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**F. No. 6/4/2022-DGTR
Directorate General of Trade Remedies, DGTR
Ministry of Commerce & Industry
Department of Commerce
Government of India
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi -110001**

Dated: 29.09.2023

FINAL FINDINGS

Case No. A.D (OI)-04/2022

Subject: Anti-dumping investigation concerning imports of "Wheel Loaders" originating in or exported from China PR.

F. No. 6/4/2022-DGTR: - Having regard to the Customs Tariff Act 1975 as amended from time to time and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof, as amended from time to time ("**AD Rules, 1995**");

A. BACKGROUND OF THE CASE

1. M/s JCB India Limited (hereinafter referred to as the "domestic industry") has filed an application before the Designated Authority (hereinafter referred to as the "**Authority**"), on behalf of the domestic industry, in accordance with the Customs Tariff Act, 1975 (hereinafter referred to as the "**Customs Tariff Act**") and the AD Rules, 1995 for initiation of anti-dumping investigation concerning imports of the "**wheel loaders**" ("**product under consideration**", or the "**subject goods**" or "**wheel loaders**") originating in or exported from China PR. ("**subject country**").
2. The Authority, on the basis of sufficient *prima facie* evidence submitted by the applicant, issued a public notice vide Notification No. 6/4/2022-DGTR dated September 30, 2022, published in the Gazette of India, initiating the subject investigation in accordance with Section 9A of the Customs Tariff Act read with Rule 5 of the AD Rules, 1995 to determine the existence, degree and effect of alleged dumping of the subject goods and to recommend the appropriate amount of anti-dumping duties, which if levied, would be adequate to remove the alleged injury to the domestic industry.

B. PROCEDURE

3. The following procedure has been followed with regard to this investigation:

- i. The Authority notified the Embassy of the subject country in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Rule 5(5) of the AD Rules, 1995.
- ii. The Authority issued a public notice dated September 30, 2022, published in the Gazette of India Extraordinary, initiating the anti-dumping investigation concerning imports of the subject goods from the subject country.
- iii. The Authority sent a copy of the initiation notification on October 4, 2022, to the Embassy of the subject country in India, the known producers and exporters from the subject country, the known importers/users of the subject imports and other interested parties, as per the information provided by the applicant. The interested parties were requested to provide relevant information in the form and manner prescribed in the initiation notification and to make their submissions known in writing within the time limit prescribed by the initiation notification.
- iv. The Authority also provided a copy of the non-confidential version of the application filed by the applicant to the known producers/exporters, known importers/users and to the Embassy of the subject country in India in accordance with Rule 6(3) of the AD Rules, 1995 through its email dated October 4, 2022.
- v. The Embassy of the subject country in India was also requested to advise the exporters/producers from their country to submit their responses to the questionnaire within the time limit prescribed by the initiation notification. The Embassy of the subject country was also sent a copy of the letter and questionnaire sent to the producers/exporters along with the names and addresses of the known producers/exporters from the subject country.
- vi. The Authority issued Economic Interest Questionnaire to the Chinese Embassy, all the known exporters, importers and the domestic industry. The Economic Interest Questionnaire was also shared with the Administrative Line Ministry.
- vii. The Authority sent questionnaires to the following known producers/exporters in the subject country in accordance with Rule 6(4) of the AD Rules, 1995:
 - i Guangxi LiuGong Machinery Co. Ltd.
 - ii Shandong Lingong Construction Machinery Co. Ltd.
 - iii Caterpillar (Qingzhou) Ltd.
 - iv Liebherr Machinery (Dalian) Co., Ltd.
 - v Volvo Construction Equipment China
 - vi Lonking International
- viii. On November 3, 2022, the Authority conducted a discussion on the methodology to be adopted for Product Control Numbers (“PCN”) in the subject investigation. Interested parties were provided time until November 7, 2022, to file their comments on the PCN methodology.
- ix. Accordingly, the Authority finalized the PCN methodology in the subject investigation *vide* notification dated November 17, 2022. Upon the request of the exporters, the

Authority granted an extension of two weeks to file the questionnaire responses. Thereafter, interested parties were provided time until December 2, 2022, to file a response to the questionnaires circulated by the Authority.

- x. In response to the above notification, the following producers/ exporters from the subject country have submitted the exporter questionnaire response:
- i Liebherr Machinery (Dailian) Co. Ltd. (“Liebherr Dailian”)
 - ii Liebherr (China) Co. Ltd. (“Liebherr China”)
 - iii Liebherr Export AG (“Liebherr Switzerland”)
 - iv Liebherr Werk-Bischofshofen GmbH (“Liebherr Austria)
 - v XCMG Construction Machinery Co., Ltd. Technology Branch,
 - vi Xuzhou Construction Machinery Group Import and Export Co., Ltd.
 - vii Shandong Lingong Construction Machinery Co., Ltd.
 - viii Caterpillar (Qingzhou) Ltd.
 - ix Caterpillar (Suzhou) Co. Ltd.
 - x Caterpillar Inc.
 - xi Caterpillar SARL Singapore Branch
 - xii Guangxi LiuGong Machinery Co. Ltd.
- xi. The producers/exporters from the subject country who have not submitted the questionnaire response or have not cooperated in the investigation have been treated as non-cooperative in the investigation.
- xii. The Authority also sent questionnaires to the known importers/users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules, 1995.
- xiii. The following importers/users submitted the importer/user questionnaire responses:
- i Liebherr India Private Limited (“Liebherr India”)
 - ii Schwing Stetter (India) Pvt Ltd
 - iii Volvo CE India Private Limited
 - iv LiuGong India Pvt. Ltd.
 - v Gainwell Commosales Pvt. Ltd.
 - vi GMMCO Ltd.
- xiv. Additionally, an association from China PR, namely, China Chamber of Commerce for Import and Export of Machinery and Electronic Products (“CCCME”) participated in the investigation.
- xv. The Directorate General of Systems & Data Management (DG Systems) was requested to provide transaction-wise details of the imports of the subject goods for the injury period and the period of investigation. The same was received by the Authority and considered at the stage of initiation of the investigation as well as for the present final findings.
- xvi. In accordance with Rule 6(6) of the AD Rules, 1995 the Authority provided an opportunity to the interested parties for presenting their views orally regarding the subject investigation through a public hearing held in hybrid mode, on April 6, 2023.

The interested parties who presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions, if any. The interested parties were further directed to share the non-confidential version of the written submissions submitted by them with the other interested parties.

- xvii. The non-injurious price (hereinafter referred to as the ‘NIP’) has been determined based on the cost of production and reasonable return on capital employed for the subject goods in India, based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the AD Rules, 1995 so as to ascertain whether anti-dumping duties lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xviii. The information submitted by the domestic industry has been examined and verified during on site-verification to the extent deemed necessary and has been relied upon for the present final findings.
- xix. The examination and verification of the information submitted by the cooperating producers/exporters from the subject country was also carried out to the extent deemed necessary and have been relied upon for the purpose of the present final findings .
- xx. The period of investigation (POI) for the purpose of the present investigation is April 1, 2021 – March 31, 2022. The injury period for the present investigation is 1st April 2018 – 31st March 2019, 1st April 2019 – 31st March 2020, 1st April 2020 – 31st March 2021 and the POI.
- xxi. The Authority made available the non-confidential version of the evidence presented by various interested parties on mutual basis in the manner prescribed through Trade Notice no. 01/2020 dated 10th April 2020. The information/submissions provided by the interested parties on a confidential basis were examined concerning the sufficiency of such confidentiality claims. On being satisfied concerning the sufficiency of the confidentiality claims filed by the interested parties, the Authority has considered such information/submissions as confidential. In case of non-acceptance of confidentiality claims, the interested parties were directed to submit the non-confidential version of the same and circulate it to the other interested parties.
- xxii. The Authority has considered all the arguments raised and information provided by all the interested parties at this stage, to the extent the same are supported with evidence and considered relevant to the present investigation.
- xxiii. ‘***’ in these disclosure statement represents information furnished by an interested party on confidential basis and so considered by the Authority under Rule 7 of AD Rules, 1995.
- xxiv. The exchange rate for the POI adopted by the Authority for the subject investigation is 1 US \$= Rs. 75.26.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

C.1 Submissions made by the other interested parties (exporters, importers and users)

4. The other interested parties have made the following submissions with respect to the product under consideration:
 - a. It is the consistent practice of the Authority to exclude those products from the scope of the PUC that are not produced by the domestic industry and/or not imported into India.
 - b. The domestic industry does not produce wheel loaders of rated payload of 7,000 KG.
 - c. Wheel loaders with a rated payload of 7,000 KG is used in specific industries like mining and shipping ports. Due to limited domestic demand, it is not commercially viable to produce them in India. The few interested parties have imported wheel loaders with a payload rating of 7,000 KG from China, as they are not manufactured domestically in India.
 - d. The diesel engine wheel loaders with a capacity of 7,000 KG have different technical specifications compared to domestically produced wheel loaders with a payload of 5,500 KG. Replacing 7,000 KG wheel loaders with 5,500 KG wheel loaders would result in inefficiencies and adverse consequences in terms of cycle time, fuel consumption, site efficiency, allied machinery efficiency, safety concerns, productivity, and maintenance cost. The 7,000 KG wheel loaders are used for bulk loading within a limited time frame, achieving higher material movement with lower fuel consumption compared to the 5,500 KG wheel loaders. There is no possibility of circumvention of anti-dumping duty by importing 7,000 KG wheel loaders.
 - e. If a lower-rated capacity wheel loader could realistically substitute a higher-rated payload wheel loader, the market would only have one type of rated payload capacity. Consumers would have rejected the higher-rated wheel loaders if the lower-rated ones could perform the same tasks.
 - f. The domestic industry has not provided clear information about the difference between "theoretical payload" and "rated payload" or disclosed these specifications in their product brochure.
 - g. Some interested parties have argued that the petition does not categorically state that any of the domestic industry's products have any patents and registered design, either of themselves or their supporters or of their importers and exporters. In this regard, it has been argued that in the past, products have been excluded from the scope of the PUC only because the same was patented.
 - h. The domestic industry has itself submitted that wheel loader with rated payload of more than 7000 Kg should be excluded from the scope of the PUC and has thereby accepted that wheel loaders with more than 7000 Kg are not substitutable with wheel loader with rated payload of 5585 Kg produced by the domestic industry.

- i. The fact that JCB is producing wheel loader of rated capacity of 3650 Kg as well as 3350 Kg, itself shows that precise rated payload capacity is an important parameter and even a variation of 300 Kg can result in a separate category of wheel loader and can be a determinative factor for the users.
- j. Certain interested parties have objected to the concurrent (or 'and') conditions for exclusion. It has been argued that the additional conditions for exclusion along with the rated payload, may inadvertently include wheel loaders with a rated payload of 7,000 KG and above within the scope of the product under consideration (PUC), even though they are not produced by the applicant.
- k. No third party has specified that wheel loaders with a payload over 7,000 KG must have certain specifications such as engine power, wheel tread, and wheel-base. Accepting these conditions as necessary for excluding wheel loaders creates a mandatory product standard and an artificial distinction between Loaders with a payload over 7,000 KG.
- l. It is difficult for customs authorities to determine if imported wheel loaders in a semi-knocked down condition fulfil the additional conditions regarding wheel base, wheel tread, and engine power.
- m. The applicant does not produce electrical wheel loaders (battery operated). Electrical wheel loaders have not been imported into India during the POI.
- n. Electrical wheel loaders have limitations in terms of geographical locations, extreme temperatures, and charging requirements, which may affect uninterrupted productivity.
- o. Electrical wheel loaders lack the necessary legal framework and certification for registration with the Road Transport Office (RTO) and cannot be used on roads, unlike diesel engine wheel loaders.
- p. The purchase cost of electrical wheel loaders is approximately three times higher than that of diesel engine wheel loaders, and they contribute to reduced carbon footprints and noise pollution compared to their diesel counterparts. Failure to exclude electrical wheel loaders would discourage the use of emission-free electric alternatives, even when they are suitable for specific applications.
- q. Electrical wheel loaders have a different production process, technology, parts, and specifications compared to diesel engine wheel loaders, resulting in lower emissions and noise. Electrical wheel loaders require specific infrastructure like charging stations and adequate electricity supply, while diesel engine wheel loaders do not.
- r. Ministry of Road Transport and Highways is the leading user of wheel loaders for infrastructure/construction purposes and promotes environmentally friendly solutions such as battery-operated wheel loaders. The Ministry of Power in consultation with NITI Aayog is also promoting electric vehicles and has introduced guidelines for charging infrastructure for electric vehicles.

- s. The initiation notification as well as PCN notification categorizes the product based on engine power (only wheel loaders powered by the engine are considered). In battery-operated wheel loaders, there is no engine to power the loader. Thus, non-fossil fuel-based wheel loaders like battery-operated electric wheel loaders are inherently different product categories altogether.
- t. Guangxi Liugong Machinery has produced and sold electrical wheel loader during the POI.
- u. The scope of the PUC does not include parts and components of wheel loaders. It is unclear whether semi-knocked down (SKD) or completely knocked down (CKD) forms are included within the scope of the PUC.
- v. The domestic industry claimed to have categorized imports in the PUC or non-PUC without any explanation on the identification and quantification of wheel loaders in SKD form and CKD form.
- w. It is suggested that wheel loaders in SKD (semi-knocked down) form should be defined as consisting of the machine body or chassis (including the engine, gear box, frame, and axle) assembled with certain separately imported items. These items include the bucket, cabin, tool kit, mufflers, handrails, and ladders.
- x. CKD refers to a product that has been completely disassembled form. In effect, the product in SKD and CKD are the same product and the difference is merely the level of assembly. Therefore, there is no clarity on the exclusion of wheel loaders in CKD form from the import data.
- y. There is no investigation till date wherein the PUC in SKD form has been included and the PUC in CKD form is excluded from the PUC.
- z. There is strong apprehension that the domestic industry has imported the PUC in CKD form and excluded wheel loaders in CKD form only to become eligible as the “domestic industry”.
- aa. The wheel loader imported in SKD form undergoes substantial value addition for assembling as a completely built unit. It requires value addition on account of assembling, skilled manpower, energy consumption, quality control/testing, sales, and distribution, amongst others. In addition, CBU (complete built unit) and SKD differ in terms of transportation costs, product quality, etc. Other things being equal, the cost composition of CBU and SKD are different, and the value/price of CBU is automatically higher than the SKD unit.
- bb. Wheel loaders in the SKD form should not be compared with the wheel loader in the CBU form. Any such comparison would not result in a fair injury analysis.
- cc. The Caterpillar Entities submitted their objections to the proposed Product Control Number (PCN) methodology to the Authority via email on November 2, 2022. They followed up with another letter on November 4, 2022, requesting a meeting with the Authority regarding the PCN methodology. However, their request for a meeting was not accepted. On November 17, 2022, the Authority confirmed the PCN classification

that was proposed during the initiation of the investigations. Therefore, it has been argued that they have not been provided a fair opportunity.

- dd. The cost/price difference between a wheel loader with automatic transmission, wet brake, and piston pump compared to a wheel loader with manual transmission, dry brake, and gear pump is approximately 40%.

C.2 Submissions made on behalf of the domestic industry

- 5. The following submissions have been made on behalf of the domestic industry with regards to the product under consideration:

- a. The PUC is a construction equipment, which is used for varied applications such as loading, shifting, heaping, and dozing bulk or discrete materials, using buckets or other attachments. The scope of the PUC includes wheel loaders with additional features that provide for functions beyond the essential functions of loading, shifting, and dozing of materials, etc.
- b. A wheel loader is a self-propelled wheel mounted equipment with an articulation joint, having front loading mechanism. The product under consideration is commonly known as "wheel loading shovel/wheel loader/front-end loader/wheeled loading shovel/wheeled loader".
- c. A wheel loader is also fitted with hydraulically operated arms on the front with lift and lower operations. Further, a wheel loader is equipped with a front-mounted bucket, which is supported by a tilting cylinder for operating the bucket and other attachments on the front based on application.
- d. The PUC is used across different sectors, including material handling, and loading in crushers, ready-mix-concrete plants, mining, ports, process industries, and other general engineering and industrial applications.
- e. The rated payload capacity is a self-declared parameter by the manufacturer which is neither accredited by any external party nor regulated by any law in force. Since the rated payload capacity of wheel loaders is self-declared, the possibility of importers or foreign producers attempting to evade the imposed duties by modifying the declared payload capacity cannot be ruled out.
- f. Gross engine power is a parameter that measures the output power of the engine that operates a wheel loader. The tuning of an engine can be modified to increase the gross power in exchange for lower efficiency, or vice-versa. Accordingly, to a certain degree, gross engine power can also be modified to avoid anti-dumping duties, without any substantial changes in the physical dimensions.
- g. Even though rated payload capacity and gross engine power are crucial parameters relevant to a wheel loader, any party looking to exploit the exclusion parameters can easily make minor changes to their claimed payload capacity or tune their engine differently to get their product excluded from the product scope. However, the size of a machine (i.e., the other two parameters of exclusion) is more difficult to modify.

- h. The exclusion should be tested on the basis of all four parameters mentioned above. In absence of the same, exclusion based on only one or two parameters is susceptible to circumvention of any imposed duties, ultimately undermining the intended effect of the duties.
- i. The domestic industry also submits that it is a settled position of WTO law that the determination of 'like products' must be done on a case-to-case basis, by examining relevant factors.
- j. It is also the consistent practice of the Authority to consider the following factors in examining whether the domestic product is like article to the imported product: (a) product specifications, which include physical & chemical characteristics, (b) manufacturing process & technology, (c) raw materials, (d) functions & uses, (e) pricing, (f) distribution & marketing and (g) tariff classification of the goods.
- k. As affirmed by the Hon'ble CESTAT in *Merino Panel Products Ltd. v. Designated Authority* (2016) (334) ELT 552, commercially and technically substitutable products are 'like products' and must be included with the scope of the PUC in an anti-dumping investigation.
- l. Other jurisdictions such as the European Commission and the United States also rely on factors such as basic physical and technical characteristics, end-uses, and interchangeability to determine 'likenesses' of the products.
- m. The domestic industry manufactures wheel loaders with a declared rated payload capacity of up to 5,585 KG, which is commercially and technically substitutable with wheel loaders having a declared rated payload capacity of 7,000 KG.
- n. The domestic industry's wheel loader of rated payload capacity 5,585 KG directly competes with wheel loaders having rated payload capacity of 7,000 KG in terms of price ranges, end-use, and applications.
- o. If the rated payload capacity is adjusted to account for differences in methodology, at the higher capacity levels of the PUC definition, the difference would be only about 5~8% when a consistent methodology (i.e., payload based on engine power) is used to assess the models of the domestic industry and LiuGong for the purpose of determining the rated payload capacity.
- p. The domestic industry has calculated the theoretical payload capacity of its competing wheel loader (with reported rated payload capacity of 5,585 KG). Upon computation of a theoretical payload capacity using the same engine power to payload ratio as LiuGong's model, the domestic industry's model would also have a rated payload capacity in the range of about 6,533 KG. The domestic industry demonstrated the same during the on-site verification.
- q. Wheel loaders produced by the domestic industry and wheel loaders of rated payload capacity of 7,000 KG do not have any differences in engine power, dimensions, hydraulic pump, etc.

- r. The wheel loaders produced by the domestic industry cater to the same market segment as wheel loaders with 7,000 KG of payload capacity.
- s. The price at which LiuGong's 870H model is imported is significantly lower compared to the selling price of the domestic industry. Further, the fact that the price of LiuGong's 870H model (7,000 KG rated capacity) is significantly lower than the domestic industry's 455ZX model (5585 KG rated capacity) also implies that the LiuGong product is being sold at extraordinarily low and injurious prices, and directly competing with the domestic industry's product.
- t. The domestic industry produces and sells models having rated payload capacity 3,650 KG and 5,585 KG. Both models are substitutable with the wheel loaders with a payload capacity of 4,500 KG technically and commercially.
- u. The domestic industry submits that a wheel loader with a payload capacity of less than 2,000 KG is substitutable with a wheel loader having a payload capacity of 3,000 KG.
- v. The wheel loaders in CBU form contain the engine number, model number, brand, and other relevant details, in transaction-wise import data. Therefore, the imports of wheel loaders in CBU form are easily identifiable.
- w. It may be noted that often machine bodies or chassis are not imported as single assemblies. Therefore, adopting the definition of wheel loaders in SKD form provided by the Caterpillar Group may result in the imposition of anti-dumping duty being rendered redundant.
- x. A wheel loader in SKD form may be defined as a shipment consisting of the machine body/chassis fitted with an engine, transmission, or axle in a single unit, which may or may not be fitted with one or more other components. Wheel loaders imported in the SKD form require minimal processing, assembly, and the use of resources.
- y. The imports in SKD form are generally imported in 5–8-line items. Notably, these line items are imported on same day, and has same import declaration number. The product description of these line items clearly mentions the number of imported machines, model number, brand of the machine, and the form of import, i.e., SKD/kits.
- z. Wheel loaders in CKD form would be wheel loaders imported in the form of parts and components. Typically, all parts and components required to manufacture a machine may not be imported at the same time, or as a part of the same transactions/shipments. It may prove to be difficult to identify the components and parts meant for wheel loaders from the transaction-wise import data, unless the model number, brand name, and other product details are clearly mentioned in the import transaction description.
- aa. Wheel loaders imported in the CKD form require substantial assembly operations in India. Since wheel loaders are heavily engineered and complex products, assembling

all the components from a CKD form requires significant manpower, skills, and other resources.

- bb. The efficiency of the domestic industry's 455ZX is comparable (in different conditions and operations) to the efficiency of LiuGong's 870H model in terms of output and fuel efficiency. Site efficiency depends on the type and quantity of allied vehicles/types of machinery deployed is dependent on the project in terms of size, location, and operations, therefore, these cannot be considered as a differentiating factor of the machine.
- cc. The domestic industry's wheel loader with 5,500 KG payload meets all site safety parameters as prescribed. In addition, it is fitted with cabin with roll over protection system and an emergency brake system.
- dd. Maintenance and repair costs should be considered from life-cycle perspective with factors of component life, pricing, duty cycle and maintenance practices being the key ones.
- ee. No upgradation is required for a wheel loader of rated payload capacity of 7,000 KG to perform the tasks of a wheel loader of rated payload capacity of 5,500 KG, and vice versa. Accordingly, no certification shall be required by the Automotive Research Association of India.
- ff. The PUC includes all wheel loaders irrespective of their mechanical energy delivery platform (i.e., internal combustion engine or battery-powered engine/motors). The engine or battery-powered motor is merely a platform meant to provide energy for the operation of the wheel loader. While the technology, production process, part and components may be different, electric wheel loaders are technical substitutable with conventional wheel loaders.
- gg. The requirement of different infrastructure and charging stations per-se does not result in two products unlike to each other. Additionally, merely an interim break in the operations of a battery-operated wheel loader (for charging) does not imply that they are different from a conventional wheel loader or have different utilities. Further, the difference in emission and noise levels does not automatically result in two products being unlike each other.
- hh. While the initial cost of an electric wheel loader may be higher, the overall cost of owning & operating costs for a conventional wheel loader and electric-powered wheel loaders are comparable.
- ii. From the perspective of a user, the end-use of a battery operated and conventional wheel loader is the same, irrespective of differences in supply chain, development, and testing infrastructure.
- jj. In the past, the Authority has refused to exclude grades of products which have neither been imported into nor manufactured in India, since the grades were substitutable by the grades offered by the domestic industry in the given investigation.

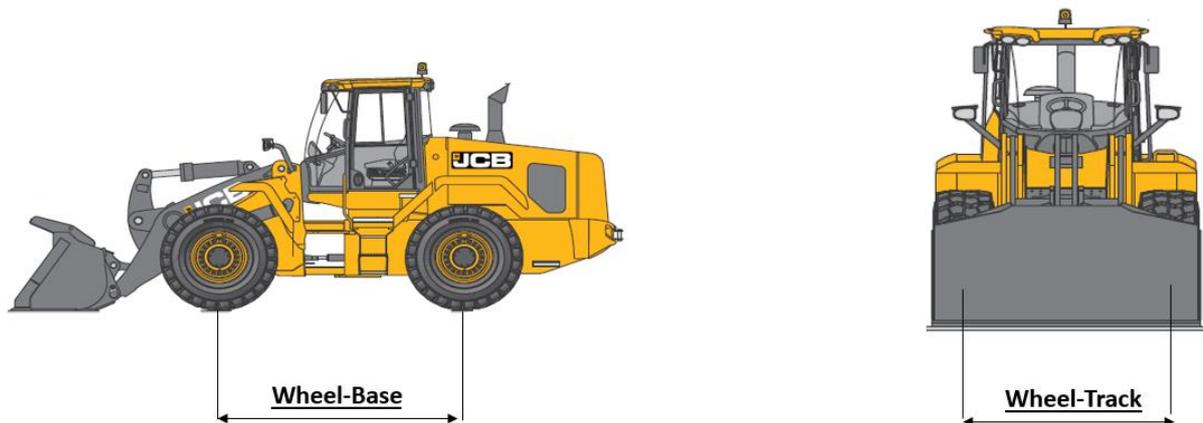
kk. The Caterpillar Group and Caterpillar India were intimated about the investigation in time. It may also be noted that the Authority has invited all the registered interested parties for a discussion on the proposed PCN structure. Subsequently, all interested parties filed their questionnaire responses on the basis of which PCN were finalized by the Authority.

ll. Due to the absence of any imports of electric wheel loaders during the POI, there is no need to modify the PCN methodology. The final PCN methodology allows for a comparison of imported and like articles on the basis of the kW (power) of the products. Therefore, the power of the battery operating a wheel loader can also be reported in terms of kW.

mm. The impact of all three parameters, i.e., transmission, brakes, and pumps (even when considered jointly) only affects the pricing of the PUC by merely 0-5%.

C.3 Examination by the Authority

6. The PUC in the present investigation is “wheel loaders” which is a self-propelled wheel-mounted equipment with an articulation joint, having front end loading mechanism.



7. The following specifications of the Wheel loaders are to be excluded from the scope of the investigation:

- i. Rated payload capacity of more than 7,000 KG;
- ii. Gross engine power above 180 kW;
- iii. Measured distance at the centre between right and left wheel (wheel tread/track) above 2,280 mm;

and

- iv. Measured distance between the front and back wheel axles (wheelbase) above 3,350 mm.

8. All the above parameters are ‘and’ conditions. In other words, a product is excluded from the scope of the PUC only if it satisfies all of the above conditions concurrently.
9. In the following paragraphs, the Authority has addressed each of the interested parties’ concerns.

Wheel loaders with rated payload capacity above 5,500 KG, 4,500 KG, and under 2,000 KG

10. The Authority notes that the main argument from the interested parties is that wheel loaders with rated payload capacity of 5,500 KG, as produced by the domestic industry, cannot be substituted with wheel loaders with rated payload capacity of 7,000 KG. It has been argued that wheel loaders of different rated payload capacities have different end-uses and costs.
11. The Authority notes that the rated payload capacity is a company-declared parameter wherein different producers of the subject goods use differing methodologies to report their rated payload capacity. Therefore, comparable wheel loaders have different rated payload capacities, depending upon the methodology followed by the producing company. Further, the Authority notes that the rated payload capacity of wheel loaders is not required to be certified by any competent body or agency under any law. Accordingly, merely differing rated payload capacity is not sufficient to render two products “unlike”. In view of the above, the exclusion of wheel loaders merely on the basis of rated payload capacities of the wheel loaders may result in any imposed anti-dumping duty being rendered redundant.
12. Additionally, at the on-site verification, the domestic industry demonstrated that the wheel loader produced by the domestic industry, having a declared rated payload capacity of 5585 KG, can lift and operate with a payload of about 7,000 KG, whereby the two products can substitute each other. Further, it was also submitted that the wheel loaders of the declared payload capacity 7,000 KG and 5,585 KG are being interchangeably used by certain customers for the same application at same site.
13. Furthermore, it was also noted that various models of rated payload capacity of 7,000 KG have been imported into the country at a price much lower than the wheel loaders of rated payload capacity of 5,585 KG sold by the domestic industry. In view of the above, it is noted that the exclusion of wheel loaders having declared rated payload capacity more than 5,585 KG is not justified.
14. With regard to the other submissions made by interested parties in relation to wheel loaders having rated payload capacity of 4,500 KG and under 2,000 KG, the Authority notes that the products covered within the scope of the PUC in an investigation need not be interchangeable. The products included are only required to be comparable.

15. Accordingly, for the purpose of fair comparison of the various types of wheel loaders, the Authority has finalized the PCN methodology, on the basis of the comments received from the interested parties, vide Notification dated F. No. 6/4/2022 dated November 17, 2022.
16. In view of the above, the Authority finds that all wheel loaders are included within the scope of the PUC, except the ones specifically excluded by the Authority.

'And' Conditions

17. The Authority notes that the following specifications of the wheel loaders are to be excluded from the scope of the investigation:
 - a. Rated payload capacity of more than 7,000 KG;
 - b. Gross engine power above 180 kW;
 - c. Measured distance at the center between right and left wheel (wheel tread/track) above 2,280 mm; and
 - d. Measured distance between the front and back wheel axles (wheelbase) above 3,350 mm.
18. The Authority notes that the domestic industry has argued that any party looking to exploit the exclusion parameters can make minor changes to their claimed payload capacity or tune their engine differently to get their product excluded from the product scope. However, the size of a machine (i.e., the other two parameters of exclusion) is more difficult to modify. Therefore, exclusion based on only one or two parameters is susceptible to circumvention of any imposed duties.
19. In this regard, the Authority notes after examining the arguments of interested parties that the lack of 'and' exclusion conditions may lead to any imposed anti-dumping duties being rendered redundant. Rated payload capacities and gross engine power are modifiable parameters which may be tweaked. However, the other two parameters of exclusion (i.e., wheel track and wheel tread) may be more difficult to modify. Also, the Authority notes that none of the interested parties have provided any instance of a model unfairly being classified as the PUC due to the concurrent exclusion parameters.
20. Accordingly, the Authority proposes to retain the 'and' exclusion conditions as part of the scope of the PUC.

Battery Operated Wheel Loaders

21. Parties have argued that battery-operated wheel loaders must be excluded from the scope of the PUC since neither have they been imported during the POI, nor have they been produced by the domestic industry.
22. The Authority notes that neither has the domestic industry manufactured the battery-operated wheel loaders, nor have they been imported. It is also noted that the price difference, end-use and other technical parameters of a battery-operated wheel loader are significantly different from that of a conventional wheel loader.
23. It is the consistent practice of the Authority to exclude grades that have neither been manufactured and sold by the domestic industry nor have been imported into India. Accordingly, the Authority decides to exclude battery operated wheel loaders from the scope of the PUC.

Inclusion of 'SKD' Units of Wheel Loaders

24. The Authority notes that wheel loaders can be imported in three forms: (i) Completely Built Up ("CBU"), (ii) Semi Knocked Down ("SKD"), and (iii) Completely Knocked Down ("CKD").
25. A CBU wheel loader is a fully assembled machine which does not require any further modification or assembly in India. Once imported, the CBU wheel loader is ready to be sold to, and used by, consumers. wheel loaders in SKD form are partially assembled machines which require minimal resources in terms of technical know-how, capital investments, labour etc., and wheel loaders in CKD form are machines which are imported in the form of parts and components.
26. The Authority notes that the domestic industry has not alleged dumping for components. It has also been submitted that inclusion of CKD forms of the PUC might lead to the indirect inclusion of parts and components of a wheel loader. Therefore, it was decided to exclude CKD forms of the PUC from the scope of the PUC.
27. On the other hand, since wheel loaders in SKD form are near complete CBU, any exclusion of wheel loaders in SKD form would lead to the exclusion of dumped imports of wheel loaders. Therefore, wheel loaders in SKD form are included in the scope of the PUC.
28. However, the Authority acknowledges that wheel loader in SKD form must be defined in order to provide clarity to importers and also to customs officials at the time of clearance. The Authority notes that the Caterpillar Group and the domestic industry have proposed

definitions for wheel loaders in SKD form. The Authority has considered these proposed definitions, and deems it appropriate to define SKD forms of wheel loaders as:

“A wheel loader in SKD form consists of the machine body/chassis fitted with an engine, transmission, or axle in a single unit, which may or may not be fitted with one or more other components.

Explanation: If chassis/machine body is imported without an engine, transmission or axle fitted into it, no anti-dumping duties shall be payable.”

PCN Methodology

29. At the outset, the Authority notes that the initiation notification allowed interested parties to place their objections to the proposed PCN methodology on record within 30 days of initiation. Accordingly, certain interested parties had filed comments on the proposed PCN methodology within the prescribed deadline, i.e., October 30, 2022. To adequately understand and address such comments, the Authority conducted a discussion on the PCN methodology to be adopted in the subject investigation on November 3, 2022. Interested parties were further provided time until November 7, 2022, to file their comments on PCN Methodology. The Authority allowed all the interested parties to attend the hearing who had filed their comments within the prescribed deadline.
30. After due consideration of the comments and submissions received from various interested parties, the Authority had finalized by the Authority vide Notification dated F. No. 6/4/2022 dated November 17, 2022. The finalized PCN Methodology is as follows:

S.No.	Criteria	Range	PCN Code
1.	Rated payload	Up to 4,000 KG	A
		Above 4,000 KG	B
2.	Engine gross power	Up to 140 kW	1
		More than 140 kW	2
3.	Measured distance at the centre between right and left wheel (Wheel tread/track)	Less than 2,100 mm	X
		2,100 mm and above	Y
4.	Measured distance between the front and back wheel axles (Wheelbase)	Up to 3,000 mm	U
		More than 3,000 mm	M

31. Pursuant to such notification, various interested parties filed their questionnaire responses on the basis of the notified PCN methodology.
32. In light of the above, the Authority finds that the contention of the Caterpillar with regard to not being provided adequate opportunity to place its objections to the PCN methodology on record is unfounded. The initiation notification was published in the official Gazette of India and all the interested parties, including Caterpillar. Despite the same Caterpillar

failed to provide its comments on the PCN methodology within the prescribed timelines. The Authority notes that that an anti-dumping investigation is a time-bound process, and submissions made after the expiry of specific deadlines are not required to be addressed. Nevertheless, the Authority has addressed additional comments on the PCN methodology below.

33. With regard to the additional PCN parameters (such as transmission, brakes and pumps) proposed by certain interested parties, the Authority notes that the interested parties have provided no evidence to establish that these additional parameters make a notable difference to the price comparison of the PUC warranting a separate PCN parameter. In other words, no evidence has been provided to establish that the inclusion of these additional parameters would enable a fairer comparison of dumping or injury. On the other hand, the Domestic Industry has provided substantive data to demonstrate that the difference in cost of Wheel Loaders on the basis of these additional parameters suggested by the interested parties is not significant. Accordingly, after examining the submissions of the interested parties, the Authority did not deem it necessary to modify the PCN methodology.
34. Additionally, the Authority also notes that battery-operated Wheel Loaders are excluded from the scope of the PUC. Therefore, there is no need to modify the PCN methodology for the same.

Like article and Scope of the PUC

35. After considering the information on record, the Authority holds that there is no known difference between the subject goods produced by the Indian industry and that exported from the subject country. Subject goods produced by the domestic industry and those imported from the subject country are comparable, in terms of product characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. Wheel loaders produced by the domestic industry are technically and commercially substitutable to the imported wheel loaders. The Authority holds that the product under consideration produced by the applicant domestic industry is a “like article” to the subject product under consideration imported from the subject country.
36. Therefore, the Authority defines the PUC as follows:

“The PUC in the present investigation is “wheel loader” which is self-propelled wheel-mounted equipment with an articulation joint, having front end loading mechanism.

Wheel loader imported in the form of completely built unit (CBU) or semi-knocked down (SKD) are included within the scope of the investigation. However, imports of wheel loader in completely knocked down (CKD) or component form are excluded from the scope of the investigation.

For the purposes of this recommendation, a wheel loader in SKD form consists of the machine body/chassis fitted with an engine, transmission, or axle in a single unit, which may or may not be fitted with one or more other components.

Explanation: If chassis/machine body is imported without an engine, transmission or axle fitted into it, no anti-dumping duties shall be payable.

The following products are excluded from the scope of the investigation:

- I. *The wheel loaders of the following specifications are to be excluded from the from the scope of the investigation:*
 - a) *Rated payload capacity of more than 7,000 KG;*
 - b) *Gross engine power above 180 kW;*
 - c) *Measured distance at the center between right and left wheel (wheel tread/track) above 2,280 mm; and*
 - d) *Measured distance between the front and back wheel axles (wheelbase) above 3,350 mm.*

All the above parameters are 'and' conditions. In other words, a product is excluded from the scope of the PUC only if it satisfies all of the above conditions concurrently.
- II. *Wheel Loader in Completely Knocked Down (CKD) or component form are excluded from the scope of the investigation.*
- III. *Battery-operated wheel loaders are also excluded from the scope of the investigation."*

D. SCOPE OF DOMESTIC INDUSTRY AND STANDING

D.1 Submissions made by the other interested parties

37. The other interested parties have made the following submissions with respect to the domestic industry and standing:
 - a. Rule 2(b) of the AD Rules, 1995 provides that those domestic producers who are related to exporters, importers or who are themselves importers of the product under consideration may be excluded when determining the scope of the domestic industry. However, such producers are not automatically excluded from the scope of the domestic industry. The use of the term "may" in Rule 2(b) of the AD Rules, 1995 provides discretion to the Authority to decide whether a company who is related to exporters or importers and/or who is importing the PUC should be included or excluded from the scope of the domestic industry. For the purpose of exercising discretion, the Authority takes into account several factors such as volume of imports during the POI, essential business of the entity in India, type of imports, reasons for imports etc.
 - b. LiuGong India and Caterpillar India are domestic producers of the PUC. They argued that they must be considered eligible as domestic industry.
 - c. Guangxi LiuGong has not exported substantial quantities of the subject goods to India during the POI. There were substantial exports by Guangxi LiuGong to India during the years prior to the POI and not during the POI. Exports by Guangxi LiuGong to India are not substantial during the POI in absolute terms. Exports by Guangxi

LiuGong to India during the POI are also not substantial in comparison to total imports from China PR.

- d. It is the settled practice of the Authority to consider imports of the subject goods during the POI for assessing the eligibility of domestic producer as a domestic industry.
- e. Imports into India during POI by LiuGong India are primarily of the subject goods not produced in India. Wheel loaders with rated payload of 7,000 KGs are not manufactured in India. In this regard, the respondents also note that wheel loaders with rated payload of 7,000 KGs are used in specific industry segments such as mining. It is not commercially viable to produce wheel loaders with rated payload of 7,000 KG in India. Therefore, LiuGong India had to import wheel loaders with rated payload of 7,000 KG in order to meet the demand of consumers in India.
- f. LiuGong India imported goods in 2019-20 and 2020-21, but their production volume during and after that period demonstrates that they are a domestic producer of wheel loaders, not an importer. They have enhanced their skills and technical capabilities to increase in-house production, making them one of the top wheel loader producers in India.
- g. LiuGong India imported wheel loaders from Guangxi LiuGong in China PR before March 31, 2021, to comply with the revised emission norms and ensure a continuous supply to their customers. The development of specific components with the required technology was time-consuming and posed a bottleneck for many manufacturers.
- h. LiuGong India is a domestic producer as evident by its total investment in domestic production and employment.
- i. The examination of post POI data regarding exports by Guangxi Liugong and imports by LiuGong India will further support the claim that LiuGong India is primarily a domestic producer and should be considered as eligible domestic industry.
- j. Since components of wheel loaders are not covered within the scope of the PUC, imports of some key components from China PR will not prejudice the status of LiuGong India as an eligible domestic industry.
- k. The ownership of Guangxi LiuGong is irrelevant for determining the eligibility of LiuGong India as a domestic industry under Rule 2(b) of the AD Rules, 1995.
- l. The claim that the individual dumping margin should not be determined for Guangxi LiuGong if LiuGong India is considered as eligible domestic industry, is without any legal basis.
- m. Caterpillar India Pvt Ltd. (hereinafter referred to as “**Caterpillar India**”)’s exclusion is unjustified because it is neither an importer of the dumped article nor involved in its sale or marketing in India. Its production represents a substantial portion of the total domestic production, and excluding it would create a ‘domestic industry’ that does not accurately represent Indian producers.

- n. Caterpillar India's wheel loaders are manufactured under contract manufacturing arrangements. Caterpillar India provides various support activities to the contract manufacturer, including technology, know-how, designs, brand use, and quality management.
- o. Creative Manufacturing Solutions (India) Private Limited (CMS), located in Maharashtra, manufactures wheel loaders under the brand name 'Hindustan'. CMS is not an importer or related to any importer/exporter of the subject goods from China. CMS is a significant producer with a substantial quantity of wheel loaders and is considered a market leader in its segment.
- p. Even if Caterpillar India is considered related to a foreign exporter, the exclusion from the scope of 'domestic industry' is not automatic under Rule 2(b) of the AD Rules, 1995.
- q. It is submitted that just because Caterpillar India is a domestic producer, it is not compulsorily required to support the anti-dumping investigation. Caterpillar India has not made loss making sales during the POI.
- r. Caterpillar India is not engaged in "deliberate and co-ordinated market targeting behaviour". Every producer, seller, dealer is at liberty to devise its sales marketing plan, so as to optimise its sales. Further, Caterpillar India sells the products made in India, whereas the imports are of products made in China. They are bound to be different.
- s. The Caterpillar Entities and Caterpillar India have clarified that there is no shareholding relationship between them and the dealers, and vice versa. They also confirm that there are no common directors between the Caterpillar Entities or Caterpillar India and the dealers. The sales and purchases between the parties are conducted on an arm's length basis, indicating independent transactions.
- t. Furthermore, the Caterpillar Entities or Caterpillar India do not exercise direct or indirect control over any of the dealers. Similarly, the dealers are not under the direct or indirect control of any third party. Additionally, there is no shared control between the Caterpillar Entities or Caterpillar India and the dealers over a common third party.
- u. It is submitted that the importers are independent companies, and merely because they have appointed common counsels, does not mean that they are related to each other.
- v. The required polling, as mandated by Rule 5 of the AD Rules, 1995, has not been conducted. As a domestic producer, their opposition to the investigations should be considered under Rule 5.
- w. While conducting the test of "a major proportion" provided under Rule 2 (b), the Authority is obliged to take into account the "total domestic production" in India. The reference to "total domestic production" is clearly to the entire domestic production and not to the production by any part of the domestic producers.
- x. JCB India Ltd. has an affiliated company (JCB Construction Equipment Shanghai Co., Ltd.) in China PR.

- y. JCB India Ltd. has not identified all Indian producers of the PUC (CASE Construction India and Doosan Bobcat India). This has resulted in an incorrect estimation of total Indian production in India.
- z. Eimco Elecon (India) Ltd. has only provided a support letter without the required data. The support of Eimco Elecon (India) Ltd. must be disregarded when determining the domestic industry standing and the injury suffered by the domestic industry.

D.2 Submissions made on behalf of the domestic industry

38. The following submissions have been made on behalf of the domestic industry with regard to the domestic industry:
- a. Out of the total eligible domestic production, the production share of the domestic industry is approximately 70%. Additionally, the domestic industry, along with the supporters constitutes about 74% of the total eligible production. In view of the same, the domestic industry meets the requisite threshold to constitute domestic industry for the purposes of the present application.
 - b. It has been the consistent practice of the Authority to exclude related domestic producers from the scope of the domestic industry to ensure a fair and just investigation.
 - c. Caterpillar India is a subsidiary of Caterpillar Inc, which is a US-based multinational company. Caterpillar (Qingzhou) Ltd. (“Caterpillar Qingzhou”), an exporter of the PUC from China PR, is also a wholly owned subsidiary of Caterpillar Inc. Caterpillar (Suzhou) Co. Ltd. (“Caterpillar Suzhou”), a producer and exporter of the PUC from China PR, is also a wholly owned subsidiary of Caterpillar Inc. Caterpillar India, Caterpillar Qingzhou and Caterpillar Suzhou are jointly controlled by Caterpillar Inc.
 - d. The related exporters of Caterpillar Inc. have exported the PUC to India during the POI in substantial quantities under the brand name of “SEM”.
 - e. Gainwell Commosales Pvt. Ltd. and GMMCO Ltd. are the official dealers of all Caterpillar products, including Caterpillar India, Caterpillar Qingzhou and Caterpillar Suzhou. There is a clear nexus between the parties.
 - f. Merely being a domestic producer in India does not make Caterpillar India eligible to participate in the determination of the domestic industry standing at the pre-initiation stage.
 - g. The domestic industry further submits that Caterpillar India failed to provide a questionnaire response in the subject investigation.
 - h. The fact that Caterpillar India is opposing the imposition of anti-dumping duties without any substantive reason, despite being a domestic producer, shows that its relationship with the Chinese exporters has affected its behaviour as a domestic producer.

- i. LiuGong India is a subsidiary for which 99.9% of shares are held by Guangxi LiuGong Machinery Co. Ltd. LiuGong India has also imported the PUC in substantial quantities from its parent company in China during the injury period, including the POI. Given the regulatory changes in the market, it is also noted that LiuGong India has made substantial sales of the product during the POI which were imported in the period from January 2021 to March 2021 (last quarter of FY 2020-21).
- j. The behaviour of LiuGong India clearly demonstrates that its operations are more akin to an importer rather than a domestic producer. Additionally, LiuGong India shielded itself from the effects of dumping by participating in high-volume imports, whereby it is not eligible to constitute domestic industry in the present investigation.
- k. LiuGong India is interested in benefitting from the dumping of the PUC, as its importer. The inclusion of LiuGong India as a domestic industry would substantially distort the Authority's investigation process.
- l. Since Caterpillar India and LiuGong India are ineligible to be qualified as the domestic industry for the purposes of Rule 2(b) of the AD Rules, 1995, there are five eligible producers, namely, JCB India Limited, L&T Construction & Mining Machinery, Tata Hitachi, Eimco Elecon (India) Ltd, and BEML Limited, which qualify for determining the eligible domestic production under Rules 2(b) and 5(3)(a) of the AD Rules, 1995.
- m. Polling in accordance with Rule 5(3)(a) of the AD Rules, 1995 is required to be conducted only for eligible domestic producers. Accordingly, the Authority was not required to invite Caterpillar India for polling prior to the initiation.

D.3 Examination by the Authority

39. The present petition is filed by JCB India Ltd, and has been supported by M/s BEML Ltd. and M/s Eimco Elecon (India) Ltd. The domestic industry has declared that it has not imported the subject goods and is not related to any foreign producer who has exported the subject goods to India during the POI. Apart from the applicant and supporters, there are four more domestic producers of the PUC. Of these four, two of the producers, i.e., L&T and Tata Hitachi, have not participated in the present investigation. With regard to the remaining two producers, the domestic industry has argued that Caterpillar India and LiuGong India are ineligible to constitute the 'domestic industry' in this investigation within the meaning of Rule 2(b) of the AD Rules, 1995.
40. Rule 2(b) of the AD Rules, 1995 defines domestic industry as under:
- “(b) “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers”.*

41. Therefore, domestic producers may be excluded from the scope of the domestic industry in two situations:
- a. When the domestic producer is related to the exporter or importer of the alleged dumped article, in this case, wheel loaders from China; or
 - b. When the domestic producer is an importer of the dumped article themselves.

42. Further, the Explanation to Rule 2(b) defines ‘related parties’ as:

“Explanation. -For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if,-

(a) one of them directly or indirectly controls the other; or

(b) both of them are directly or indirectly controlled by a third person; or

(c) together they directly or indirectly control a third person subject to the condition that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.

Note: For the purpose of this Explanation, a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.”

43. The Authority acknowledges that it has the discretion to determine, on the basis of various factors, whether a related domestic producer is eligible to be domestic industry. However, it notes that related domestic producers must be rendered ineligible unless an exception case is made out by such a domestic producer.
44. The Authority notes that both Caterpillar India and LiuGong India are ‘related’ to exporters of the PUC from the subject country:
- a. Caterpillar India is a subsidiary of Caterpillar Inc, which is a US-based multinational company. Caterpillar (Qingzhou) Ltd., an exporter of the PUC from China PR, is also a wholly owned subsidiary of Caterpillar Inc. Caterpillar (Suzhou) Co. Ltd., a producer and exporter of the PUC from China PR, is also a wholly owned subsidiary of Caterpillar Inc. Therefore, Caterpillar India, Caterpillar Qingzhou and Caterpillar Suzhou are jointly controlled by Caterpillar Inc. Accordingly, Caterpillar Inc., is legally in a position to exercise restraint or direction over both entities particularly Caterpillar India. This relationship falls within the meaning of Explanation (b) of Rule 2(b). Additionally, Caterpillar India has not demonstrated that it is not controlled (legally or operationally) by Caterpillar Inc.
 - b. LiuGong India is a subsidiary for which 99.9% of shares are held by Guangxi LiuGong Machinery Co. Ltd., which is a Chinese producer and exporter of the PUC. Accordingly, Guangxi LiuGong Machinery Co. Ltd. is legally in a position to exercise restraint or direction over LiuGong India. This relationship falls within the meaning of

Explanation (a) of Rule 2(b). Further, LiuGong India has not demonstrated that it is not controlled by Guangxi LiuGong Machinery Co. Ltd.

45. The Authority notes that both Caterpillar and LiuGong have both exported the subject goods from the subject country in substantial quantities through the injury period. In particular, Caterpillar has exported 30-40% of the total imports of the subject goods from the subject country into India during the POI. LiuGong has exported almost half the total imports of the PUC from the subject country into India in 2020-21.
46. The Authority notes that LiuGong India has requested the Authority to assess post-POI data to examine its eligibility as domestic industry. In this regard, the Authority notes that as per its consistent practice, it has not assessed the post-POI data for the purposes of assessing the standing of the domestic industry.
47. Therefore, the Authority holds that both LiuGong India and Caterpillar India's related entities have regularly exported the PUC to India. No exceptional circumstances have been established by LiuGong India and Caterpillar India for their relationship with the exporters.
48. Additionally, the Authority also notes that Caterpillar India also failed to file a questionnaire response as a domestic producer. LiuGong India has also only filed its response as an importer, and not a domestic producer. Therefore, The Authority holds that these producers have not provided any concrete reasons for opposing the investigation other than their relationship with exporters of the subject goods.
49. In view of the above, the Authority holds that both Caterpillar India and LiuGong India do not qualify as domestic industry within the meaning of Rule 2(b).
50. With regard to the argument regarding polling, the Authority notes that polling is required to be conducted only for eligible domestic producers. However, Caterpillar India and LiuGong India were considered as not eligible for such polling under Rule 2(b) of the AD Rules, 1995.
51. With regard to the standing of JCB India Ltd. as the domestic industry in the present investigation, the Authority holds that it constitutes 70% of the eligible domestic production. Further, the application is also supported by BEML Ltd. and Eimco Elecon (India) Ltd. Accordingly, the domestic industry along with the supporter accounts for a major share of the eligible Indian production.
52. Therefore, for the purpose of this investigation, JCB India Ltd. constitutes the domestic industry within the meaning of Rule 2(b) of the AD Rules, 1995 and the application satisfies the criteria of standing in terms of Rule 5(3) of the AD Rules, 1995.

E. CONFIDENTIALITY

E.1 Submissions made by the other interested parties

53. The other interested parties have made the following submissions with respect to the product under consideration:
- a. Caterpillar India asserts that the investigation is being conducted based on the DG Systems data, despite the application relying on import data from an unnamed private agency.
 - b. DG Systems does not qualify as an "interested party" and therefore cannot claim confidentiality under the rule. Even if the information is considered confidential, a non-confidential summary should be provided to the involved parties, which has not been done in this case.
 - c. Rule 6(7) of the AD Rules, 1995 requires evidence submitted by one party to be made available to the other parties, but the DG Systems data has not been shared, depriving Caterpillar India of the opportunity to comment on it.
 - d. Without disclosing the name of the agency and providing a non-confidential summary of the import data, the information in the application cannot be considered sufficient or accurate for the purpose of initiating the investigation.
 - e. Failure to provide a non-confidential version of the information or disclose the agency's name is a violation of the principles of natural justice.
 - f. The domestic industry has claimed excessive confidentiality by not disclosing the name of the source of information used as a basis for the initiation of the present investigation. The domestic industry has not even mentioned the source of imported data nor cited any reason for claiming the same as confidential. It is submitted that the import data sourced by the domestic industry pertains to Chinese exporters and therefore, the same cannot be claimed as confidential from the responding exporters.

E.2 Submissions made on behalf of the domestic industry

54. The following submissions have been made on behalf of the domestic industry with regard to the product under consideration:
- a. The domestic industry had requested for import data from the DGCI&S, however, the same was not made available. Therefore, the domestic industry relied on the import data from private sources. Further, the domestic industry submits that it has provided the import data sorting methodology which includes the tariff heading, product description, and the manner in which the quantity/values have been determined.
 - b. Various interested parties have not filed their questionnaire responses in line with Trade Notice No. 10/2018 dated September 7, 2018.

E.3 Examination by the Authority

55. With regard to confidentiality of information, Rule 7 of the AD Rules, 1995 provides as follows:

“(1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalised or summary form, it may disregard such information.”

56. The Authority made a non-confidential version of the information provided by various interested parties available to all interested parties for inspection through the public file containing non- confidential version of evidence submitted by various interested parties and also through e-mail communication between various parties.

57. Submissions made by the domestic industry and other opposing interested parties with regard to confidentiality, to the extent considered relevant, were examined by the Authority and addressed accordingly. The Authority notes that the information provided by the interested parties on confidential basis was duly examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

F. MISCELLANEOUS

F.1 Submissions made by the other interested parties

58. The other interested parties have made the following submissions with respect to the miscellaneous issues:
- a. The domestic industry has failed to submit a properly substantiated application that would allow the Authority to form an initial view on the presence of dumping, injury, and a causal link between the alleged dumped imports and the injury. The evidence provided in support of the application is deemed inaccurate and inadequate under Rule 5(2) of the AD Rules, 1995.
 - b. In the case of *Union of India and Others v. Adani Exports Ltd and Another* (2002) 1 SCC 567, the Hon'ble Supreme Court held that the question of jurisdiction should be first decided before going into the merits of any case.
 - c. The POI is not appropriate due to several exceptional circumstances that significantly impacted the market conditions during that period. These circumstances include the second wave of the COVID-19 pandemic affecting India in the first quarter of FY 2021-22, a contraction in demand due to delays in infrastructure and government projects, changes in emissions norms from Bharat Stage-III (BS-III) to Bharat Stage-IV (BS-IV) by the Ministry of Road Transport and Highways, significant price fluctuations in steel and other materials, non-availability or restricted availability of critical production materials, and the diversion of oxygen from industrial to medical use, which affected fabrication activities and the production of wheel loaders and their components in the country. The POI, once decided, cannot be changed at a later stage.
 - d. The POI can be revised before the initiation of the investigation and no request for a change shall be considered after the initiation of the investigation. Also, the examination of post POI data shall be communicated in the initiation notification. However, no such communication was made in the initiation notification of the present investigation about the same. Thus, post POI data cannot be examined in the present investigation.

F.2 Submissions made on behalf of the domestic industry

59. No miscellaneous submissions have been made by the domestic industry.

F.3 Examination by the Authority

60. With regard to the contention that the initiation notice was violative of Rule 5 of the AD Rules, 1995, the Authority notes that the investigation was initiated only after examination of the evidence provided by the domestic industry. Only when all the requirements under Rule 5 were met, the investigation was initiated by the Authority.
61. With regard to the contention that the POI is inappropriate given the change in emission-norms, contraction in demand, significant price fluctuations, and other external factors,

the Authority notes that the existence of external factors during the said period does not make it ineligible for being selected as a POI. In its assessment of injury, it has considered the effect these external factors had on the performance of the domestic industry, if any, during the POI. Any such effects have not been attributed to the imports of the PUC from the subject country.

62. With regards to the jurisdictional issue that has been raised by Liebherr Group that the Authority should first decide on the issue of standing before proceeding with the other facts of the investigation. It is noted that the case was initiated only after the determination that the applicant industry has a standing to qualify as the domestic industry as per the statutory threshold in terms of Rule 5(3) of the AD Rules. It is further noted that the Authority in this final finding has again deliberated in the beginning i.e., from para 39 to 52 itself on the standing of the domestic industry and has held that the domestic industry has a standing as per the statutory threshold. In view of the same, the Authority notes that it doesn't find any merit on the issue of jurisdictional challenge to proceed with the investigation and its determination thereto.

G. MARKET ECONOMY TREATMENT (MET), NORMAL VALUE, EXPORT PRICE & DETERMINATION OF DUMPING MARGIN

G.1 Submissions made by the other interested parties

63. The other interested parties have made the following submissions with respect to the this:
 - a. Guangxi LiuGong, the producer, and exporter of the subject goods in China PR, has submitted the Exporter Questionnaire Response within the specified timeframe.
 - b. LiuGong India, a related entity of Guangxi LiuGong in India, has submitted Part IV of the Exporter Questionnaire Response. All parties involved in exports to India and imports into India have participated in the investigation.
 - c. The estimated dumping margin and injury margin presented by the domestic industry in the petition should not be relied upon for determining dumping and injury related to exports made by Guangxi LiuGong.
 - d. Section 9A(6A) of the Customs Tariff Act allows for the determination of the dumping margin for cooperating producers/exporters based on the information they submit. The margin of dumping is to be calculated based on the records of normal value and export price maintained by the exporter or producer.
 - e. Certain interested parties disagreed with the market economy treatment given to China PR, and requested the Authority to not use surrogate country methodology, use appropriate normal value calculation and at the very least, use data provided by the company instead of applying analogue country data in the investigation.
 - f. China's Accession Protocol expired on December 11, 2016. Such practice was to be expired from then on. "Surrogate country" methodology should not be used in

calculating the normal value for this case. The Appellate Body Report in *EC - Fastener* provides strong justification for China PR to automatically obtain the market-economy status once the Article 15 of the Protocol expires.

- g. The normal value for China PR should first be determined based on price or constructed value in the third country, or the price from such a third country to other countries. In case the normal value cannot be computed based on third country price, the same be computed on any other reasonable basis, including the price paid or payable in India for the like product, duly adjusted, if necessary, to include a reasonable profit margin.

G.2 Submissions made on behalf of the domestic industry

- 64. The following submissions have been made on behalf of the domestic industry with regard to the product under consideration:
 - a. It is submitted that sub-paragraph (2) of paragraph 8, Annexure I of the AD Rules, 1995 stipulates that a country shall be considered as a non-market economy (“NME”) for the purpose of the anti-dumping investigation if the same has been treated as an NME in three (3) previous years preceding the investigation period unless the producers/exporters cooperating in the investigation produces sufficient evidence establishing that it operates under market economy principles.
 - b. It is submitted that none of the exporters or producers from China has filed for market economy treatment in the present investigation. Therefore, there is no evidence on record to prove that exporters of the PUC from China PR operate under market economy principles for the purposes of the present investigation.
 - c. Section 15(d) sets forth three different timelines: (i) China stops being a non-market economy for the purpose of trade remedial investigations in India once it establishes under Indian law that it is a market economy; (ii) certain sectors or industries stop being treated as non-market economy sectors for the purpose of trade remedial investigations in India once it is established under Indian law that market economy conditions prevail in those sectors on industries; and (iii) all other provisions of Section 15 of the Protocol would remain to be operational after December 11, 2016, except Section 15(a)(ii).
 - d. Section 15(a)(ii) merely reiterates the power of the investigating Authority under the second Ad Note to Article VI:1 of the General Agreement on Tariffs and Trade 1995.
 - e. Article 2.7 of the Anti-Dumping Agreement clearly carves out an exemption for the second Ad Note for Article VI:1 of the GATT.
 - f. Section 15(a) which imposes a rebuttable presumption on China being a non-market economy did not expire on December 11, 2016.
 - g. There exists no obligation on India to consider China a non-market economy after December 11, 2016. In fact, Article 2.2 of the Anti-Dumping Agreement also allows investigating authorities to adopt an alternative methodology for calculating normal value when the domestic sales in the exporting country do not permit a proper comparison.

- h. The domestic industry also notes that it is a consistent practice to regard China as a non-market economy not only in Indian trade remedial investigations, but also in trade remedial investigations conducted in all major jurisdictions. For example, jurisdictions such as the European Union and the United States of America continue to consider China to be a non-market economy.
- i. China requested a WTO panel to be formed to decide on its non-market economy status in 2017 in *EU — Price Comparison Methodologies*. However, in 2019, China requested the Panel to be suspended. It was reported that China decided to seek suspension because the results of the interim report, which has never been made public, were unfavourable to China.

G.3 Examination by the Authority

Normal Value

Market Economy Status for Chinese Producers

65. Article 15 of China's Accession Protocol in WTO provides as follows:

"Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

- (a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:*
 - (i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*
 - (ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*
- (b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply;*

however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.

(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.”

66. It is noted that while the provision contained in Article 15 (a) (ii) have expired on 11.12.2016, the provision under Article 2.2.1.1 of the WTO Agreement on Anti-Dumping read with the obligation under 15 (a) (i) of the Accession Protocol require the criterion stipulated in Para 8 of Annexure I to the AD Rules, 1995 to be satisfied through the information/data to be provided in the supplementary questionnaire upon claiming market economy status.
67. At the stage of initiation, the Authority proceeded as per the information given by the applicant. Upon initiation, the Authority advised the producers/ exporters in China PR to respond to the notice of initiation and provide information relevant to the determination of their market economy status. The Authority sent copies of the supplementary questionnaire to all the known producers/ exporters for rebutting the presumption of non-market economy in accordance with criteria laid down in Para 8(3) of Annexure-I to the Rules and furnish relevant detailed information. The Authority also requested the Government of China PR to advise the producers/ exporters in China PR to provide the relevant information.

68. None of the exporters/producers contested the non-market economy status of China. Thus, in view of the above position and in the absence of rebuttal of the non-market economy presumption by any Chinese exporting company, the Authority, consider it appropriate to treat China PR as a non- market economy country in the present investigation and proceeds with para 7 of Annexure- I to the Rules for determination of normal value in case of China PR.

Determination of Normal Value for China PR

69. The Authority notes that no evidence has been provided by the domestic industry or other interested parties on prices in market economy third countries. The global trade data also could not be used to consider price from a market economy third country in view of the fact of various PCNs involved and the absence of dedicated HSN Code for the PUC.

70. Therefore, the Authority has determined the normal value for the subject imports from China PR as per the “price actually paid or payable in India” as stipulated in para 7 of Annexure – I to the AD Rules, 1995. It has been computed based on the cost of production of the domestic industry, with reasonable addition for selling, general and administrative expenses, and profits. The normal value was constructed PCN wise for a fair comparison. The weighted average on the basis of quantities of various PCN by the respective producer exporter is shown in the dumping margin table below.

Export Price

Caterpillar (Qingzhou) Ltd, Caterpillar (Suzhou) Co., Ltd, Caterpillar Inc., and Caterpillar SARL Singapore Branch

Caterpillar (Qingzhou) Ltd.

71. Caterpillar (Qingzhou) Ltd. (hereinafter referred as “CQL”) is engaged in manufacture of the PUC at its factory located at Nanhuan Road, Qingzhou City, Shandong 262500 P.R. China.

72. During the POI, CQL directly exported *** wheel loaders to unrelated customers in India out of which *** were A1XU and *** were B2YM. These exports were made on CIF basis for which CQL has claimed adjustments on account of ocean freight, insurance, inland transportation, port expenses, credit cost. Accordingly, the weighted average of net export price at ex-factory level so determined is mentioned in the dumping margin table.

Caterpillar (Suzhou) Co., Ltd

73. Caterpillar (Suzhou) Co., Ltd (hereinafter referred as “CSCL”) is engaged in manufacture of the PUC at its factory located at No. 58 Qiming Road, Export Processing Zone B, Suzhou Industrial Park, Suzhou 215121, P.R. China.

74. During the POI CSCL has exported *** wheel loaders to India through its group companies Caterpillar Inc. (hereinafter referred as “CAT Inc.”), Caterpillar SARL Singapore Branch (hereinafter referred as “CSSB”) on CIF basis. While invoicing is routed through group companies, wheel loaders are directly exported from the factory. CSCL has claimed adjustments on account of ocean freight, insurance, inland transportation, port expenses, credit cost. Accordingly, the weighted average of net export price at ex-factory level so determined is mentioned in the dumping margin table.

Guangxi Liugong Machinery Co. Ltd. and LiuGong India Pvt. Ltd

75. From the response filed by Guangxi Liugong Machinery Co., Ltd (“Liugong China”), Authority notes that Liugong China has exported the product under consideration manufactured by Liugong China to its related importer, LiuGong India Pvt. Ltd (“Liugong India”) and also to unrelated Indian customer during the POI. Both Liugong China and Liugong India have participated in the investigation and provided all the relevant information in the prescribed questionnaire format.

76. It is noted that Liugong India is engaged in production as well as trading of product under consideration in India. During the POI, Liugong India has sold the PUC manufactured by itself and also PUC imported from Liugong China.

77. Liugong China has exported ***wheel loaders to unrelated Indian customer and ***wheel loaders to Liugong India during the POI. Accordingly, the Authority has worked out the ex-factory export price taking export price of Liugong China to related and unrelated Indian customers and adjusted on account of ocean freight, insurance, inland transportation, port related expenses, credit cost and bank charges.

78. Liugong China and Liugong India have provided the PCN wise information in the relevant appendices. The aforesaid adjustments and PCN wise information have been verified and accepted by the Authority. It is noted that Liugong India has earned profit on resale of the PUC during the POI. Accordingly, the export price for the subject goods at ex-factory level for Liugong China has been determined and shown in the dumping margin table.

Shandong Lingong Construction Machinery Co., Ltd. and Volvo CE India Private Limited

79. From the responses filed by Shandong Lingong Construction Machinery Co., Ltd. (“SDLG”) and its affiliated importer in India i.e., Volvo CE India Private Limited (“Volvo”), the Authority notes that SDLG is a producer of the subject goods in China PR and has exported the subject goods directly to Volvo which is related to SDLG.

80. During the POI, SDLG has exported *** units of wheel loaders to India. For the exports to India, SDLG has claimed adjustments such as ocean freight, insurance, inland insurance, credit cost, dismounting cost, port and other related expense.

81. SDLG and Volvo have provided the PCN wise information in the relevant appendices. The aforesaid adjustments and PCN wise information have been verified and accepted by the Authority. It is noted that Volvo incurred losses and the same has been adjusted in the export price. Accordingly, the export price for the subject goods at ex-factory level for SDLG has been determined and shown in the dumping margin table below.

Liebherr Machinery (Dalian) Co. Ltd. (LH Dalian), Liebherr Werk-Bischofshofen GmbH (LH Austria), Liebherr Export AG (LH Swiss), Liebherr China Co. Ltd. and Liebherr India Private Limited (LH India).

82. Liebherr Machinery (Dalian) Co. Ltd. (LH Dalian) is the producer of the subject goods in China, filed complete questionnaire response along with its related trading company, namely, Liebherr Werk-Bischofshofen GmbH (LH Austria), Liebherr Export AG (LH Swiss), Liebherr China Co. Ltd. and Liebherr India Private Limited (LH India).

83. During the POI, LH Dalian has exported *** machines to India through its related traders LH Austria and LH Swiss only. Out of the *** machines *** machines were exported directly to Indian customers and *** machines were sold through its related importer LH India. LH Dalian has claimed adjustment on account of overseas transportation, overseas insurance, inland transportation, credit cost, bank charges, port and other related expenses, and other additional equipment charges.

84. LH Dalian and other parties involved in the value chain provided the PCN wise information in the relevant appendices. The aforesaid adjustments and PCN wise information have been verified and accepted by the Authority. The Authority also examined the profitability of these export transactions. Accordingly, the export price for the subject goods at ex-factory level for SDLG has been determined and shown in the dumping margin table below.

XCMG Construction Machinery Co., Ltd. Technology Branch, Xuzhou Construction Machinery Group Imp. & Exp. Co., Ltd., and Schwing Stetter (India) Pvt Ltd.

85. From the responses filed by XCMG Construction Machinery Co., Ltd. Technology Branch (“XCMG”) Xuzhou Construction Machinery Group Imp. & Exp. Co., Ltd., and its affiliated importer in India i.e., Schwing Stetter (India) Pvt Ltd. (“Schwing”), the Authority notes that XCMG is a producer of the subject goods in China PR and has exported the subject goods to India through a related trader to a related importer namely Schwing in India.

86. During the POI, XCMG has sold *** units of the subject goods in home market to their related company namely Xuzhou Construction Machinery Group Imp. & Exp. Co., Ltd., The related company, Xuzhou Construction Machinery Group Imp. & Exp. Co., Ltd., has

sold *** units of the subject goods directly to India to related company Schwing. The related exporter namely Xuzhou Construction Machinery Group Imp. & Exp. Co., Ltd., has claimed adjustment on account of ocean freight, insurance, port and other related expenses, credit cost.

87. XCMG and other parties involved in the value chain provided the PCN wise information in the relevant appendices. The aforesaid adjustments and PCN wise information have been verified and accepted by the Authority. The Authority also examined the profitability of the traders reported in Appendix 5. Accordingly, the export price for the subject goods at ex-factory level for XCMG has been determined and shown in the dumping margin table below.

Normal Value & Export Price for non-cooperating producers/exporters

88. For all other producers/ exporters of China PR, export value has been determined based on facts available. Export price has been determined on the basis of transaction wise import data of the cooperating producers and exporters. Since these are CIF export price, these have been adjusted for expenses such as ocean freight, insurance, port expenses, bank charges, inland freight, credit cost, port and other charges to determine ex-factory export price.

Dumping Margin

89. It is noted that in the subject investigation many cooperating producers and exporters are related to each other and form a group of related companies. It has been a consistent practice of the Authority to consider related exporting producers and exporters as one single entity for the determination of a dumping margin and thus to establish one single dumping margin for them. This is in particular because calculating individual dumping margins might encourage circumvention of antidumping measures, thus rendering them ineffective, by enabling related exporting producers to channel their exports to India through the company with the lowest individual dumping margin. In accordance with the above, related producers and exporters have been regarded as one single entity and attributed one single dumping margin which was calculated on the basis of the weighted average of the dumping margins of the cooperating related producers and exporters.
90. Considering the normal value and the export price for the subject goods, the dumping margin for the subject goods from the subject country is proposed to be determined as follows:

Dumping margin table

Producer's/ exporter's name	CNV per unit (US\$)	NEP per unit (US\$)	Dumping margin per unit (US\$)	Dumping margin %	Dumping margin % range
Guangxi Liugong Machinery Co., Ltd.	***	***	***	***	80-90
Caterpillar (Qingzhou) Co., Ltd.	***	***	***	***	50-60
Caterpillar (Suzhou) Co., Ltd.	***	***	(***)	(***)	(30-40)
Caterpillar Group	***	***	***	***	40-50
Liebherr Machinery (Dalian) Co. Ltd	***	***	(***)	(***)	(30-40)
Shandong Lingong Construction Machinery (SDLG)	***	***	***	***	70-80
M/s XCMG Construction Machinery Co., Ltd. -Technology Branch	***	***	***	***	100-110
Any other producer	***	***	***	***	110-120

H. METHODOLOGY OF INJURY ASSESSMENT AND EXAMINATION OF CAUSAL LINK

91. Rule 11 of the AD Rules, 1995 read with Annexure II to the AD Rules, 1995 provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “... *taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...*”. Further, in considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
92. The Authority has examined the effect of dumped imports on the state of the domestic industry in the paragraphs below.

H.1 Submissions made by the other interested parties

93. The other interested parties have made the following submissions with respect to this:

- i There is no legal basis or past precedence for such an adjustment by the Authority. It is considered a normal trade practice for imports made prior to the POI to be sold during the POI, and no adjustment can be made to account for this. Any adjustment in the import for the POI shall impact volume analysis, computation of NIP, evaluation of price undercutting/underselling and margin of dumping.
- ii The Authority has rejected the POI of 15 months from Jan 2021-March 2022 and determined the POI as April 21-March 22. Now since the Authority has already excluded imports during January 2021-March 2021 from dumping determination, these imports cannot be adjusted thereafter.
- iii If the aggregate imports from China PR in 2020-21 and the POI are combined and distributed equally in both years, there is still no absolute increase in import volumes from China PR. In fact, even after adjusting the imports in the POI, there is a consistent decline in import volume from China PR from 100 index points in 2018-19 to 78 index points in the POI.
- iv Imports from the subject country have declined substantially during the POI to 43 as compared to 100 during the base year 2018-19. The decline in imports indicates that there is no volume effect caused by an absolute increase in imports.
- v Imports have decreased from 100 to 75 indexed points in relation to the domestic industry's production and from 100 to 58 indexed points in proportion to the demand in India. Market share of total imports has declined from 100 indexed points in 2018-19 to 59 indexed points in the POI. Market share of the domestic industry has remained stable during the injury investigation period.
- vi Despite a contraction in demand, the share of imports has significantly declined, indicating a complete absence of a volume effect.
- vii Even in the base year and preceding years, when there was no dumping, there was positive price undercutting at similar levels as in the POI. This suggests that the price undercutting is not a result of dumping but rather due to a lack of direct comparison between the imported wheel loaders and the domestic industry's products.
- viii Even if there is positive price undercutting during the POI, it is important to note that there is no injury to the domestic industry. The computed margin of price undercutting and price underselling in the application falls within the range of 40-60%. This indicates that the domestic industry was selling its products at their optimum price, which is equivalent to the non-injurious price. Since there is no volume effect and no evidence of injury to the domestic industry, it can be concluded that there is no injury to the company.
- ix According to Annexure III of the AD Rules, 1995, the best utilization of raw materials, production capacities, and utilities of the domestic industry over the past three years and the period of investigation (POI) should be taken into account. It is important to note that starting from April 1, 2021, the PUC was required to be manufactured under the CEV Stage IV emission standards. Prior to that date, the applicable emission standard was CEV Stage III. Certain interested parties assert that there is no discretion

regarding the applicability of Annexure III in determining the non-injurious price. The non-injurious price must be determined in accordance with Annexure III, even if there were differences in the utilization of raw materials, utilities, and production capacities during the POI due to the implementation of CEV Stage IV emission norms.

- x The landed value of imports increased by 24% in the POI compared to the base year. If the injury to the domestic industry was truly due to cheap imports, they could have raised their price by at least 24% to align with the increased import prices. The fact that the domestic industry's price increase is only 17% suggests that factors other than imports are influencing their pricing.
- xi The change in cost has actually decreased by 97% in the POI, while their selling price has increased by over 2,000%. Therefore, there is no evidence of price suppression in the present case.
- xii The domestic industry's CIF prices for the PUC are far higher than the prices indicated for the PUC from China and are even higher than the other countries whose CIF value of exports have been indicated in Exhibit 1.4 of the application.
- xiii There are a total of 7 domestic producers of the subject goods in India. Injury to the domestic industry, if any, is due to inter se competition between the domestic producers of the subject goods in India.
- xiv Market share of the domestic industry has increased by 3 indexed points and the market share of other domestic producers has increased by 32 indexed points. Sales of other Indian producers have increased substantially during the POI to 98 as compared to 60 during the previous year.
- xv There was an abnormal increase in imports during the quarter of January 2021 to March 2021, which led to an abnormal increase in sales of imported wheel loaders and consequently market share in the POI. Therefore, the market share of the imports was temporarily higher than usual in the POI. Even in such a situation, the market share of imported wheel loaders have not increased in the POI as compared to previous years.
- xvi The fact that the domestic industry has been able to improve its market share in a scenario where the demand has contracted significantly indicates that there is no injurious effect on account of the imports.
- xvii Despite the fall in demand in the market, sales of the domestic industry did not decrease in tandem with the fall in demand. This shows that the domestic industry was able to maintain its market share.
- xviii The domestic industry was earning profits in 2018-19. However, the domestic industry is incurring losses since 2019-20. Losses incurred by the domestic industry has increased in 2020-21 but has improved from (1788) indexed points in 2020-21 in (877) indexed points.
- xix Imports from China PR declined in 2019-20 as compared to 2018-19. However, the domestic industry incurred losses in 2019-20 as compared to 2018-19. Even though the increase in losses coincides with the increase in imports from China PR, impact of

increased imports in 2020-21 was felt by the domestic industry in the POI, and not 2020-21. This is because wheel loaders were majorly imported between January 2021 to March 2021, and were resold during the POI. However, the losses incurred by the domestic industry reduced substantially in the POI as compared to 2020-21.

- xx There is no threat of material injury on import of the subject goods from China PR.
- xxi It is also not clear how the increase in inventory in 2020-21 as compared to 2018-19 was more than six times when the domestic sales of JCB during the same period was stable and declined only by 7 index points.
- xxii Since there is a substantial cost and price difference between BS III complaint wheel loaders and CEV Stage IV compliant wheel loaders, it is inappropriate to compare the two different product categories i.e., CEV Stage IV compliant wheel loaders (imported during POI) vis-à-vis BS III complaint wheel loaders (manufactured by the domestic industry before POI and sold during the POI).
- xxiii The evaluation of the import data and economic parameters of the domestic industry on a monthly/ quarterly basis is necessary to objectively evaluate the impact of imports. Evaluation of the data on a monthly/ quarterly basis is necessary to avoid any distortion due to the resale of wheel loaders complying with BS-III norms, manufactured before the period of investigation.
- xxiv The injury should be assessed strictly as per Annexure-II and the Gujarat High Court judgment which confirms that there is no requirement to assess injury margin/price underselling. The respondents request not to refer to price underselling/injury margin to assess material injury or threat of material injury.
- xxv The POI is a period of recovery for the domestic industry, as its losses have declined significantly, indicating the absence of nexus between the imports and financial health of the domestic industry.
- xxvi It is submitted that the domestic industry's ability to raise investment has not been impacted at all. This is evident from the fact that the domestic industry has invested ₹ 100 million in a factory near Vadodara in Gujarat and commenced production since April 2022. The domestic industry has participated in "Invest Rajasthan 2022" and signed MOU for new investments in Rajasthan.
- xxvii There is unexplained increase in capital employed. Capital employed has increased to 179 indexed points in the POI from 100 indexed points in 2018-19. However, there is no increase in capacity during the investigation period.
- xxviii The return on capital employed in the POI has improved as compared to previous year, and is almost at par with 2019-20 levels, when there are admittedly no dumped imports.
- xxix In the POI, the domestic industry retrenched a large number of persons (about 400 persons) at the senior level, as the organization was top heavy. This happened for all segments and was not confined to wheel loaders. The wages show a healthy improvement as compared to the base year. The employment and wages do not indicate any injury to the domestic industry.

- xxx Number of employees has declined to 79 during the POI as compared to 100 during the base year 2018-19 whereas wages have increased from 100 during the base year 2018-19 to 128 during the POI. However, the number of employees and wages don't get affected directly from the imports from China PR.
- xxxii The domestic sales increased relative to production on account of backlog inventory available with the domestic industry at the beginning of FY 2021-22. Import volume during the POI declined relative to the domestic industry's domestic sales and demand.
- xxxiii There is a marked decline in the closing inventory for the domestic industry. In fact, in 2020-21, the domestic industry had huge inventories, which it has been able to liquidate during the POI. The closing inventory at the end of POI, is comparable to that in the base year. The closing inventory does not indicate any extra-ordinary accumulation of inventory of the domestic industry at the end of the POI.
- xxxiiii The Authority is requested to assess inventory levels on a semi-annual basis since the domestic sales were impacted by government regulations and backlog inventory.
- xxxv The profitability parameters reflected improvement during the POI as the COVID-19 subsided and imports from all sources including subject country declined substantially.
- xxxvi The productivity per day and productivity per employee declined during 2019-20 and subsequently increased during 2020-21. The number of employees and wages paid declined during POI due to a slowdown in demand and the sale of backlog inventory.
- xxxvii The capacity of the domestic industry remained constant during the POI and the injury period. The production and capacity utilization of the domestic industry declined in 2019-20 and the POI. Production during POI has declined on account of the resale of backlog inventory. The domestic industry has not utilized its existing capacity to cater export market. This resulted in low-capacity utilization.
- xxxviii The domestic industry had not provided justification why there is significant variation in their capacity utilization figures during the injury period. Also, profitability improved in the period of investigation despite all allegations of injury.
- xxxix The domestic industry has performed well, and their losses, cash profits and ROCE all improved during the period of investigation. The domestic industry itself has claimed that the "construction equipment industry could grow 25% in 2021, regain pre-Covid peak in 2022".
- xxxix The domestic industry has neither furnished any data nor claimed any decline in growth.

H.2 Submissions made by the Domestic industry

94. The domestic industry have made the following submissions with respect to this:
- i The domestic industry requests the Authority to appropriately adjust the imports of the January to March 2021 quarter to the POI for the purpose of a fair and accurate assessment of injury.

- ii The decline in the volume of imports from the year 2020-21 in the POI is on account of imports made in huge quantities in the last quarter of FY 2020-21 due to changes in the emission regulations.
- iii The introduction of the compulsory use of CEV Stage IV emission standards led to a situation of large-scale stocking and selling in the Indian market, wherein several buyers/dealers imported substantial quantities of the PUC in the quarter of January-March 2021 and stored the same as inventory. The same stock was then sold over a longer period from April 2021 to November 2021. Accordingly, the PUC imported in the period January to March 2021 were ultimately sold in the subsequent period.
- iv A majority of imports (of the POI) took place in Jan-March 2021 whereas the resulting market distortion, undercutting and injurious impact was only experienced in the months of the proposed POI as the stocked imports started entering the domestic commercial market at low prices.
- v A simplistic analysis of volume effect which does not take into account the context in which imports have been made would not be an objective examination of facts, and would therefore, be a violation of an investigating Authority's overarching obligation.
- vi The imports during the POI were only limited due to the inventory collected by the importers in the last quarter of FY 2020-21. The dumped imports were sold at low prices in the domestic market during this period and caused injury to the domestic industry.
- vii The reason for the domestic industry's increase in losses through the injury period can be attributed to the price undercutting exhibited by the dumped imports, along with the (i) rapid increase in the volume of subject imports, and (ii) the domestic industry's inability to increase its prices commensurate to the increase in cost owing to the low prices at which imports were being made.
- viii The volume of imports from the subject country has increased by 26 indexed points in the year 2020-21, as compared to the previous year.
- ix In 2020-21, the imports increased significantly. In particular, the imports made in the quarter of January to March 2021 were stockpiled for sale during the POI. However, the cost of the products increased by 20 indexed points as compared to the previous year, while the domestic industry could only increase its prices by 5 indexed points as compared to the previous year. It was only able to increase its prices by 4 indexed points as compared to the base year, in the face of an increase of 30 indexed points in the cost of the product as compared to the base year.
- x Chinese exporters have been engaging in dumping in the previous years as well, and have been undercutting the market. This has caused tremendous injury to the domestic industry.
- xi The volume of imports from China PR in relation to the production of the domestic industry has increased from 100 indexed points in 2018-19 to 113 indexed points in the

year 2020-21 then declined in the POI to 75 indexed points on account of the increased imports in the last quarter of January-March 2021 of the year 2020-21.

- xii The imports from China PR are coming at prices below the domestic selling price of the domestic industry, thus, heavily undercutting the selling price and injuring the domestic industry. These declining prices led to an increase in losses suffered which are directly attributable to low-priced imports from China PR.
- xiii The domestic industry was unable to increase its prices due to the dumped prices of the imports in the market. The selling price is significantly lower than the non-injurious price.
- xiv While the price undercutting remained in the same range as the previous year in 2019-20, there was a rise in the cost to sell the products by 10 indexed points as compared to the previous year.
- xv The imports are coming into India at a much lower price compared to the non-injurious price. Further, these low-priced imports adversely affected the performance of the domestic industry, thereby preventing the domestic industry from achieving a fair selling price thereby causing severe material injury.
- xvi The cost to make and sell has increased substantially for the domestic industry, i.e., by 30 indexed points in the POI compared to the base year 2018-19. During the same period, the domestic industry could not increase the selling price of the PUC commensurately with the increase in its cost, on account of imports from the subject country. Further, the price suppression increased substantially in the POI on account of dumped imports.
- xvii The apparent demand/consumption for the year 2020-21 calculated based on the import data, as available, is skewed since a substantial volume of imports were made in the last quarter of January-March 2021, which were ultimately sold in the subsequent period (i.e., April to November 2021). Accordingly, the import volumes of the last quarter of FY 2020-21 should be appropriately adjusted to assess the actual demand.
- xviii There is a minor decline in demand compared to the base year. The minor decline in the demand is on account of the fact that the year 2018-19 witnessed an increase in demand for construction equipment (including the PUC) due to significant investments in infrastructure-related projects in the country.
- xix The demand for the PUC has declined in the POI compared to the year 2020-21 and the base year on account of the excess imports made in the last quarter of January-March 2021. The domestic sales of the domestic industry declined at a much faster pace compared to the demand for the subject goods in the country. This clearly indicates that the domestic industry is not able to sell its products in the market on account of dumping of the PUC from the subject country.
- xx The domestic industry has lost market share compared to the previous year 2020-21.

- xxi While the imports from the subject country have lost market share in the POI compared to the previous year 2020-21, the same is on account of pent-up imports in the last quarter of the FY 2020-21 due to changes in the emission regulations.
- xxii The market share of the imports from China PR's market share increased in the year 2019-20 & 2020-21 compared to the base year 2018-19
- xxiii The installed capacity of the domestic industry has remained constant. However, capacity utilization has declined in the POI compared to the previous year or base year.
- xxiv There has been a reduction in the productivity, employment, and wages of the domestic industry. The same remains far below the potential of the domestic industry to offer sustainable employment and wages.
- xxv Aggressive dumping, and pricing by the exporters from the subject country have led to a significant decline in all the financial performance indicators such as PBIT, cash profits, and return on capital employed of the domestic industry.
- xxvi The level of the inventories of finished goods has increased substantially in the POI compared with the base year 2018-19.
- xxvii The PUC is part of a large product portfolio for the domestic industry, and the decline in the financial performance has adversely affected the domestic industry's overall capability to raise capital at competitive rates.
- xxviii LiuGong has argued that since the domestic industry has failed to provide post-POI data, it cannot make any claim regarding threat of material injury. In this regard, it is submitted that while a threat of material injury assessment may include the analysis of post-POI data, the same is not mandated by Para. (vii) of Annexure II of the AD Rules, 1995.

H.3 Examination by the Authority

95. Rule 11 of the Rules read with Annexure II provides that an injury determination shall involve an examination of factors that may indicate injury to the domestic industry, “... *taking into account all the relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on the domestic producers of such articles...*”. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales

realization, the magnitude, and margin of dumping, etc. have been considered in accordance with Annexure II to the Rules.

- i The Authority has taken note of the various submissions made by the domestic industry and the other interested parties on injury and has analyzed the same as per the evidence available on record.
- ii The domestic industry has argued that the imports made in the period of January-March 2021 should be considered as part of the POI for the purposes of injury analysis. In this regard, the Authority notes that Government of India, vide notification dated 30th September 2020, mandated the compulsory use of CEV Stage IV emission standards for diesel non-road engines used in construction and agricultural equipment from the existing Bharat Stage III standards. Accordingly, with effect from 1st April 2021, the PUC was mandatorily required to be manufactured under the CEV Stage IV. However, the PUC manufactured or imported prior to 31st March 2021, could still be sold in the Indian market until 30th November 2021. The Authority notes that substantial imports made in the period of January – March 2021 may have been sold during the period of investigation by the related importers of the exporters. However, the Authority notes that there are no precedents to attribute the pre-POI import data to the POI imports. Therefore, the Authority has analysed the injury in the subsequent paragraphs in a manner consistent with the practice of the Authority.
- iii The Authority notes several submissions made by the interested parties on the improvement of market share of the other domestic manufacturer of wheel loaders and increase in the *inter-se* competition between the domestic producers. The Authority notes that market share of the imports from the subject country has increased until the year 2020-21 compared to the base year of 2018-19 but witnessed a decline in the POI. As noted above by the Authority, various importers/exporters have exported the PUC in substantial quantities in the pre-POI period, which were sold during the POI.
- iv The Authority further notes that the various submissions have been made by the interested parties regarding the improvement of economic parameters of the domestic industry. In this regard, the Authority has carried out a detailed examination of the economic parameters, to assess current injury, if any, to the domestic industry.

H.3.1 Volume effect of the dumped imports

a) Assessment of Demand

96. The Authority has determined the demand or the apparent consumption of the product in India, as the sum of domestic sales of the domestic industry, supporter and other domestic producers, and imports from all sources. The demand so assessed is given in the table below.

Particulars	Unit	2018-19	2019-20	2020-21	POI
Sales of domestic industry	Nos	***	***	***	***
Trend	Indexed	100	69	93	76
Domestic sales of Supporters	Nos	***	***	***	***
Trend	Indexed	100	31	35	19
Sales of Other Domestic Producers	Nos	***	***	***	***
Trend	Indexed	100	97	62	98
China - Dumped Imports	Nos	***	***	***	***
Trend	Indexed	100	82	109	42
China – Un-dumped Imports	Nos	***	***	***	***
Trend	Indexed	100	83	97	70
China - Total Imports	Nos	1308	1071	1419	552
Trend	Indexed	100	82	108	42
Imports from other countries	Nos	48	18	35	32
Trend	Indexed	100	38	73	67
Total Demand	Nos	***	***	***	***
Total Demand	Indexed	100	84	85	73

97. The Authority notes that total demand in the POI declined compared from the year 2020-21 as well as base year 2018-19. As noted by the Authority earlier, the same is on account of the imports in substantial volume made in the pre-POI period which were sold during the POI. The domestic industry submitted that the decline in demand compared to the base year of 2018-19 is on account of the fact that the year 2018-19 witnessed an increase in demand for construction equipment (including the PUC) due to significant investments in infrastructure-related projects in the country.

b) Import volume and share of the subject country.

98. The effect of the volume of dumped imports from the subject country as well as imports from other countries have been examined by the Authority as follows:

Particulars	Unit	2018-19	2019-20	2020-21	POI
Import from the subject country	Nos	1308	1071	1419	552
- Dumped Imports	Nos	***	***	***	***
- Un-dumped Imports	Nos	***	***	***	***
Import from non-subject country	Nos	48	18	35	32
Total Imports	Nos	1356	1089	1454	584
Dumped Imports in relation					
- Production	%	***	***	***	***
Trend	Indexed	100	118	109	72
- Indian Demand	%	***	***	***	***
Trend	Indexed	100	97	128	57

- Total imports	%	***	***	***	***
Trend	Indexed	100	102	101	96

99. Various interested parties claimed the imports of the subject goods from the subject country have declined significantly in the POI compared to the previous year. As noted above, the Government of India, vide notification dated 30th September 2020, mandated the compulsory use of CEV Stage IV emission standards for diesel non-road engines used in construction and agricultural equipment from the existing Bharat Stage III standards. Accordingly, with effect from 1st April 2021, the PUC was mandatorily required to be manufactured under the CEV Stage IV. However, the PUC manufactured or imported prior to 31st March 2021, could still be sold in the Indian market until 30th November 2021. The Authority notes that substantial imports made in the period of January – March 2021 may have been sold during the period of investigation by the related importers of the exporters.

100. Therefore, the overall imports of the subject goods declined in the POI from the base year 2018-19. As noted in the above paragraphs, quantities imported in 2020-21, were sold in the domestic market during the period of investigation. Accordingly, the imports declined in the POI.

101. The Authority further notes that:

- i. Dumped imports from the subject country in relation to production of the domestic industry increased in the year 2020-21 from the base year and declined in the POI.
- ii. The imports from the non-subject countries as well as un-dumped imports have declined over the injury period.
- iii. The dumped imports from the subject country have declined in both absolute terms and in relation to production and consumption in the POI. However, imports have increased in the year 2020-21 compared to the base year 2018-19.

H.3.2 Price effect of the dumped imports

102. Various interested parties have argued that the domestic industry is not suffering price injury. With regard to the effect of the dumped imports on prices, it is required to be analysed whether there has been a significant price undercutting by the alleged dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in normal course.

103. Accordingly, the impact on the prices of the domestic industry on account of dumped imports of the subject goods from the subject country has been examined with reference

to price undercutting and price suppression/depression, if any. For the purpose of this analysis the cost of sales and the net sales realization (NSR) of the domestic industry have been compared with the landed price of the subject imports from the subject country.

a) Price undercutting

104. In order to determine, whether the imports are undercutting the prices of the domestic industry in the market, price undercutting has been worked out by comparing the landed price of the subject imports with the selling price of the domestic industry during the injury period. Due to significant difference in the prices of PCNs proposed in the present investigation, the Authority has determined the price undercutting separately for each PCN.

Particulars	Unit	2018-19			2019-20			2020-21			POI		
		A1XU	B2YM	Total	A1XU	B2YM	Total	A1XU	B2YM	Total	A1XU	B2YM	Total
Import Quantity	Units	***	***	1308	***	***	1071	***	***	1419	***	***	552
Net Sales Realization	INR in Lacs/Unit	***	***	***	***	***	***	***	***	***	***	***	***
Landed Price	INR in Lacs/Unit	***	***	35.37	***	***	30.50	***	***	33.28	***	***	44.13
Price Undercutting	INR in Lacs/Unit	***	***	***	***	***	***	***	***	***	***	***	***
Price Undercutting	%	***	***	***	***	***	***	***	***	***	***	***	***
Price Undercutting	% - Range	40-50%	40-50%	40-50%	40-50%	40-50%	40-50%	30-40%	40-50%	40-50%	20-30%	40-50%	30-40%

105. Interested parties have argued that even when there was no dumping, there was positive price undercutting. In this regard, the Authority notes that there is no evidence on record which suggests that there was no dumping during the injury period.

106. It has also been argued that since the price undercutting and injury margin are in the same range, it is indicative that the domestic industry is selling its products at their 'optimum' price. In this regard, the Authority notes that the NIP and NSR solve different purposes during an investigation, and cannot be compared. It may be noted that the NIP is a notional price, which is calculated in accordance with the methodology prescribed by Annexure III. On the other hand, NSR is the actual price at which the domestic industry has sold the PUC in the domestic market. In any case, on examining the actual figures of the domestic industry, the Authority notes that the landed price of the subject imports is below the NSR of the domestic industry resulting in positive price undercutting.

e) Price suppression / depression

107. In order to determine whether the dumped imports are suppressing or depressing the domestic prices and whether the effect of such imports is to depress domestic prices to a significant degree or prevent increases in domestic prices which otherwise would have occurred to a significant degree, the Authority notes the changes in the costs and prices over the injury period. Due to significant difference in the prices of PCNs proposed in the

present investigation, the Authority has analysed the price suppression /depression separately for PCNs.

Particulars	Unit	2018-19			2019-20			2020-21			POI		
		A1XU	B2YM	Total	A1XU	B2YM	Total	A1XU	B2YM	Total	A1XU	B2YM	Total
Import Quantity	Units	***	***	1308	***	***	1071	***	***	1419	***	***	552
Net Sales Realization	INR in Lacs/Unit	***	***	***	***	***	***	***	***	***	***	***	***
Trend	Indexed	100	100	100	98	94	90	99	94	93	112	113	120
Landed Price	INR in Lacs/Unit	***	***	35.37	***	***	30.50	***	***	33.28	***	***	44.13
Trend	Indexed	100	100	100	99	89	86	108	92	94	136	112	125
Cost of Sales	INR in Lacs/Unit	***	***	***	***	***	***	***	***	***	***	***	***
Trend	Indexed	100	100	100	109	104	101	125	127	124	125	140	145

108. It is seen that throughout the injury period, the landed price of the subject imports has remained below the cost and the selling price of the domestic industry. The landed price of the subject imports and selling price of the domestic industry declined in 2019-20, however, during the same period the cost of the domestic industry increased. Further, in the year 2020-21, both landed price and selling price increased at almost the same rate but the cost has increased at significant rate. Further, in the period of investigation, increase in landed price of the subject imports is more than the increase in the cost and selling price of the domestic industry. However, the selling price and landed prices is significantly lower compared to the cost of sales.

109. With regard to the interested parties' submission that the landed value increased at a higher rate than the domestic selling price, the Authority notes that the domestic industry was unable to increase its prices due to the price pressure created by the dumped imports.

110. Based on the indexed figures of the domestic industry, certain interested parties also argued that the cost has decreased by 97 indexed points, while the domestic industry's selling price has increased by 20 indexed points. The Authority finds this argument to have no factual basis.

H.3.3 Economic parameters pertaining to the domestic industry

111. Annexure - II of the Rules lays down that the determination of injury shall involve an objective examination of the consequent impact of dumped imports on the domestic producers of such products. The Rules further provide for an objective evaluation of all relevant economic parameters and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity: factors affecting domestic prices, the magnitude of margin of dumping actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Accordingly, various injury parameters relating to the domestic industry are discussed herein below.

a) Capacity, production, capacity utilization and domestic sales

112. The capacity, production, capacity utilization and domestic sales over the entire injury period was as follows:

Particulars	Unit	2018-19	2019-20	2020-21	POI
Capacity - PUC	Units	***	***	***	***
Trend	Indexed	100	100	100	100
Production - PUC	Units	***	***	***	***
Trend	Indexed	100	69	100	57
Capacity Utilization	%	***	***	***	***
Trend	Indexed	100	69	100	57
Domestic Sales - PUC	Units	***	***	***	***
Trend	Indexed	100	69	93	76

113. Interested parties have raised concerns about the ‘variation’ in the capacity utilization of the domestic industry. In this regard, it has been noted that the domestic industry’s capacity utilization increased in 2020-21, owing to the impending change in emission standards. The domestic industry produced both BS-III and CEV-IV norms compliant wheel loaders in that period. It is also seen that:

- i. The installed capacity of the petitioner has remained constant. However, the domestic industry is operating with idle capacities.
- ii. The production and domestic sales for the PUC has declined in the POI compared to the year 2020-21 and the base year.

b) Market Share

114. Various interested parties have argued that despite the contraction in demand, the market share of the subject imports has declined, while the market share of the domestic industry has remained stable. In this regard, the Authority notes that the market share of the subject imports and the domestic industry over the entire injury period was as follows:

Particulars	Unit	2018-19	2019-20	2020-21	POI
Imports from China PR	%	***	***	***	***
Trend	Indexed	100	97	128	58
Imports from other countries	%	***	***	***	***
Trend	Indexed	100	45	86	91
Total Imports	%	***	***	***	***
Trend	Indexed	100	96	126	59
Domestic industry	%	***	***	***	***
Trend	Indexed	100	82	110	104

Market Share of Supporters	%	***	***	***	***
Trend	Indexed	100	37	41	26
Other Domestic Producers	%	***	***	***	***
Trend	Indexed	100	115	73	134
Total	%	100%	100%	100%	100%

115. It is seen that the market share of the imports from the subject country has declined particularly in the period of investigation. However, as noted above, substantial quantities of the PUC were imported in the pre-POI period which were sold during the period of investigation. During the same period, market share of the domestic industry remained same.

116. The Authority notes that the market share of the other domestic producers (including LiuGong India and Caterpillar India) has improved considerably, on the other hand, the market share of the domestic industry and supporter has declined. However, the Authority notes that market share of the imports from the subject country has increased until the year 2020-21 compared to the base year of 2018-19 but witnessed a decline in the POI. As noted above by the Authority, various exporters have exported the PUC in substantial quantities in the pre-POI period, which were further sold by their domestic affiliates/importers during the POI.

c) Profitability, Cash profits and return on investments

117. Information with respect to profitability, return on investment and cash profits was as follows:

Particulars	Unit	2018-19	2019-20	2020-21	POI
Cost of Sales	INR in Lacs/Unit	***	***	***	***
Trend	Indexed	100	110	131	131
Selling Price	INR in Lacs/Unit	***	***	***	***
Trend	Indexed	100	99	104	117
Profit/(Loss)	INR in Lacs/Unit	***	***	***	***
Trend	Indexed	100	-654	-1788	-931
Profit/(Loss)	INR in Lacs	***	***	***	***
Trend	Indexed	100	-453	-1665	-710
Cash Profits	INR in Lacs	***	***	***	***
Trend	Indexed	100	-276	-1111	-463

PBIT	INR in Lacs	***	***	***	***
Trend	Indexed	100	-453	-1665	-710
Return on capital employed	%	***	***	***	***
Trend	Indexed	100	-522	-889	-423

118. Interested parties have argued that the losses incurred by the domestic industry have declined in the POI, as compared to the previous year. In this regard, the Authority notes:

- i. The profitability of the domestic industry has declined significantly, and the domestic industry is incurring losses.
- ii. The domestic industry started incurring cash losses from 2019-20.
- iii. While the losses of the domestic industry declined in the period of investigation, the losses are at significant levels.
- iv. The return earned by the domestic industry is negative.

119. Interested parties have also argued that even though the imports made between January 2021 – March 2021 were sold in the POI, the domestic industry’s losses have decreased in the POI. Interested parties have also argued that profitability parameters have improved during the POI, and therefore, that period was a period of recovery for the domestic industry. In this regard, the domestic industry submitted that it could increase the selling price of the PUC slightly from the previous year at higher rate than increase in the cost, therefore the losses declined in the POI compared to the previous year. However, the domestic industry’s prices continued to remain suppressed by the dumped imports from China, and therefore, the domestic industry continued to make extreme losses during the POI.

d) Inventories

120. Information with respect to inventories is as follows:

Particulars	Unit	2018-19	2019-20	2020-21	POI
Opening Inventories	Unit	***	***	***	***
Closing Inventories	Unit	***	***	***	***
Average Inventories	Unit	***	***	***	***
Trend	Indexed	100	166	688	646

121. Interested parties have argued that it is not clear how the increase in inventory in 2020-21 as compared to 2018-19 was more than six times, when the domestic sales of the domestic industry only declined slightly. In this regard, the Authority has verified the information provided by the domestic industry. The Authority notes that due to the change in emission

norms in 2020-21, the domestic industry also manufactured BS-III compliant wheel loaders before March 31, 2021, for sale in the domestic market till November 30, 2021. Accordingly, there was a spike in the opening inventories in the beginning of the POI, i.e., April 1, 2021. However, the Authority also notes the closing inventory of the domestic industry stabilized to pre-2021 levels during the POI. Therefore, the average inventory during the POI has increased compared to the base year.

122. Additionally, the Authority also notes that the decline in the domestic sales of the domestic industry in the POI is substantial.

123. Interested parties have requested the Authority to assess the inventory on a semi-annual basis. In this regard, the Authority has followed its consistent practice to assess injury to the domestic industry's economic parameters. It is seen that the average inventory of the domestic industry has increased throughout the injury period.

a) Productivity, employment, and wages

124. Information with respect to productivity, employment and wages over the injury period is as under:

Particulars	Unit	2018-19	2019-20	2020-21	POI
Productivity per day	Units/Day	***	***	***	***
Trend	Indexed	100	69	100	57
Productivity per employee	Units/Nos	***	***	***	***
Trend	Indexed	100	90	109	73
Employment	Nos	***	***	***	***
Trend	Indexed	100	77	91	79
Wages	INR in Lacs	***	***	***	***
Trend	Indexed	100	117	178	128

125. Productivity, and employment have declined over the injury period. However, the wages have increased in the period of investigation compared to the base year.

126. Interested parties have argued that 400 employees were retrenched during COVID. In this regard, the domestic industry has clarified that majority of these employees were re-hired in the same year.

b) Growth

127. The information with respect to growth of the domestic industry with respect to the base year is given below:

Particulars	Unit	2019-20	2020-21	POI
Production	Y/Y	-30.87%	44.05%	-42.38%
Sales	Y/Y	-30.82%	34.60%	-18.08%
Profit/(Loss) per unit	Y/Y	-754.15%	173.28%	-47.94%
Inventory	Y/Y	65.85%	314.71%	-6.03%
Market Share	Y/Y	-17.72%	33.50%	-5.35%
Profit/(Loss) before tax	Y/Y	-552.54%	267.83%	-57.35%
Cash Profit	Y/Y	-376.07%	302.43%	-58.31%
ROI	Y/Y	-621.64%	-70.49%	52.46%

128. It is seen that the growth of the domestic industry has been negative on all the parameters in the period of investigation except return on investment. However, the domestic industry continues to have a negative return on investments in the POI. The growth of the domestic industry was negative as compared to 2019-20.

c) Ability of raise capital investments

129. The interested parties have argued that the domestic industry has made new investments in Rajasthan and Gujarat. It is seen that the ROCE earned on investments on the PUC already made is negative.

d) Magnitude of dumping margin

130. It is seen that the dumping margin is more than *de minimis* and significant.

H.4 CAUSAL LINK AND NON – ATTRIBUTION ANALYSIS

H.4.1 Submissions made by the other interested parties

131. The other interested parties have made the following submissions with respect to the this:
- i The domestic industry’s claim of injury is patently false, as Caterpillar India has not made loss making sales during the POI in the domestic market.
 - ii There has been a very sharp decline in the demand for the subject goods, mainly on account of the effects of the COVID-19 Pandemic. The demand has fallen from 100 in the base year to 74 in the POI. The fall in demand has caused a decline in the production of the domestic industry, resulting in loss of economies of scale, escalation in costs, etc., making the domestic industry’s products overpriced for the Indian market. The injury if any is on account of the sharp contraction in demand.
 - iii Consequent to the change in emission norms, the domestic industry had to upgrade its facilities and selection of components, resulting in cost escalation. The BS-IV wheel loaders were more expensive, and it took the market some time to adapt to higher priced products. The change in norms created a disturbance on the demand and supply front, causing temporary adverse effect on the domestic industry and other Indian producers. Such ill effects cannot be attributed to the imports.

- iv The respondents specifically submit that the domestic industry has specifically omitted reference to competition between domestic producers as the other known factor causing injury to the domestic industry.
- v The wheel loader market is operating on thin margins, due to stiff competition between domestic producers. The profitability of all domestic producers has remained moderate due to severe price competition. The price in the Indian market is not driven by the imports, but by the competition between the local producers.
- vi The POI data regarding total imports into India from China PR and domestic sales of self-produced wheel loaders by LiuGong India shows that the performance of the domestic industry is impacted by competition between the domestic producers.
- vii When sales of other domestic producers in India during the POI is also analysed, it would be clear that the domestic industry is impacted by competition between domestic producers and not by imports into India.
- viii Despite the decline in the domestic industry's sales volume, there is an unreasonable increase in the expenses on commissions, discounts, rebates, etc.
- ix The domestic industry has incurred high depreciation costs. The domestic industry has experienced losses since 2019-20, primarily due to an increase in depreciation costs. The depreciation cost has risen from 100 index points in 2018-19 to 179 index points in 2019-20. Concurrently, the profit before tax (PBT) of the domestic industry has declined from 100 index points in 2018-19 to (653) index points in 2019-20.
- x Furthermore, the domestic industry has failed to provide the information regarding the interest cost incurred during the injury investigation period, which is a violation of Trade Notice No. 05/2021.
- xi For 2020-21 and POI, the domestic industry incurred disproportionate higher freight, commission, and rebate, which adversely impacted the profitability. Such an increase in commission, discount, and freight is likely on account of (a) higher commission paid for the resale of backlog inventory; and (b) new offers such as preferential down payment and payment days introduced by the domestic industry to boost sales.
- xii In a report published by Indian Construction Equipment manufacturers Association (ICMA), for FY 2021-22, various industry leaders have given their views regarding the challenges faced in the year and the way forward. The industry players have stated that the FY 2021-22, has seen a decline in demand in the construction equipment industry due to supply constraints, COVID-19 etc. None of them have made a whisper saying that the imports are causing any injury to the industry. In fact, Mr. Deepak Shetty, Convener, ICEMA SMART Infra Panel and CEO & Managing Director of the domestic industry, has also pointed factors other than import to be a cause of concern. The domestic industry's claim that the injury suffered by them is on account of imports, is also not in line with the views of the other industry players.
- xiii The domestic industry's deterioration in economic parameters overlaps with the COVID-19 pandemic. In comparison to FY 2018-2019, FY 2019-2020 shows a decline

in most of the sales-related metrics, followed by a rebound in FY 2020-2021, and then a small decline during the injury investigation period. This trend coincides with the COVID-19 pandemic and the period when the new Indian emission regulations come into effect. As a result, the domestic industry suffered the injury on account of the COVID-19 pandemic and not on account of the subject imports.

- xiv Earlier imports made during FY 2020- 21 were in anticipation of change in emission norms and thus it cannot be claimed that JCB suffered on account of the alleged dumped imports.
- xv The petition does not consider external factors like depressed market conditions, internal problems, COVID-19, devaluation of the rupee, inflation, price increase of bulk commodity on the global and Indian market.
- xvi The injury assessment should be done post removal of Bharat III norms since BS-III norm machinery will not be imported/sold in the future. Since anti-dumping duties are progressive in nature, machinery with obsolete emission norms/legally barred technology, should be removed for the purpose of any injury calculations.
- xvii The domestic industry's losses are on account of its own inefficiency and lack of acceptability of the domestic industry's 5.5 T (455ZX) wheel loader in the Indian market, on account of costly add-ons, for which there was no demand in the market.

H.4.2 Submissions made by the domestic industry

132. The domestic industry has made the following submissions with respect to the this:

- i The imports of the PUC from countries other than China PR are not significant in terms of volume and are below *de-minimis*. Further, the price at which the imports are made from other than subject country is not injuring the domestic industry. Therefore, any injury to the domestic industry cannot be attributed to third country imports.
- ii The export performance of the domestic industry has not affected its financial performance. Crucially, the export performance of the domestic industry has not been taken into consideration when determining the effect of the dumped imports and the extent of the injury. Therefore, the injury cannot be attributed to the domestic industry's export performance.
- iii There has been no injury caused to the domestic industry on account of change in technology.
- iv The domestic industry has only considered information related to the PUC for the purpose of injury analysis. Therefore, the injury demonstrated above cannot be attributed to the performance of other products of the domestic industry.
- v During the POI, there were no such constraints (such as raw material shortages, power shortage, tax, capacity/investment constraints, etc.,) on the operations of the domestic industry concerning the PUC.

- vi The PUC inventory level of the domestic industry at the onset of the plant shutdown was *** units which is enough to meet the demand of the country for approximately 30 days (based on the average demand per day in FY 2020-21).
- vii There are no trade restrictive practices that can be considered germane to the material injury suffered by the domestic industry.
- viii As demonstrated by the domestic industry, it has not incurred any interest cost during the POI or injury period. As a result, it has not reported the same as part of Proforma IV-A.
- ix The domestic industry submits that the capital employed has increased mainly on account of the inventory of wheel loaders.
- x The overall depreciation at plant level has decreased during the POI.
- xi It is submitted that the domestic industry was required to make certain investments in tooling and machinery required for the purpose of manufacturing CEV Stage IV wheel loaders. Therefore, there was a slight increase in the fixed assets employed.

H.4.3 Non-Attribution Analysis

133. As per the AD Rules, 1995, the Authority, *inter alia*, is required to examine any known factors other than the dumped imports which at the same time are causing injury to the domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It has been examined below whether factors other than dumped imports could have contributed to the injury to the domestic industry.

a) Volume of imports from third countries

134. The Authority notes that the imports of the product under consideration from non-subject countries are not in significant quantity. Also, the prices at which imports of the PUC were made from non-subject countries is significantly higher than prices of the subject country.

b) Export Performance and Captive Consumption

135. The Authority notes that the export performance of the domestic industry has not impacted its economic parameters. The export performance of the domestic industry has not been taken into consideration when determining the effect of the dumped imports and the extent of the injury caused to the domestic industry.

c) Development of Technology

136. At the on-site verification, the domestic industry demonstrated that the change in emission norms did not attribute to the injury caused to the domestic industry.

d) Performance of other products of the company

137. The domestic industry has only considered information related to the PUC for the purpose of injury analysis. Therefore, the injury demonstrated above cannot be attributed to the performance of other products of the domestic industry.

e) Trade Restrictive Practices and Competition between the Foreign and Domestic producers

138. There are no trade restrictive practices that can be considered germane to the material injury suffered by the domestic industry.

f) Contraction in Demand and Changes in pattern of consumption

139. The Authority notes that demand of the subject goods as determined has declined in the POI. However, as noted above, this is predominantly on account of the imports in large quantities in the pre-POI period which were sold during the POI. Therefore, the demand figures were distorted in the POI on account of the change in the emission regulation. Thus, contraction in demand or change in the pattern of consumption could not have caused injury to the domestic industry.

140. The Authority notes several submissions made by the interested parties on the improvement of market share of the other domestic manufacturer of wheel loaders and increase in the *inter-se* competition between the domestic producers. In this regard, the Authority notes that the market share of the other domestic producers (including LiuGong India and Caterpillar India) has improved considerably, on the other hand, the market share of the domestic industry and supporter has declined. However, the Authority notes that market share of the imports from the subject country has increased until the year 2020-21 compared to the base year of 2018-19 but witnessed a decline in the POI. As noted above by the Authority, various importers/exporters have exported the PUC in substantial quantities in the pre-POI period, which were sold during the POI.

141. During the on-site verification, it was demonstrated that the depreciation cost did not cause injury to the domestic industry. It was also verified that the domestic industry did not incur any interest costs. It was also noted that factors such as commission and freight have not caused injury to the domestic industry.

I. MAGNITUDE OF INJURY MARGIN

142. The Authority has determined the NIP for the domestic industry on the basis of principles laid down in the Rules read with Annexure III, as amended. The NIP of the product under consideration has been determined by adopting the information/data relating to the duly verified cost of production provided by the domestic industry for the POI. The NIP has been considered for comparing the landed price from the subject country for calculating injury margin. For determining the NIP, the best utilisation of the raw materials and utilities has been considered over the injury period. Best utilisation of production capacity over the injury period has been considered. Extraordinary or non-recurring expenses have been excluded from the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e., average net fixed assets plus average working capital) for the product under consideration was allowed as pre-tax profit to arrive at the NIP as prescribed in Annexure III to the Rules.

143. Based on the landed price and the NIP determined as above, the injury margin as determined by the Authority is provided in the table below. Further, separate injury margin has been determined for PCNs.

Injury Margin

Producer's/ exporter's name	NIP per unit (US\$)	Landed value per unit (US\$)	Injury margin per unit (US\$)	Injury margin %	Injury margin % range
Guangxi Liugong Machinery Co., Ltd.	***	***	***	***	50-60
Caterpillar (Qingzhou) Co., Ltd.	***	***	***	***	30-40
Caterpillar (Suzhou) Co., Ltd.	***	***	***	***	(40-50)
Caterpillar Group	***	***	***	***	10-20
Liebherr Machinery (Dalian) Co. Ltd	***	***	***	***	(40-50)
Shandong Lingong Construction Machinery (SDLG)	***	***	***	***	30-40
M/s XCMG Construction Machinery Co., Ltd. -Technology Branch	***	***	***	***	70-80
Any other producer	***	***	***	***	70-80

J. POST-DISCLOSURE COMMENTS

J.1 Submissions by Interested Parties

144. Post Disclosure comments made by the other interested parties is as follows:

- i The Authority is requested to confirm in the final finding the exclusion of wheel loaders in Completely Knocked Down (CKD) or component form and battery-operated wheel loaders from the scope of the PUC.
- ii Rated payload is a technical and a standard parameter that is used by all manufacturers of wheel loader. There is no reason to distrust the declared rated payload capacity of a producer. There is no incentive for the producer to overstate or understate rated payload capacity of its wheel loader since the wheel loader with a specific rated payload would be used for a specific industry segment.
- iii Rated payload alone is a determinative criterion for users. Rated payload is also determinative for deciding the applicability of wheel loaders in the concerned industry segment. Therefore, it is incorrect to undermine the significance of rated payload by stating that it is a self-certified parameter.
- iv JCB claimed that its model “would also have a rated payload capacity in the range of about 6,533 Kg” (as noted in para. 5. p of the disclosure statement) – it is not clear how the Authority observed in its examination that JCB model can lift about 7,000 Kg.
- v If such a sample or theoretical demonstration is the criterion, then the declared rated payload capacity of 7000 Kg can also lift and operate with a payload of about 8,300 Kg. Thus, the substantial gap between the wheel loader produced by the domestic industry and the wheel loader with a rated payload capacity of 7000 Kg will remain. It is arbitrary to compare the so-called theoretical payload of the domestic industry with the declared rated payload of Guangxi Liugong.
- vi It can be seen that rated payload capacity (of more than 7,000 Kg) is one of the mandatory criteria for seeking exclusion. In other words, if the imported wheel loader fulfils the condition (b), (c), and (d) but does have a declared rated payload capacity of 7,000 Kg or less, it will be covered within the scope of the PUC. It will not be excluded from the scope of the PUC on the ground that its ‘theoretical payload’ is 8,300 Kg even though the rated payload capacity is 7,000 Kg or less. Thus, the Authority should give equal weightage to the rated payload capacity throughout the investigation and cannot play fast and loose at the same time.
- vii With regard to the observation that wheel loaders with a rated payload capacity of 7,000 Kg have been imported into the country at a price much lower than the wheel loaders of rated payload capacity of 5,585 Kg, the respondents note that the price of wheel loaders with rated payload capacity of 7,000 Kg cannot be a relevant criterion while assessing the technical substitutability between these two products.

- viii The Authority has considered only parameters such as rated payload, engine gross power, the distance between the right and left wheel, and the distance between the front and back wheel axles. The Authority is requested to consider other parameters such as automatic/ manual transmission, brake – wet brakes/dry brakes, and gear pumps/piston pumps.
- ix The detailed submissions highlighting statutory restrictions on the use of wheel loaders with a payload capacity of 5,585 KG to lift a payload of 7,000 KG have not been examined by the Authority.
- x SDLG has filed detailed submissions highlighting statutory restrictions on the use of wheel loaders with a payload capacity of 5,585 KG to lift a payload of 7,000 KG. These submissions were neither recorded nor examined by the Authority.
- xi Under the Motor Vehicles Act, 1988, JCB India Ltd.'s wheel loaders are legally restricted to carrying a maximum laden weight of 5,585 KG. This legal limitation makes them distinct from wheel loaders with a 7,000 KG payload capacity and not considered "like articles."
- xii There is a significant cost/price difference (i.e., about 40%) between automatic/manual transmission, brake – wet brakes/dry brakes, and gear pumps/piston pumps. GCPL is willing to provide actual cost differences on a confidential basis to the Authority.
- xiii The Authority has constructed normal value based on the domestic industry's data which is not comparable with the imported wheel loader on account of the aforesaid parameters i.e., transmission, brake, and pumps. The said finding is incorrect as these parameters have a significant bearing on the costs of wheel loaders.
- xiv The Authority is requested to compare normal value and injury margins for SKD wheel loaders independently and make necessary adjustments for accurate comparison, rather than comparing them with CBU wheel loaders.
- xv The demand/supply of the first two-quarters of the POI was plagued with exceptional circumstances that created abnormal market conditions – the same is being used as a pretext to claim injury. Therefore, the POI must be changed.
- xvi Various factors such as COVID, changes in emission norms, etc should be considered while assessing injury.
- xvii The change in norms resulted in cost escalation. The wheel loaders became more expensive and it took time for the market to adapt to higher-priced products. The change in norms which created a disturbance in demand-supply cannot be attributed to imports.
- xviii There was a significant fall in demand on account of the COVID-19 pandemic, which in turn caused a decline in production. Thus, this resulted in loss of economies of scale, escalation in costs, etc and in turn making domestic industry's products overpriced.
- xix Inter-se competition between domestic producers has been overlooked and injury due to these factors has been attributed to imports.
- xx Illustrative calculation has been provided on a confidential basis – a levy of 20% duty would erode contractors' profitability by ***% and a levy of 40% would

- impact profitability by ***%. Interested parties are willing to provide actual calculations on a confidential basis to the Authority.
- xxi Imposition of duties would be detrimental to the users as the PUC is used in applications such as mining, port operations, and road construction.
- xxii CQL did not receive any questionnaire from the Authority. It came to know about the investigation from CCME.
- xxiii The name of the participating entity is Caterpillar (Qingzhou) Ltd and not Caterpillar (Qingzhou) Ltd.
- xxiv Caterpillar group's name was not given in the list of known exporters in the application. A hearing was fixed on PCN, but to Caterpillar groups surprise, it was not included in the parties called upon to participate. Despite making a specific request, it was not allowed to participate in the PCN hearing on 3rd November 2022.
- xxv Caterpillar group filed objections to PCN methodology on 2nd November 2022 and vide letter dated 4th November 2022 requested a meeting on PCN methodology. However, this was not accepted. On 17 November 2022, the Authority confirmed the PCN proposed at the time of initiation.
- xxvi CIPL is a domestic producer of wheel loaders as it manufactures under contract manufacturing in India. It undertakes various activities connected to the manufacturing of wheel loaders. CIPL would therefore qualify as a domestic industry under Rule 2(b) of the AD Rules.
- xxvii CMS manufactures in Banda, Maharashtra, and is neither an importer nor related to an exporter/importer of goods from China. CMS manufactures a substantial quantity of wheel loaders under the brand Hindustan and is one of the market leaders in its segment. Hence, CMS is an eligible producer and was required to be considered for pre-initiation polling and standing of JCB as a domestic industry. Polling is a pre-condition for the initiation of an investigation.
- xxviii L&T and Tata Hitachi, who are not involved in importing or producing the subject goods, should be included in the domestic industry scope.
- xxix Guangxi Liugong made substantial exports to India during the years prior to the POI but not during the POI.
- xxx The Authority has not examined the relevant factors for deciding the eligibility of a producer. An objective assessment of these factors would show that LiuGong India is an eligible domestic industry.
- xxxi There is no specific questionnaire for producers opposing the levy. CMS filed a communication providing certain information. No reason of finding has been given for exclusion of CMS from domestic producers eligible for consideration as a domestic industry.
- xxxii Caterpillar group denies that it has dumped wheel loaders to India. A determination be made that the exports of caterpillar entities are not at dumped prices, whereby investigation against these entities be terminated.
- xxxiii Various economic parameters have been changed. The petitioner did not mention anything about these changes in the written submissions filed by them post-oral hearing dated 14th April 2023. No information with regard to changes in the above

- parameters has been filed and circulated to other interested parties for their comments.
- xxxiv The Authority has observed that there is an improvement in domestic manufacturers' market share and an increase in *inter-se* competition between the domestic players. However, the Authority has given a finding that the domestic industry is suffering injury.
- xxxv There is no volume effect, hence there cannot be any injury on account of imports.
- xxxvi The Authority has noted that the market share of imports declined in the POI whereas the domestic industry's market share remained the same. This observation does not lead to the fact that JCB is suffering as its market share remains unchanged. In fact, other producers' market share increased.
- xxxvii The domestic industry's losses have declined significantly and it is in the recovery phase.
- xxxviii If losses incurred by the domestic industry were higher in the POI as compared to 2020-21, then it would be correct to claim that the imports are causing injury to the domestic industry. However, the losses incurred by the domestic industry declined substantially in the POI as compared to pre-POI period.
- xxxix Quarterly evaluation was requested because Chinese producers/exporters only sent CEV Stage IV compliant wheel loaders to India during the POI, while BS III compliant loaders and CEV Stage IV compliant wheel loaders were sold in the Indian market during different quarters. This discrepancy led to the request for quarterly injury assessments.
- xl The period of April 2021 – June 2021 should be excluded from the POI for eliminating the impact of second wave of Covid-19. The Authority has not provided any response to the claim that the adverse impact of second wave of Covid-19 pandemic in the POI should be excluded for assessing material injury.
- xli The domestic industry has huge inventories that it could not liquidate in the POI.
- xlii The injury margin computed for the Caterpillar group is very high which may be due to inappropriate NIP.
- xliii The domestic industry has suffered losses due to this significant increase in cost of sales which is due to a substantial increase in steel prices and other input costs.
- xliv If the rate of steel applicable during the POI is considered, it will result in an overtly high determination of NIP.
- xlv The Authority is requested to adjust the determination of NIP so that abnormal and temporary increases in steel prices would not result in an exaggerated and unrealistic determination of NIP.
- xlvi JCB incurs high sales and marketing expenses as a business strategy to optimise its sales. The said abnormal expenses would be reflected in the NIP and constructed normal value, which has in turn led to high dumping and injury margins. Appropriate adjustments may be made to set off additional expenses.
- xlvii Anti-dumping duty, if any, should be recommended for 2 years.
- xlviii The Authority should grant a lower rate of duty to the participating producer than the residual category.
- xlix The non-injurious price determined by the Authority is highly inflated and is not based on real situation. The Authority should adopt actual profit earned by the

domestic industry during a period when dumping was not alleged and not 22% ROCE. Adoption of 22% gives undue protection to the domestic industry.

J.2 Submissions by Domestic Industry

145. Post disclosure comments made by the domestic industry is as follows:

- i The domestic industry submitted that it was demonstrated during the spot verification that a wheel loader of 5,585 KG can lift and operate with a payload of about 7,000 KG.
- ii The domestic industry submitted that there are no legal constraints on a wheel loader to lift a higher or lower load than its self-declared rated payload capacity by any legal body, including the Ministry of Road Transport and Highways and the Automotive Industry Standards and submitted that wheel loaders above 5,585kg must not be excluded from the scope of the investigation.
- iii A wheel loader qualifies as a ‘construction equipment vehicle’ or ‘non-transport vehicle’ within the meaning of Rule 2(cab) of the Central Motor Vehicle Rules, 1989. None of the certification or registration documents are required to declare the payload/laden weight for this category (i.e., construction equipment) of vehicles. It may be noted that all tests relating to construction equipment vehicles are performed in unladen condition, in accordance with the Central Motor Vehicle Rules, 1989 which is demonstrated through a sample certificate of registration issued for a wheel loader by the International Centre for Automotive Technology.
- iv The laden weight is not specified for wheel loaders (or other construction equipment vehicles) in the certificate of registration. Therefore, Section 113(3)(b) of the Motor Vehicles Act, 1988 is not applicable to wheel loaders. Thus, the exclusion of wheel loaders merely on the basis of rated payload capacity is likely to result in any imposed anti-dumping duty being rendered redundant, since comparable wheel loaders may have different rated payload capacities.
- v Apart from establishing commercial substitutability, the fact that the price of LiuGong’s model (rated payload capacity of 7,000 KG) is significantly lower than the domestic industry’s model also implies that the LiuGong product is being sold at extraordinarily low and injurious prices, and directly competing with the domestic industry’s product.
- vi With regard to wheel loaders with a rated payload capacity of 4,500 KG and less than 2,000 KG models are substitutable with the wheel loaders with a payload capacity of 4,500 KG technically and commercially. Therefore, to be included in the product scope of the investigation.
- vii Similarly, the domestic industry submits that a wheel loader with a payload capacity of less than 2,000 KG is substitutable with a wheel loader having a payload capacity of 3,300 KG and thus must not be excluded.
- viii It has been noted that none of the interested parties have provided any evidence of any model being included in the scope of the PUC unfairly due to a concurrent reading of the exclusion parameters. Accordingly, it has found that exclusion based on only one

or two parameters is susceptible to circumvention of any imposed duties and has proposed to retain the 'and' exclusion conditions as part of the PUC.

- ix A product scope determined on the basis of only one parameter (such as the rated payload capacity), may result in the exclusion of wheel loaders which are substitutable with the domestic industry's products. Therefore, to prevent such a situation, it is essential to evaluate all four parameters simultaneously. It reiterates that a wheel loader is a complex engineering product, which must not be determined by a singular parameter/factor.
- x The domestic industry also reiterates that the scope identified for each exclusion parameter is not arbitrary, and is based on market research.
- xi A battery-operated wheel loader satisfies all 4 characteristics to fall within the scope of the PUC. The domestic industry reiterates that the PUC includes all wheel loaders irrespective of their mechanical energy delivery platform (i.e., internal combustion engine or battery-powered engine/motors). The engine or battery-powered motor is merely a platform meant to provide energy for the operation of the wheel loader. The only difference is that internal combustion engines convert thermal energy into mechanical energy whereas a battery-powered motor converts stored electrical energy into mechanical energy. Accordingly, such wheel loaders must be covered under the product scope of the investigation. From the perspective of a user, the end-use of the products is the same, irrespective of differences in supply chain, development and testing infrastructure.
- xii The Authority has noted since the domestic industry has not alleged dumping for components, the inclusion of CKD units of wheel loaders may result in the inadvertent inclusion of components, and therefore, the expansion of the PUC.
- xiii The domestic industry agrees with the definition proposed by the Authority: "A wheel loader in SKD form consists of the machine body/chassis fitted with an engine, transmission, or axle in a single unit, which may or may not be fitted with one or more other components." The proposed definition is based on the views expressed by various interested parties including the domestic industry. Importantly, the proposed definition ensures that the parts and components used in manufacturing of wheel loaders are not inadvertently included within the scope of the PUC.
- xiv The Authority has reiterated that the PCN methodology was finalized by the Authority vide Notification F. No. 6/4/2022 dated November 17, 2022, and that questionnaire responses were filed by the interested parties on the basis of the notified PCN methodology. The Authority has noted that submissions made after the expiry of the specific deadlines need not be entertained by the Authority. However, the Authority has addressed the comments received before after the finalization of PCN.
- xv Battery-operated wheel loaders should be included in the scope of the PUC.
- xvi The final PCN methodology allows for a comparison of imported and like articles on the basis of the kW (power) of the products.
- xvii It is crucial to bear in mind that PCN parameters are identified to enable a fair price comparison between the various product sub-categories. Therefore, any parameter selected for the PCN comparison must have a demonstrable and material impact on the cost and price of the product.

xviii The parameters are examined separately in terms of impact on the overall price comparability to show a variation in the pricing of the PUC by a mere 2.44%:

Comparison of different Wheel Loader models on the basis of transmission, brakes and pumps					
S No	Parameter	Categories	Model/Variant	Price (INR)	Difference (INR)
1	Transmission	Manual	Avtech T22	***	
		Automatic	4WG115	***	***
2	Brakes	Wet	MT-L3055	***	
		Dry		***	***
3	Pumps	Piston		***	
		Gear		***	***
Total Difference in the cost				INR/Unit	***
Selling Price of the Wheel Loader				INR/Unit	***
Total Difference in the cost compared to the selling price				%	0-5%

- xix The domestic industry requests the Authority to include battery-operated wheel loaders in the scope of the PUC.
- xx The Authority has rightly noted that JCB India Ltd. is eligible to be considered as domestic industry under Rule 2(b) and 5(3) of the Anti-Dumping Rules. It has also rightly noted that LiuGong India Pvt. Ltd. and Caterpillar India Pvt. Ltd. are not eligible to constitute 'domestic industry' given their relationship with Chinese producers/exporters.
- xxi A majority of imports (of the POI) took place in pre-POI period whereas the resulting market distortion, undercutting and injurious impact was only experienced in during the POI as the stocked imports started entering the domestic commercial market at low prices. The domestic industry requests the Authority to find that the decrease in volume of dumped imports is distorted, and does not reflect the accurate market situation.
- xxii The domestic industry is operating with idle capacities, and that the production and sales for the PUC has declined in the POI as compared to the previous and the base year.
- xxiii The profitability of the domestic industry has been adversely affected due to intensified dumping by the exporters from the subject country and that the profitability has reduced significantly.
- xxiv The Authority has also clarified that the inventory of the domestic industry has been verified, and that the analysis has been done as per its consistent practice. It has also observed that majority of the 400 employees retrenched by the domestic industry were re-hired.

- xxv It has noted that factors such as imports from third countries, export performance and captive consumption, development of technology, performance of other products of the company, trade restrictive practices, contraction in demand, *inter-se* competition between domestic producers and depreciation cost have not caused injury to the domestic industry.
- xxvi In lieu of the provision of technical know-how and other requisite document/information, the domestic industry is required to pay a royalty at a pre-determined percentage of the sales made in the domestic market and exports to South Asian Association for Regional Cooperation (SAARC) nations. The domestic industry submits that while the royalty payable is accrued on the basis of sales, the same is payable for the provision of technical know-how as per transfer technology agreement.
- xxvii The Authority has noted that the PCNs differs in terms of associated cost and price of different, therefore has undertaken price undercutting, dumping and injury assessment for each PCN separately. In light of the, the domestic industry requests the Authority to recommend duties in the form of an ad-valorem basis.

J.3 Examination by Authority

- i The Authority has examined the post-disclosure comments/submissions made by the interested parties including reiterations which have already been examined suitably and adequately addressed in the relevant paras of these final findings. The issues raised for the first time in the post disclosure comments/submissions made by the interested parties and considered relevant by the Authority are examined below.
- ii With regard to certain arguments concerning the rated payload capacity of wheel loaders, the Authority notes that rated payload capacity is a crucial factor for the PUC and therefore has been considered as one of the parameters in the PCN. Further, it notes that rated payload capacity is a self-declared parameter.
- iii While wheel loader with the declared payload capacity of 7,000 KG may lift weight more than declared payload, the wheel loaders with 5,585 KG and 7,000 KG rated payload capacity have substantial overlap in various technical specifications as verified by the Authority. Wheel loaders with rated payload capacity of 5,585 KG and 7,000 KG can lift and operate with a load of 7,000 KG, and are being deployed for the same function at the same site. The domestic industry has demonstrated that wheel loaders of rated payload capacity of 5,585 KG and 7,000 KG are being used in the same market segment at the same site. In addition to the technical specification overlap, the commercial substitutability is also a relevant factor that has been considered. The Authority notes that wheel loaders of 7,000 KG are being imported at a price lesser than the domestic selling price of domestically produced wheel loaders with rated payload capacity of 5,585 KG. Therefore, it is clear that the wheel loaders with rated payload capacity of 5,585 KG are technically, commercially, and functionally substitutable with wheel loaders with rated payload capacity of 7,000 KG. In any case, the Authority reiterates that there is no requirement for the imported and like products to be identical but need to be similar to each other.

- iv With regard to the argument that there are legal constraints on wheel loaders of a rated payload capacity of 5,585 KG to lift and operate with a load of 7,000 KG, the Authority observes that the provision highlighted by the interested parties is not applicable to construction equipment vehicles, such as a wheel loader. Further, the Authority notes that registration certificate does not include any specification/parameter with laden weight, therefore, the contention of the interested parties are inaccurate.
- v With regard to Caterpillar not receiving an adequate opportunity to provide its comments on the PCN methodology, the Authority notes that the initiation notification was published in the official e-Gazette of India and all the interested parties had access to the same. Further, the relevant embassy was also intimated in accordance with the Anti-Dumping Rules. The initiation notification allowed interested parties to place their comments to the proposed PCN methodology on record within 30 days of initiation. In light of the above, the Authority finds that the contention of the Caterpillar with regard to not being provided adequate opportunity to place its objections to the PCN methodology on record is unfounded.
- vi Certain interested parties had filed comments on the proposed PCN methodology within the prescribed deadline. To adequately understand and address such comments, the Authority held a discussion on the PCN methodology to be adopted in the subject investigation on November 3, 2022. Interested parties were further provided time until November 7, 2022, to file their comments on PCN Methodology. With the regard to the communications, Caterpillar failed to circulate its proposed PCN methodology to all the interested parties as per the list issued by the Authority to allow the interested parties a chance to review and provide their comments. Accordingly, the Authority has allowed only those interested parties which had filed their comments within the prescribed deadline and circulated their comments to other interested parties, to attend the discussion. After due consideration of the comments and submissions received from various interested parties, the Authority had finalized by the PCNs and notified vide Notification dated F. No. 6/4/2022 dated November 17, 2022.
- vii The Authority notes that that an anti-dumping investigation is a time-bound process, and submissions made after the expiry of specific deadlines are not required to be addressed. Nevertheless, the Authority addressed additional comments on the PCN methodology in the relevant section of the present final findings.
- viii The Authority reiterates that the interested parties have provided no evidence to establish that these additional parameters make a notable difference to the price comparison of the PUC warranting a separate PCN parameter, even at this stage of the investigation. In other words, no evidence has been provided to establish that absence of these parameters in the PCN would distort the assessment of dumping or injury. On the other hand, the domestic industry has provided relevant data to demonstrate that the difference in cost of wheel loaders on the basis of these combined additional parameters suggested by the interested parties is not significant. Accordingly, after examining the submissions of the interested parties, the Authority did not deem it appropriate to modify the PCN methodology.

- ix With regard to the definition of the PUC in SKD form, the Authority notes that it has not received any substantial comments on the definition proposed by it. It further observes that there is no requirement to define wheel loaders in CKD form since all wheel loaders other than those in CBU and SKD (as defined) form, are not covered within the scope of the investigation.
- x With regard to the submissions relating to the standing of the domestic industry, the Authority notes that both LiuGong India and Caterpillar India are domestic producers, but are not eligible to form 'domestic industry' within the meaning of Rule 2(b) of the Anti-Dumping Rules. An assessment of the exports made by their related exporters reveals that such exports are substantial, and have remained substantial through the injury period. Given the peculiar circumstances of the present investigation, the Authority has assessed exports by the related exporters through the injury period as well, for a holistic examination of whether the relationship between the domestic producers and the exporters renders them ineligible to constitute 'domestic industry' under Rule 2(b) of the Anti-Dumping Rules. Notably, during the POI, more than 30% of sales by LiuGong India were wheel loaders which were imported prior to the POI.
- xi With regard to the contention that Creative Manufacturing Solutions (India) Private Limited (CMS) should be considered as eligible domestic industry, the Authority notes that CMS is a job worker for the Caterpillar India Private Limited and job-workers cannot be considered domestic producers for the purposes of an anti-dumping investigation. In any event, it may be noted that Caterpillar India Private Limited has duly been considered as a domestic producer who is not eligible as domestic industry within the meaning of Rule 2(b) of the Anti-dumping Rules.
- xii With regard to submissions of the interested parties regarding an improvement in various economic parameters, the Authority notes that there is no requirement for all economic parameters to be deteriorating for the Authority to find that the domestic industry has been injured by dumped imports.
- xiii With regard to the injury being suffered by the domestic industry on account of a decline in demand, the Authority notes that the domestic industry suffered the highest losses when the demand of the PUC was relatively high. Therefore, the interested parties have failed to establish a causal relationship between the decline in demand and the injury caused to the domestic industry.
- xiv With regard to the injury being suffered by the domestic industry on account of the change in emission norms, the Authority reiterates that the domestic industry demonstrated that there has been no injury caused to it because of such a change during the on-site verification.
- xv With regard to the claims concerning the calculation of NIP, the Authority notes that the NIP has been computed on the basis of principles laid down in Annexure III of the Anti-Dumping Rules.
- xvi As regards the submission made by the domestic industry regarding disallowance of royalty paid for technical know-how for computation of NIP, the same has been disallowed as per Annexure-III to ADD Rules, 1995 and consistent practice of the

Authority. Domestic Industry was requested to provide copy of the royalty agreement to establish whether the royalty expense is made for technical know-how of the product under consideration. However, the same was not provided to the Authority. It was also noted that the royalty payment was made to the related party on the specified percent of the sales. As the domestic industry has not fully cooperated, NIP has been calculated on the basis of best available facts and in terms of Rule 6(8) of ADD Rules.

xvii With regard to the submission made by interested parties concerning 22% return on capital employed for calculating NIP, the authority notes that NIP has been calculated in accordance with Annexure III of Anti-dumping Rules and consistent practice of the Authority.

K. INDIAN INDUSTRY ISSUES

K.1 Submissions made by other interested parties

- i The other interested parties have made the following submissions with respect to the this:
- ii The imposition of anti-dumping duty would be detrimental to users and contrary to public interest, as wheel loaders are used in applications like mining, port operations, road construction etc.
- iii Operations carried out at port such as bulk material/ cargo handling require wheel loaders to do the job in a time bound manner. If anti-dumping duties are imposed on wheel loaders, it will increase the capital cost which will lead to deployment of lesser number of wheel loaders by service providers to complete the job. Thus, making such service provider business unviable.
- iv Further, the cascading effect of anti-dumping duties could have a bearing on the material movement from the port area to the end users. This will in-turn affect the turnaround time of vessels at the berth leading to heavy demurrage and other port handling charges.
- v Further, imposition of anti-dumping duty may lead to additional outflow/ negative impact on public exchequer and publicly funded institutions in terms of increased price of coal and the downstream applications like power (thermal power plant), steel etc.
- vi Wheel loaders contribute at many stages of various mining operations including coal mining. The broader stages of mining operations are removal of overburden, blasting, stock piling, transportation. Wheel loaders are majorly used in stock piling and transportation activities. An escalation in the 'on-road price' of wheel loaders will have a bearing on the overall cost of ownership of the machines for the end users. The end users are typically entities engaged as contractors in such activities. The impact on cost of ownership may be due to following attributable reasons-
 - Servicing of loans- Downpayment, EMIs

- Resource and capacity constraints
 - Added operations and maintenance cost.
 - Contract Prices are generally non-negotiable in nature- Long Term Contracts
 - Cascading effect on the ecosystem of financial institutions may lead to delinquencies or even NPAs.
 - Act as an entry barrier for contractors to bid for coal loading tenders.
- vii At the existing rate the contractor would go into losses and its operations would become unviable. Imposition of duty@ ***% would erode the profitability of the contractor by **%, whereas a 40% duty would impact by ***%.
- viii As per the prevailing exchange rate, the impact of duty in INR terms is approximately ***/unit. Considering the average useful life of Loaders as 7-8 years, the impact of duty on downstream users is highly significant i.e. approximately INR *** to ***per year (excluding finance cost and taxes).

K.2 Submissions made by the domestic industry

146. The domestic industry has made the following submissions:

- i There are no concerns regarding public interest in the present investigation since no users have participated in the present investigation. Additionally, except LiuGong India, no other interested party has filed an Economic Interest Questionnaire as well. Notably, no public interest issues were highlighted by the LiuGong as well. Therefore, it is not possible for any interested party to bring up the issue of public interest at this juncture.
- ii Wheel loaders are a very small part of the overall investment in mining and ports, and hence the impact of increased duty would be even more negligible.
- iii The impact the PUC is used in a wide array of industries and sectors. The application of the PUC is generally in quarry/crusher, large-scale construction, infrastructure projects, mining, ports and other industries. Therefore, the impact of the duties on downstream applications would differ depending on the scale and size of the project under which the PUC has been deployed.
- iv The impact of the anti-dumping duties cannot be calculated on a per-unit basis. It must be calculated on a cost-per-tonnage basis.
- v The imposition of 20% duties on the operation of the crusher would lead to an impact of about 0.4% only. As per the off-highway research report for the year 2020, the crusher industry (or quarry industry) is the largest segment and represents about 43% of the total demand of the PUC.

- vi For the rest of the segments like mining, road and construction, ports and other industries, the wheel loader is a much smaller part of the overall investment, and hence the impact of increased duty would be even more negligible.

K.3 Examination by Authority

- i. At the outset, the Authority notes that none of the users of the PUC have cooperated in the present investigation by filing the relevant user/economic interest questionnaire responses, participating in the oral hearing or filing any submissions. Based on this, there is no evidence placed on record which suggests that any imposition of anti-dumping duties would adversely impact the users of the PUC.
- ii The economic interest questionnaire has only been filed by LiuGong India and the domestic industry. LiuGong India did not raise any concerns related to public interest. However, the domestic industry has presented detailed calculations to show that the imposition of an anti-dumping duty would have a negligible impact on the user industry.
- iii One of the importers, M/s Gainwell Commosales Pvt. Ltd. has also provided calculations to claim that the imposition of anti-dumping duty would significantly impact the user industry. The Authority notes that the Gainwell Commosales has provided the calculations at the operator level (often hire purchaser) and not at the cost of operations of the mining or port operations as submitted by the domestic industry. Further, Gainwell has not provided the source of information such as life of wheel loader, interest cost considered, fuel consumption norms, diesel prices etc., to arrive at the end-user impact of the duties, if any. Gainwell Commosales submitted that it may provide the detailed calculations to the Authority on confidential basis at this stage of the investigation. It may be appreciated that anti-dumping investigations are time-bound process, and any new information at this stage will not be considered by the Authority.
- iv Accordingly, the Authority allocated the ownership costs over a period of 7 years, and added other annual costs (such as manpower, repair, maintenance, fuel). It was found that the impact of a 20-40% duty on a wheel loader is negligible for a contractor (hire purchaser).
- v In any case, the Authority notes that trade remedial measures are intended to restore equal competitive opportunities in the domestic market by ensuring level playing field to domestic producers through imposition of appropriate duties against unfair imports of the subject goods. At the same time, the Authority is cognizant of the fact that the impact of such duties is not limited to only the domestic producers of the PUC but also affects the users as well as consumers of the PUC. Further, imposition of duties may also lead to competition issues within the country.

L. CONCLUSION

147. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority as recorded in this finding, the Authority concludes that:

- i The subject goods exported from the subject country and the article manufactured by the domestic industry are ‘like article’ to each other in terms of Rule 2 (d) of the AD Rules, 1995.
- ii The domestic industry satisfies the requirements stipulated under Rule 2 (b) of the AD Rules, 1995 and application satisfies the standing requirements under Rule 5(3) of the AD Rules, 1995.
- iii The application contained all information relevant for the purpose of initiation of the anti – dumping investigation and necessary evidence in terms of Rule 5(2) of the AD Rules, 1995 to justify the initiation of the present investigation for determination of dumping and material injury to the domestic industry in terms of Rule 5 (3) of the AD Rules, 1995.
- iv The imports of the PUC from the subject country are at dumped prices.
- v The domestic industry has suffered material injury due to dumping of the product under consideration from the subject country:
- vi Dumped imports from the subject country have declined in both absolute and relative terms during the POI. However, imports have increased in 2020-21 compared to the base year 2018-19. These imports may have been sold in the domestic market during the POI, thereby injuring the domestic industry during the POI.
- vii The price undercutting calculated for the dumped imports is positive and high during the POI.
- viii The landed price of the subject imports has remained below the cost and the selling price of the domestic industry. Additionally, the domestic industry was unable to increase its selling price at the rate at which the cost of sales increased during the POI.
- ix The production and domestic sales for the PUC has declined in the POI as compared to the previous year and the base year.
- x The profitability of the domestic industry declined significantly, and the domestic industry is incurring losses. The return earned by the domestic industry is negative.
- xi The growth of the domestic industry has been negative on all parameters in the POI.
- xii The material injury has been caused by the dumped imports from the subject country, and there are no other factors which are causing injury to the domestic industry.

M. RECOMMENDATIONS

148. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was provided to the domestic industry, other domestic producers, Embassy of the subject country, producers/exporters of the subject goods from the subject country, importers, users, and other interested parties to provide information with regards to dumping, injury, and causal link. Having initiated under Rule 5(3) of the Anti-Dumping Rules and conducted investigation in accordance with Rule 6 of the Anti-Dumping Rules regarding dumping, injury and causal link as required under Rule 17 (1)

(a) of the Anti-Dumping Rules and established material injury to the domestic industry due to subject imports from the subject country, the Authority recommends imposition of anti – dumping duties on the subject imports from the subject country.

149. Considering the nature of the product under consideration and the large number of PCNs involved, the Authority considers that it would be appropriate to recommend anti-dumping duty as a percentage of the CIF value of the import price of the subject goods.

150. Further, having regard to the lesser duty rule as enunciated in Rule 17 (1)(b) of the Anti-Dumping Rules, the Authority recommends imposition of definitive anti-dumping duties equal to the lesser of margin of dumping or margin of injury, from the date of notification to be issued in this regard by the Central Government, so as to remove the injury to the domestic industry. Accordingly, definitive anti-dumping duties equal to the amount as percentage of CIF value indicated in Col 7 of the duty table given below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government for a period of five (5) years:

Duty Table

S. No.	Customs Tariff Line	Description of Goods	Country of Origin	Country of Export	Producer	Duty (% of CIF value in US\$)
1	2	3	4	5	6	7
1.	84295900 and 84295100	Wheel Loaders*	China PR	Any including China PR	Guangxi LiuGong Machinery Co. Ltd.	55.18%
2.	-do-	-do-	China PR	Any including China PR	Caterpillar (Qingzhou) Co., Ltd.	18.84%
3.	-do-	-do-	China PR	Any including China PR	Caterpillar (Suzhou) Co., Ltd.	18.84%
4.	-do-	-do-	China PR	Any including China PR	Liebherr Machinery (Dalian) Co. Ltd	NIL
5.	-do-	-do-	China PR	Any including	Shandong Lingong	34.74%

				China PR	Construction Machinery Co., Ltd. (“SDLG”)	
6.	-do-	-do-	China PR	Any including China PR	XCMG Construction Machinery Co., Ltd.	77.68%
7.	-do-	-do-	China PR	Any including China PR	Any other Producer	82.71%

**“Wheel loader” is a self-propelled wheel-mounted equipment with an articulation joint, having front end loading mechanism.*

Wheel loader imported in the form of completely built unit (CBU) or semi-knocked down (SKD) are included within the scope of the investigation. However, imports of wheel loader in completely knocked down (CKD) or component form are excluded from the scope of the investigation.

For the purposes of this recommendation, a wheel loader in SKD form consists of the machine body/chassis fitted with an engine, transmission, or axle in a single unit, which may or may not be fitted with one or more other components.

Explanation: If chassis/machine body is imported without an engine, transmission or axle fitted into it, no anti-dumping duties shall be payable.

The following products are excluded from the scope of the investigation:

151. The wheel loaders of the following specifications are to be excluded from the from the scope of the investigation:

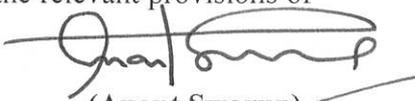
- a) Rated payload capacity of more than 7,000 KG; and*
- b) Gross engine power above 180 kW; and*
- c) Measured distance at the center between right and left wheel (wheel tread/track) above 2,280 mm; and*
- d) Measured distance between the front and back wheel axles (wheelbase) above 3,350 mm.*

All the above parameters are ‘and’ conditions. In other words, a product is excluded from the scope of the PUC only if it satisfies all of the above conditions concurrently.

- e) Wheel Loader in Completely Knocked Down (CKD) or component form are excluded from the scope of the investigation.*
- f) Battery-operated wheel loaders are also excluded from the scope of the investigation.*

N. FURTHER PROCEDURE

152. An appeal against the recommendation of the Authority shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Customs Tariff Act.


(Anant Swarup)
Designated Authority