situation" in Article 2.2 of the ADA makes it clear that the effect on domestic and export prices and price comparability must be due to the PMS found, not any other factors. Different markets including Chinese market and Uk market would always have different market situations including different prevailing conditions of competition. It is natural that the exporter's pricing strategy in Chinese and UK market would be affected by such differences. However, the effect of differences of such market conditions on domestic price and export price is not "because of the particular market situation", could not be attributable to PMS, and is not relevant for the assessment for PMS's effect under Article 2.2. TRA is required to examine the effect on domestic price and exporter price that would be specifically attribute to the PMS found. For example, when the PMS is found based on the alleged distorted input costs, any different effects on domestic price and export price and price comparability would need to be assessed due to such alleged distorted input costs per se, not other factors, such as different conditions of competition in the Chinese and UK market due to other factors.

2.2.3 A proper comparison is permitted if adjustments can be made for fair comparison

Last but not least, even if the TRA were to determine that an exporter's domestic prices and export prices are affected differently because of the PMS found, this does not necessarily mean it is warranted to reject the domestic price in the determination of normal value. The condition in Article 2.2 of the ADA is that such difference "do not permit" proper comparison, not that there is any difference that "affect" proper comparison. Therefore, the PMS found might have some different impact on the domestic price and the export price so that they are not directly comparable in all aspects. However, it does not automatically lead to such proper comparison

[21] Panel Report, *Australia — Anti-Dumping Measures on Paper*, paras. 7.80 and 7.89.

impermissible, and it would not qualify for applying methods other than using the domestic price for the determination of the normal value unless such impact on proper comparison amount to the degree of impermissible.

In this respect, Article 2.4 of the ADA provides useful context. Article 2.4 provides for the "fair comparison" between the normal value and the export price through due allowance. Therefore, while the normal value established under Article 2.2 would need to provide a foundation for "fair comparison" with export price, Article 2.4 recognizes that the normal value determined under Article 2.2 could still contain factors affecting price comparability to the export price. This does not mean the prices “do not permit” a proper comparison, because the difference are to be adjusted under Article 2.4.

Therefore, the TRA should not stop its examination at the finding of any difference in the impact of the PMS found on domestic price and export price, and needs to continue to examine whether adjustments could be made to compare the domestic price and export price properly and fairly despite such differences. If adjustment could be made, the condition of “do not permit a proper comparison” in Article 2.2 is not satisfied and domestic prices should not be rejected for the determination of normal value due to PMS.

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 PMS under the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 in China's boom lifts market. All types of Chinese boom lifts producers operate independently according to the market principle. 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 boom lifts market is fully open and free, and the price is determined by the market forces. In addition, there is no PMS in China’s boom lifts market that do not permit a proper comparison between domestic price and export price.

GOC requests the TRA to conduct the investigation and to make determinations in accordance with UK’s WTO obligations and based on positive evidences and objective examinations.