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By Trade Remedies Service and email

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13 June 2025

Dear Sir or Madam

Investigation AD0047 - certain excavators originating from the People's Republic of China ("PRC")

Application for reconsideration of the Trade Remedies Authority's recommendation to the Secretary of State made under paragraphs 17(3), 18(2)(a)(i) and 18(5) of Schedule 4 to the Taxation (Cross-border Trade) Act 2018, as set out in the Final Determination issued on 13 May 2025

Introduction

1. We act for Caterpillar (Xuzhou) Limited, Caterpillar SARL, Caterpillar SARL Singapore Branch, Caterpillar (China) Investment Co., Ltd ("**Caterpillar Group**" or "**Applicant**").

2. The Caterpillar Group hereby makes an application to the Trade Remedies Authority ("**TRA**") for reconsideration of its recommendation to the Secretary of State under paragraphs 17(3), 18(2)(a)(i) and 18(5) of Schedule 4 to the Taxation (Cross-border Trade) Act 2018 (the "**Act**"), as set out in its Final Determination (the "**Final Determination**") issued on 13 May and dated 14 May 2025 in the anti-dumping investigation AD0047 (the "**Investigation**") concerning certain excavators originating from the PRC.

3. In the Final Determination, the TRA made a final affirmative determination under paragraphs 11(5) and 11(6)(a) of Schedule 4 of the Act on imports of relevant goods i.e. self-propelled track-laying (i.e. tracked) excavators with a 360° revolving superstructure and with an operating weight of 11,000 kg or more but less than 80,000 kg, originating from the PRC that fall under the commodity

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code 8429 5210 00. The TRA determined that (i) the relevant goods that are the subject of the final affirmative determination have been or are being dumped into the UK and (ii) the dumped goods have caused or are causing injury to a UK industry. In accordance with paragraphs 17(3), 18(2)(a)(i) and 18(5) of Schedule 4 to the Act, the TRA made a recommendation to the Secretary of State for Business and Trade (the "**Secretary of State**") to impose an ad-valorem anti-dumping duty of 18.81%. for a period of five years on those relevant goods ("**Original Decision**").

4. On 13 May 2025, the Secretary of State accepted the TRA's recommendation and published "*Trade remedies notice 2025/10: definitive anti-dumping duty on certain excavators originating from China*", [1] which became effective on 14 May 2025.

Eligibility of the Applicant

5. The Caterpillar Group participated in the Investigation and became a sampled exporter/producer of the relevant goods, it is therefore eligible to apply for reconsideration of the Original Decision. Further, as the Original Decision concerns an individual anti-dumping duty of 18.81% for Caterpillar Group it also meets the eligibility criteria set by regulation 9(6) of the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 ("**Reconsideration and Appeals Regulations**").

Grounds for the Application

6. The Caterpillar Group respectfully requests that the TRA reconsiders the Original Decision as there are material errors of law and fact in its dumping and injury margin determinations, and in the resulting anti-dumping duty calculations for the Caterpillar Group. The Caterpillar Group's detailed submissions in support of its request for reconsideration are set out in Annex A. In summary the TRA is invited to:

Re-consider the injury margin calculation

7. In particular, the TRA is invited to use the *actual customs value* declared during the investigation period in the denominator, as well as the numerator of the injury margin calculation. The TRA applied [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] adjustment to both elements of the injury margin calculation, i.e. to the numerator as well as to the denominator. Applying [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] deduction is inappropriate in this situation because the customs declarations collected in the Investigation show that the full invoice value of imported excavators was declared to UK customs. Accordingly, there is no basis for the TRA to deduct such [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] in its calculations. The TRA is further invited to include prices of XXL excavators exported by Caterpillar Group to the UK into injury margin calculation and compare them to JCB prices for XL excavators as these have been found by the TRA to share physical and commercial characteristics closely resembling one another. In addition, the TRA is respectfully requested to adjust normal rate of profit for calculating target price to that achieved by Komatsu UK Limited.

Re-consider the dumping margin calculation

8. In particular, the TRA is invited (a) to use *the actual customs value* declared during the investigation period to calculate the customs value in the denominator of the dumping margin calculation; (b) to

[1] https://www.gov.uk/government/publications/trade-remedies-notice-definitive-anti-dumping-duty-on-certain-excavators-originating-from-china/trade-remedies-notice-202510-definitive-anti-dumping-duty-on-certain-excavators-originating-from-china

determine that *no Particular Market*[2] *Situation ("**PMS**") applies to the Caterpillar Group*; and/or (c) if a PMS is found to apply to Caterpillar Group (contrary to Caterpillar Group's case) determine that *the PMS does not affect price comparability*.

Re-consider the injury and causal link determination and provide an adequate disclosure

9. In particular, the TRA is invited to establish the volume and value of imports properly based on *the country of origin* and not based on the country of dispatch and *revise its injury and causal link analysis* accordingly. Determinations on the existence of a material injury, price undercutting and price depression, as well as on the existence of a causal link between imports from the PRC and alleged material injury, should rest on an objective examination of the positive evidence on the record. The TRA is also kindly requested to re-consider whether any known factors other than the dumped goods have caused, or are causing, injury to a UK industry.

Re-consider the form of the anti-dumping measures

10. The TRA will be aware that the Caterpillar Group did not have time during its participation in the truncated Investigation timetable to consider proposing a price undertaking. Further and alternatively (and without prejudice to Caterpillar Group's grounds above), the Caterpillar Group respectfully requests the TRA to reconsider the *form* of the anti-dumping duty applicable to the Caterpillar Group once the TRA reaches its provisional findings on other grounds of this re-consideration request.

Please let us know if you need any further information to conduct this reconsideration. We would also be happy to meet you in person or virtually to provide further explanations and information about this request for reconsideration.

We look forward to hearing from you.

Yours faithfully

Mayer Brown Europe-Brussels LLP

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[2] For the avoidance of doubt, references in this Application to the term 'market' are to the relevant market as referred to in the Original Decision or applicable statute or statutory instrument.

ANNEX A

GROUNDS FOR CATERPILLAR GROUP'S REQUEST FOR RECONSIDERATION

SECTION 1: ISSUES RELATING TO THE INJURY MARGIN DETERMINATION

1. The TRA calculated the Caterpillar Group's injury margin by comparing (a) Caterpillar **CONFIDENTIAL:** sensitive information removed – commercially sensitive information] actual sales price to an unrelated UK importer, adjusted for [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] with (b) the target price of the UK industry. The TRA applied [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information*] adjustment* to <u>*both elements*</u> of the injury margin calculation, i.e. to the numerator as well as to the denominator.

2. This methodology should be re-considered for the reasons outlined below.

<u>Ground 1</u>: customs value in the denominator of the injury margin calculation must be based on *actual customs value* as declared during the investigation period

3. Going back to first principles, anti-dumping duty is an import duty.[3] The amount of an import duty that an importer must pay when declaring goods for a release in free circulation is worked out as a percentage of the *customs value* of the goods.[4] Conversely, as a matter of mathematics, the ad valorem duty percentage is worked out by dividing the amount of the import duty by the *customs value*. Thus, if the TRA concludes it should set an ad valorem anti-dumping duty for the Caterpillar Group, it should only do so by dividing the amount of underselling by the customs value.

4. The TRA failed to adopt this methodology. Instead, the TRA calculated an ad valorem anti-dumping duty for the Caterpillar Group by dividing the amount of underselling by a customs value that has *already* been reduced by the amount of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]. The TRA adopted this approach notwithstanding customs declarations – as verified by the TRA and accepted by the HMRC - showing that the customs value declared to the HMRC was <u>not</u> reduced by the amount of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information].[5]

5. Therefore the customs value for the purpose of the injury margin calculation should be based on *actual customs value*. This customs value equates to the value of an invoice that Caterpillar [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] issues to the unrelated importer. This information was before the TRA in its investigation: the Caterpillar Group reported and documented such customs values in its questionnaire response, as verified by the TRA.

6. The TRA's reasoning underpinning its decision to adjust the customs value for [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] should be re-considered.

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[3] Paragraph 17(3) of the Act.

[4] HMRC Guidance on Valuing imported goods using Method 1 (transaction value), 3 November 2022 ("**HMRC Guidance**") explains: "*The amount of Customs Duty you must pay is worked out as a percentage of the customs value of the goods. This type of Customs Duty is referred to as 'ad valorem duty'*".

[5] See copies of the declarations provided in the Verification Exhibit VE-30 and Appendix B4.1.4-2 to the Questionnaire Response by CXL.

7. First, since the Caterpillar Group is not affiliated with the UK importer, contrary to the Final Determination,[6] there is no basis to "construct" Caterpillar Group's CIF value, i.e. its customs value.

8. Second, it is incorrect to claim that the calculations underpinning the injury margin are not required to be based on the reported CIF import price of the relevant goods. As outlined above, an anti-dumping duty should be calculated by expressing the *actual amount of underselling* by the *actual customs value*. This is because that customs value is the basis for applying the anti-dumping duty.

9. Third, there is no good reason not to use the actual customs value in the denominator of the injury margin calculation. (Indeed, TRA acknowledges that the Caterpillar Group and its unrelated UK importer did not act "inappropriately" when declaring to the HMRC invoice values that have not been adjusted for [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information].[7])

10. Fourth, since as follows from the customs declarations verified by the TRA, an unrelated importer of the Caterpillar Group's excavators declared at importation the full value of excavators that was not decreased for the amount of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information], the TRA's anti-dumping duty of 18.81% is based on an *artificially deflated denominator* and thus *overstates the actual injury margin* as existed during the investigation period. It follows that contrary to paragraph 14(3)(b) of the Act, the TRA recommended to the Secretary of State an amount of anti-dumping duty that *exceeds the amount which would be adequate to remove the injury to a UK industry in the goods.*

11. Fifth, the Final Determination appears to suggest that even if an unrelated importer of the Caterpillar Group's excavators pays a 18.81% anti-dumping duty as a percentage of the full customs value, it can claim an overpayment from the HRMC at a later stage (when [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] and adjusts the customs value downwards).[8] This suggestion seems to underscore precisely the point that the Caterpillar Group is making, namely, that at the point of importation applying an anti-dumping duty at the level of 18.81% will result in an *overpayment of the anti-dumping duty*, which is contrary to paragraph 14(3)(b) of the Act.

12. As to whether an importer can in fact subsequently request a 'refund' of an overpaid anti-dumping duty as the TRA suggests, this is unclear. As the TRA will be aware, anti-dumping duty is governed by a separate "re-payment" procedure that does not provide for refunds where there is a decrease in the injury margin. Furthermore, we are not aware of any HMRC Guidance (or other UK statutory rules) that suggest a refund claim is permitted for the difference in the injury margin resulting from the deflated denominator in a situation where an importer does not [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] at all.

13. Finally, it is noted that for the purpose of a denominator of the injury and dumping margin calculations, the European Commission takes *actual customs value* as declared at CIF EU border level, regardless of the adjustments it implements under Articles 2.3 and 2.4 of the WTO Anti-dumping Agreement.

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7 Final Determination, at 745.

8 Final Determination, at 745.

14. For these reasons the TRA should re-consider customs value used in the denominator of the injury margin calculation and instead base customs value in the denominator of the injury margin calculation on *actual* customs value as declared during the investigation period.

<u>Ground 2</u>: landed price in the numerator must reflect *actual customs value* as declared during the investigation period

15. The TRA's position in relation to the Caterpillar Group's submission concerning deductions for [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] from the landed price used for the purpose of the numerator is unclear and in any event incorrect.

16. First, the TRA does not explain how Regulation 36(2) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) 2019 Regulations ("**the Regulations**") justifies its deduction of the [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]. According to that provision, when calculating the amount of an injury margin "…*the TRA must take into account any information it considers relevant in order to calculate the relevant amount*." Consistent with regulation 36(2) the primary source of relevant information that the TRA should consider is the data showing that during the investigation period Caterpillar Group's unrelated importer declared the customs value without deduction of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] and did not adjust it retroactively.

17. Second, the Final Determination seeks to support the deduction of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] by reference to Regulations 15(2) and 15(4) of the Regulations.[9] However, based on the dumping and injury calculations as disclosed to the Caterpillar Group, the export price was established based on sales price of Caterpillar [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] to the unrelated importer in the UK and not based on the re-sales price of the unrelated importer in the UK to the final customer. The Final Affirmative Determination therefore errors in applying Regulation 15(4) as a basis for the [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] adjustment. The Final Affirmative Determination did not apply Regulation 15(4) to construct the Caterpillar Group's export price neither in the context of the dumping margin calculation, nor in the context of the injury margin calculation.

18. Moreover, the Final Determination does not explain the rationale for applying Regulation 15(2) of the Regulations. The Caterpillar Group rejects any notion that there is a factual or legal basis to apply this provision given that (a) there is an export price and given that (b) such price is reliable and has been consistently relied upon to set the customs value at the point of importation. The Final Determination acknowledges that the use of export price inclusive of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] was proper.[10]

19. Importantly, while Article 2.3 of the WTO Anti-dumping Agreement (Regulations 15(2) and 15(4) of the Regulations that implement that provision as a matter of English law) addresses the establishment of the export price, it is limited in scope, applying only to the situations described in that Article. It does not address all of the issues that may arise in relation to the export price used in a comparison to determine a margin of dumping.[11] Indeed, there is nothing in Regulations 15(2) and 15(4) of the Regulations to support the TRA's unwarranted deduction of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]

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[9] Final Affirmative Determination, at 421 and 537.

[10] Final Affirmative Determination, at 745.

[11] Panel Report, *Republic – AD on Steel Bars (Costa Rica),* para. 7.31.

when establishing the landed price for the purpose of the injury margin calculation or for the purpose of establishing EXW export price for the purpose of the dumping margin calculation.

20. Third, given that the UK legislation does not provide for the refund of dumping duties following retrospective adjustments to customs values and, in any event, no refund is possible when the customs value is not subsequently adjusted for [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information], the TRA's calculation *overstates the amount of customs debt* arising out the calculated dumping duty.

21. Fourth, the HMRC Guidance does not suggest there is any possibility of claiming back anti-dumping duties following the revision of customs values. As mentioned above, for anti-dumping duty refunds a separate "re-payment" procedure is envisaged in the UK statute.[12] In the context of that procedure, a re-payment is possible only in case a dumping margin has been or eliminated or decreased. Any change in the level of the injury margin therefore is not the basis for a refund.

22. Accordingly, the TRA should re-consider the landed price used in the numerator of the injury margin calculation. As part of its reconsideration, it is respectfully submitted that the TRA should reference data on the record and base landed price in the numerator of the injury margin determination on actual customs value as declared during the investigation period.

Ground 3: prices of XXL excavators of Caterpillar Group should be considered for the purpose of the injury margin calculation

23. In the period of the investigation, Caterpillar Group exported to the UK excavators falling under PCN XXL covering excavators weighing more or equal to 55 tons but less than 80 tons. TRA included prices and volumes of those excavators when calculating the dumping margin of the Caterpillar Group. However, the TRA *excluded* XXL excavators when calculating an injury margin. TRA does not explain the reasons that led it to disregard those excavators even though they undoubtedly formed part of the sales of relevant goods to the UK made by Caterpillar Group.

24. The Caterpillar Group submits, first, that the TRA should re-consider the injury margin and establish injury margin for the Caterpillar Group's relevant goods as a whole including XXL excavators. Since such excavators are covered by the scope of relevant goods and since they were exported to the UK, their customs value should be reflected in the denominator of the injury margin calculation.

25. Secondly, since the Final Determination concluded that an XL excavator produced in the UK and an XXL excavator imported to the UK originating from the PRC do share physical and commercial characteristics closely resembling one another,[13] prices of XXL excavators should be compared with the JCB prices for XL excavators when calculating the injury margin of the Caterpillar Group. The TRA is respectfully requested to re-consider the injury margin on that account as well.

Ground 4: normal rate of profit used to calculate target price should be reconsidered

26. It appears from paragraph 740 of the Final Determination that to calculate the target price the TRA applied a normal rate of profit of 11%:

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[12] Regulation 89 of the Regulations.

[13] Final Determination, paragraph 98.

"The normal rate of profit was set at 11% in this instance, which was based on UK industry's submissions for the rate of net profit it said it would reasonably achieve in the absence of injury from the relevant goods. The TRA noted that the 11% submitted by UK industry was in line with the identified profit margin for unrelated UK importers of the excavators and also supported when compared to the calculated profit margins for the sampled PRC exporters."

27. The normal rate of profit applied by the TRA, however, is overstated and is not based on adequate evidence of profits achieved by EU excavator producers in the ordinary course of business:

   (a) UK's industry's submissions with respect to the rate of net profit it expected to reasonably achieve in the absence of injury from the relevant goods is based on the evidence that encompasses aggregated data for industries other than the excavator industry and thus is too wide, as well as on the evidence that is not UK-specific. In particular, JCB appears to have relied[14] on the following data none of which is representative for the UK excavator industry:

      i. average profit margin of Komatsu Ltd., a Japanese producer of excavators, for financial years 2019-2021;
      ii. average profit in the machinery industry in Europe, Japan and the US, for the period 2019-2022;
      iii. average profit margin in the global industrial machinery and components industry, for the injury period;

   (b) the TRA's reference to identified profit margin for unrelated UK importers of the excavators is unsuitable as importers are not producers and do not form a part of industry;

   (c) the TRA's reference to profit margins for the sampled PRC exporters is inadequate as the TRA alleges existence of a PMS in the PRC and distortion of the PRC exporter's costs.

28. At the same time, the TRA failed to assess the profit margin of Komatsu UK Limited that was identified by the TRA as one of the two UK producer of excavators.[15] According to publicly available Financial Statements of Komatsu UK Limited covering 2017-2023[16], during 2017-2023 the profit margin of Komatsu UK Limited ranged from **2% to 3%** (a summary of the data is available in Annex 4).

29. The Caterpillar Group respectfully requests that the TRA should re-assess the normal rate of profit and use instead the profit margin of Komatsu UK Limited that manufactures and sells excavators in the UK.

SECTION 2: ISSUES RELATING TO THE DUMPING MARGIN DETERMINATION

30. The Final Determination determines the dumping margin for the Caterpillar Group by first determining the amount of dumping. Such amount is calculated as a difference between (a) the actual UK export price at EXW Xuzhou delivery terms, and (b) constructed normal value where because of a PMS, cost of manufacturing is determined on the basis of the cost of manufacturing of excavators in Brazil.

31. To calculate the dumping duty, the Final Determination then divides the amount of alleged dumping by the CIF value during the Investigation period adjusted by the amount of

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[14] See JCB's Application, Section G.1.4.

[15] Final Determination, paragraph 132.

[16] https://find-and-update.company-information.service.gov.uk/company/01948743/filing-history

[**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]. The resulting dumping margin is 23.91%.

32. The Caterpillar Group considers that, for the reasons mentioned below, the dumping margin determination is incorrect and should be re-considered.

Ground 5: customs value in the denominator of the dumping margin calculation should be based on actual customs value as declared during the investigation period

33. As with the injury margin calculations, the TRA has inflated the Caterpillar Group's dumping margin by using incorrect customs value information. As anti-dumping duties are administered by applying the rate of ad valorem duty to the customs value, the TRA should have expressed the amount of alleged dumping as a *percentage of actual customs value* in the investigation period. Given that such customs value was not adjusted for [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information], customs value for the purpose of the dumping margin calculation should, in the same way, not be reduced by those credits. The TRA's dumping calculation however uses a lower customs value adjusted downwards by the amount of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]. This leads to a flawed calculation.

34. It is also noted that for the purposes of a denominator of the injury and dumping margin calculations, the European Commission takes *actual customs value* as declared at CIF EU border level, regardless of the adjustments it implements under Articles 2.3 and 2.4 of the WTO Anti-dumping Agreement.

35. The TRA should re-consider the customs value used in the denominator of the dumping margin calculation. The TRA should have regard to the facts on the record only and base CIF value in the denominator of the dumping margin calculation on actual customs value as declared during the investigation period.

Ground 6: no PMS applies to the Caterpillar Group

36. The Final Determination makes a PMS finding based on (i) State influence on the economy in the PRC[17] and (ii) allegedly distorted costs of raw materials used in the production of excavators in the PRC.[18]

37. As to the State influence on the economy in the PRC, the Final Determination noted that there was evidence of government influence within both PRC SOEs and private organisations "*including the sampled exporters*".[19] The TRA concluded this government influence over "*sampled exporters*" causes the price of excavators to reflect non-commercial factors:

*"On balance, the TRA has determined that there is evidence that government influence is present within both SOEs and private organisations, **including the sampled exporters**. The TRA has found evidence that government influence causes the price of excavators to reflect non-commercial factors. This is evidenced above through; article 19 of the Companies Law of the People's Republic of China, the 14th Five-Year Plan for Economic and Social Development (2021-2025), and the Made in China 2025 strategy."*[20]

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[17] Final Determination, Section G2.1.1.

[18] Final Determination, Sections G2.1.2 – G2.1.11.

[19] Final Determination, paragraph 201.

[20] Statement of Essential Facts, paragraph 157, *emphasis added*.

38. The Final Determination found that Chinese Communist Party "*assumes an all-encompassing leadership role within the country*" and cited examples of a state owned Liugong Group (SOE) which "*actively promotes its alignment with government policy*" and of Sany Group that had "*at least one leading PRC politician and a senior member of the GoC either holding a director position or being a member of the board*".[21] However, no such findings were made with respect of the Caterpillar Group.

39. As the Caterpillar Group noted in its comments to the TRA on 17 April 2025, Caterpillar (Xuzhou) Limited ("**CXL**") is privately owned by Caterpillar Inc. The PRC government does not own, directly or indirectly, any shares in CXL and no state officials are present on the boards or management bodies of either CXL or Caterpillar (China) Investment Co., Ltd ("**CCI**").

40. Furthermore Caterpillar Group noted in its comments to the TRA on 17 April 2025 that:

    (a) CXL is [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] on the same terms, regardless of the destination;[22]

    (b) CXL and CCI (its affiliated trading company in China), are not subject to any constraints, directive, or mandatory prices imposed by the Government of the PRC;

    (c) CXL and CCI follow the same global pricing policy of Caterpillar that applies regardless of the country or region of sales;[23]

    (d) CXL and CCI financial statements do not contain any reservations or notes relating to the government interference into the company's prices or costs; and

    (e) CXL does not benefit from any subsidies by the Government of the PRC above *de minimis* level.

41. Under the Statutory Guidance, the TRA is required to conduct a PMS assessment on a company-specific basis.[24] It appears it has not done so. The Caterpillar Group therefore respectfully requests that the TRA re-examines the applicability of the PMS evidence by reference to Caterpillar Group.

42. As to the TRA's comments in the Final Determination that (a) the PMS encompasses factors beyond those specified by the Caterpillar Group and that (b) Caterpillar Group did not provide new evidence to dispute the finding of a PMS,[25] these claims are challenged.

43. The TRA's finding in the Final Determination as to PRC state influence of the economy is an essential underpinning of its PMS determination. However although claiming that state influence over the economy affects *all* sampled producers, no evidence of such alleged

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[21] Final Determination, paragraphs 188 and 189.

[22] See Appendix B4.1.4-1 to CXL's questionnaire response.

[23] See Appendix 7 to Deficiency Letter Response of CXL submitted on 6 March 2025 which contains List Price. Also see pages 2 and 3 of verification exhibit VE-30 which contain information on pricing.

[24] TRA dumping, subsidisation and safeguarding investigations guidance, Particular market situation and costs adjustments, 28 October 2019 ("**Statutory Guidance**") states: "***The assessment of whether adjustments are justified should be made on an exporter-by-exporter basis.*** *For example, where government intervention affects a production input in the domestic market, the purchasing behaviour of a particular exporter should be examined to determine whether the input has been supplied at a price substantially determined by market forces. If the exporter buys "on-the-spot" from an external unrelated supplier in another country, adjustments may not be appropriate*." (emphasis added)

[25] Final Determination, paragraph 311.

influence over the Caterpillar Group is provided whether at Section G2.1.1 of the Final Determination or at all.

44. Moreover, it is incorrect to suggest the Caterpillar Group did not provide new evidence to disprove the PMS finding. As set out above in paragraphs 39 and 40, the Caterpillar Group's questionnaire response clearly demonstrates the lack of the State influence over the Caterpillar Group.

45. Secondly, as detailed below in paragraphs 114 and 108, the TRA's conclusion on presence of a PMS in the PRC is substantiated by government influence and control in steel and key excavator component costs,[26] and (b) the TRA uses 50% steel content in inputs threshold to allege that input prices reflect non-commercial factors arguably existing in steel market.[27] However, as demonstrated by the Caterpillar Group during the investigation, [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] used by the Caterpillar Group has steel content [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information].[28] Thus, under the PMS legal standard as developed by the TRA, no PMS applies with respect to the Caterpillar Group.

46. Thirdly, having claimed the existence of a PMS based on alleged government intervention in the steel market, the TRA failed to analyse (a) whether prices of excavators in the PRC are "artificially low" and, (b) if so, whether they result from distortions in the market of indirect input (steel), as required by the Statutory Guidance. While the Statutory Guidance establishes that a PMS may exist due to government intervention in a market of an indirect input, it nevertheless requires the TRA to establish that such government intervention "*results*" in artificially low sales prices in the domestic market of the like goods:

"*There may also be cases where the source of a particular market situation is government intervention in any of the following:*

- *the domestic market for the like goods*
- *an upstream market that inputs into the like goods*
- *a market indirectly providing inputs into the like goods, which* ***results*** *in* ***artificially low sales prices*** *in the domestic market of the like goods.*"[29]

47. Given the above, where the TRA substantiates a PMS by existence of government intervention in the input market, it is required to conduct two separate assessments: (a) whether the domestic sales prices of goods incorporating inputs are artificially low, and (b) whether the artificially low prices have been caused by the government intervention. However, in the present case the TRA neither made a determination on the existence of artificially low domestic sales prices of excavators, nor carried out a respective analysis.

48. Finally, the TRA's claim that 50% steel content in inputs allows for a pass-through of the non-commercial factors to excavator pricing does not meet the legal standard set by the Statutory

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[26] Final Determination, paragraph 306: *"a PMS exists in the domestic excavator market in the PRC, as the price of excavators reflect non-commercial factors as a result of government influence and control in steel and key excavator component costs"* .

[27] Final Determination, paragraph 229: *"Although there is a clear distinction between the production of steel and the various excavator components listed above, the* ***high proportion of steel in many*** *excavator components means that* ***many*** *of the non-commercial factors that are reflected in the price of PRC steel flow through into the price of the components themselves. Information provided by* ***a sampled exporter*** *showed that for the six major components of excavators, all but the counterweight contained* ***more than 50% steel****, with some components being 100% steel. As such, even if there was* ***no other evidence of state intervention in the excavator component market****, it becomes difficult to see how the prices of these inputs could not reflect non-commercial factors due to the high proportion of steel present in these inputs*."

[28] Questionnaire Response by the Caterpillar Group, tables D13 "Excavators – Steel Content" and D14 "Excavator Inputs – Steel Content"; Verification Exhibit VE-5.

[29] *Emphasis added*.

Guidance as it is not supported by any evidence and analysis. The TRA failed to establish a nexus between the alleged government interventions in steel market and their alleged reflection in the excavator prices of the Caterpillar Group.

Ground 7: regardless of its existence, a PMS does not affect comparability of the Caterpillar Group prices in PRC to the UK

49. The TRA concluded that the PMS prevents a proper comparison between the export price and comparable domestic price because "*domestic prices do not reflect market conditions, while exports prices are affected by the market conditions within the UK*" and "*exporters of excavators from the PRC can use their artificially reduced costs to price their exports to gain UK market share from competitors who do not benefit from an artificially low-cost base*".[30] Based on the above, the TRA "*has therefore concluded that the price at which exporters of excavators originating from the PRC sell the goods concerned into the UK (export price) is influenced by different considerations to those which influence the price at which they sell their like goods domestically (comparable price), which means it is not possible to conduct a proper comparison*".[31]

50. The above finding, however, is incorrect as regards the Caterpillar Group. Indeed, in the case of the Caterpillar Group, the Final Determination acknowledged that companies of the Caterpillar Group "*apply the same global pricing structure regardless of which sales market they operate in*".[32] However, the Final Determination failed to assess the effect of the global pricing structure on domestic and export prices and failed to examine what (if any) relationship exists between price and cost, in order to determine whether proper comparison between the export price and comparable domestic price is possible. Thus the TRA failed to give proper consideration to the relevant factual circumstances and in particular to the evidence that "*CXL and CCI follow the same global pricing policy of Caterpillar that applies regardless of the sales market*".[33]

51. In particular, the TRA failed to access the List Price submitted by the Caterpillar Group in Reply to Deficiency Letter of 6 March 2025, which contains pricing data for UK and the PRC. It also failed to give proper consideration to information on the pricing mechanism submitted by Caterpillar Group during verification[34], which clearly demonstrates that [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information].

52. As follows from the evidence submitted by Caterpillar Group in the course of the Investigation, price calculation for sales in any region starts [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information].[35] [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information].

53. The Caterpillar Group emphasizes that neither its List Price nor applicable discounts could be considered to “reflect non-commercial factors” in the PRC:

    (a) [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information].

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[30] Final Determination, paragraphs 166 and 172.

[31] Final Determination, paragraph 174.

[32] Final Determination, paragraph 310.

[33] Comments on the dumping and injury margin disclosure submitted by the Caterpillar Group on 17 April 2025, paragraph 16.

[34] As part of Verification Exhibit VE-22.

[35] See Verification Exhibit VE-22.

54. Moreover, as explained by the Caterpillar Group during verification, in the instance of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information].

55. It follows from the above that:

    (a) domestic sales prices do not reflect non-commercial factors in the PRC as neither the [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] are specific to the PRC;

    (b) [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information].

56. Further, it appears that the TRA has not given proper consideration to the information on pricing contained in the Caterpillar Group's Comments to the Dumping and Injury Margin of 17 April 2025, namely to the Caterpillar Group's submission that [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information].

57. The TRA's determination that a PMS consisting of the alleged distortion of the cost of production affects price comparability of UK and PRC sales is also inconsistent with WTO jurisprudence.

58. According to WTO jurisprudence, to disregard domestic sales prices for the purpose of the normal value determination, an investigating authority has to demonstrate not only the existence of a PMS, but also prove that a PMS does not permit a proper comparison between the normal value and export prices:

    "Turning to the assessment of whether "a proper comparison" is not permitted because of the particular market situation, we note that the focus of the analysis is on whether the effect of the particular market situation is such that a proper comparison between domestic sales prices and export prices under examination is not permitted. In other words, the investigating authority must examine the domestic sales in order to determine whether a proper comparison between the two prices is permitted in spite of the effect of the particular market situation. The point is to determine if there is a comparable domestic price (i.e. if there is "the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country" in the sense of GATT 1994 Article VI:1(b) and Article 2.1 of the Anti-Dumping Agreement). That determination is fact-specific and should be made on a case-by-case basis by the investigating authority assessing the effect of particular market situation on the domestic price in relation to the effect on the export price, if any."[36]

59. Furthermore, and again according to WTO jurisprudence, such relative assessment is necessary because a PMS may have the same effect on both domestic and export prices.[37] Specifically, in a situation where the PMS consists in the cost distortions, an investigating authority needs to demonstrate *exactly* how a cost distortion – that in principle affects sales to all markets – can affect *price* comparability.

60. The Caterpillar Group respectfully draws the TRA's attention to the WTO Panel findings in *Australia – Anti-Dumping Measures on Paper.* In that case Australia determined that a PMS consisted in the distortion of raw material prices for the production of paper. However, because

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[36] Panel Report, *Australia – Anti-Dumping Measures on Paper*, para. 7.76.

[37] Panel Report, *Australia – Anti-Dumping Measures on Paper*, para. 7.76: *"If the investigating authority finds that because of a particular market situation a proper comparison of the domestic price and the export price is not permitted, it is required to give a reasoned and adequate explanation of its conclusion".*

the distortion affected the production of **all** paper, Australia failed to demonstrate that price comparability was affected "*because of the particular market situation*":

"*Australia identifies relevant findings of the ADC to the effect that the policies of the Government of Indonesia have affected the forestry sector and resulted in reduced logs prices; that these policies benefitted the Indonesian pulp industry; that the cost of producing pulp was substantially less than a competitive benchmark; that the pulp is the largest component for the production of A4 copy paper; that Indonesian A4 copy paper producers benefitted from access to cheaper pulp; that Indonesian domestic A4 paper prices are artificially low and below comparable regional benchmarks; that the Government's involvement resulted in a distortion of the domestic price for A4 copy paper and that there was a market situation in the Indonesian A4 copy paper market.*

Consistent with Australia's argumentation. the ADC focused on whether the domestic sales and domestic prices were suitable for use as the basis for normal value. We consider that this approach fails to give meaning and effect to the phrase "permit a proper comparison". In particular, the examination does not address the question whether the domestic prices could be properly compared with the export prices despite the effects of the particular market situation.

We observe that the effect of the particular market situation on the Indonesian market for A4 copy paper was solely through the decreased cost of purchasing (or making) pulp, which is an important input… Australia does not dispute that the same pulp was used to produce A4 copy paper for sale in the domestic market and in the export market, and we find no evidence in the record to the contrary.

We find that Australia did not examine whether domestic sales permitted a proper comparison between the domestic prices found to be affected by the decreased cost of pulp with the export prices for which the pulp cost was presumably equally decreased, despite assertions in the underlying proceeding which called for such an examination."[38]

61. Against this background, nothing in the Final Determination demonstrates that the alleged distortions of steel and component costs affect comparability of PRC and UK excavator prices. Similar to the findings of the Australian investigating authority – that were *annulled* by the WTO Dispute Settlement – the TRA alleges that intra-China prices are somehow depressed by distorted input costs. However, even assuming this is correct (which is not accepted) not only does the TRA not provide any evidence that alleged cost distortions necessarily translate to cheaper prices in PRC, but the TRA also fails to demonstrate that the same cost distortion does not translate to *decreased* prices for exports to the UK as well.

62. Further, the Final Determination appears to claim that distorted input costs result in lower prices for the UK as well, thus in fact acknowledging that the distorted costs have <u>no effect</u> on price comparability:

"Exporters of excavators from the PRC can use their artificially reduced costs to price their exports to gain UK market share from competitors who do not benefit from an artificially low-cost base. This is demonstrated in Section H1.1.1 which shows that imports of all excavators into the UK originating from the PRC during the injury period increased by 252%, whilst total imports into the UK from all third countries (excluding the PRC) during the same period only increased by 53%, indicating that the PRC has been able to increase its market share by a significantly greater degree than competing exporting countries."[39]

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[38] Panel Report, *Australia – Anti-Dumping Measures on Paper*, paras. 7.86-7.89.

[39] Final Determination, paragraph 172.

63. Finally, as mentioned above, having concluded that "*price of excavators reflect non-commercial factors as a result of government influence and control in steel and key excavator component costs*"[40] and that the PMS prevents a proper comparison between the export price and comparable domestic price because "*domestic prices do not reflect market conditions, while exports prices are affected by the market conditions within the UK"*[41], the TRA failed to assess the effect of the PMS on the UK excavator market and on the UK industry which uses excavator components produced in the PRC.

64. Alleged distortion on the excavator component market and its effect on price comparability should be examined in light of the UK industry (JCB) likely also purchasing certain key excavator components allegedly affected by the distortion which therefore would equally affect UK pricing.

65. In particular, as follows from the publicly available Financial Statements of JCB[42], it has been purchasing parts from its affiliates in China, namely from JCB Construction Equipment (Sanghai) Limited and JCB Hong Kong Limited, likely for use in its production processes. During 2017-2021, the share of the parts from PRC in the cost of sales of JCB ranged from 18% to 27%.[43] Following group's restructuring of the holdings in the PRC affiliates, as of 2022 JCB stopped disclosing information on purchases of the parts from PRC. However, data in the Financial Statements reflecting trading balances with group undertakings suggests that transactions with related parties, including purchases of parts from related parties in the PRC, continued in 2022 and 2023, and thus affected costs and prices of JCB, the UK industry and the UK excavator market. The TRA failed to consider this factor while accessing market conditions within the UK.

66. Thus, the TRA's conclusion that different considerations influence domestic and export prices is not applicable to the Caterpillar Group and in any case is wrong, unsubstantiated and manifestly incapable of demonstrating that the lagged cost distortion translates into the lack of comparability of UK and PRC prices of excavators. Therefore, with respect to the Caterpillar Group, the TRA's dumping analysis should have been based on the fair comparison between the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the PRC (i.e. domestic price) and the export price.

Ground 8: even if a PMS applies to the Caterpillar Group and affects its price comparability (which is not accepted), the TRA should have determined the normal value for the Caterpillar Group based on sales to third countries

67. In accordance with Regulation 8(1) of the Regulations, where there is no comparable price, or it is not appropriate to use the comparable price in accordance with Regulation 7(2), i.e. including situations where a PMS exists, the TRA must determine the normal value of the goods by one of three methods:

    (a) by determining the costs of production plus a reasonable amount for administrative, selling and general costs and for profits;

    (b) by determining the price of the like goods when exported to an appropriate third country or territory provided that price is representative; or

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[40] Final Determination, paragraphs 162, 169, 306.

[41] Final Determination, paragraphs 166 and 172.

[42] https://find-and-update.company-information.service.gov.uk/company/02517503/filing-history

[43] Please refer to see Annex 5 that provides excerpts from Financial Statements of JCB Heavy Products Ltd. for 2016-2023.

(c) in accordance with Regulation 14 (normal value in respect of imports from particular foreign countries and territories) where that regulation applies.

68. The Regulations do not provide for any hierarchy of methods to determine the normal value meaning that the TRA is entitled to rely upon any method referred to in Regulation 8(1).

69. Paragraph 314 of the Final Determination explains that the TRA considered using the first and the third method to determine the normal value within the meaning of Regulation 8(1):

"Regulation 8 of the Regulations provides a set of methodologies that the TRA may use to determine normal value. Regulation 8(1)(c) permits the TRA to construct normal value using Regulation 14 in certain circumstances. However, the TRA does not consider that those circumstances exist in this case, and it is more appropriate to construct using regulation 8(1)(a). The TRA will therefore determine the normal value for the sampled PRC exporters based on the facts of the case before it and in accordance with regulations 7 – 13 of the Regulations."

70. However, the TRA did not appear to have examined the possibility of using the second method mentioned in Regulation 8(1) and as a result did not explain why "*it is more appropriate*" to use the first and not the second method.

71. At the same time, the circumstances of the case clearly demonstrate that it is more appropriate to use the second and not the first method:

(a) As the Final Determination found, cost records of the PRC exporting producers do not reflect "*normal circumstances*" and thus cannot be used without major adjustments:

"However, the TRA has determined that the price of steel and key excavator components reflect non-commercial factors, which is reflected in a PMS in the excavator market. As these are not considered normal circumstances, the exporters" costs of production have been adjusted in accordance with regulation 13 of the Regulations."[44]

(b) At the same time, the TRA did not find that similar abnormal circumstances or PMS apply in countries outside of the PRC.

(c) TRA findings on price comparability mean that the PMS affects only prices in the PRC but not prices for export.[45]

72. On that basis, the Caterpillar Group considers that the TRA should re-consider the choice of a methodology to set the normal value and instead of constructing the normal value by relying on circumstantial evidence of the cost of production that has nothing to do with the cost of production of the Caterpillar Group, rely upon its sales to third countries.

73. Regulation 10 provides for the purpose of making a determination under regulation 8(1)(b), the TRA may take the following into account —

(a) whether the volume of trade from the exporting country or territory to the third country or territory is similar to the volume of trade from the exporting country or territory to the United Kingdom;

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[44] Final Determination, paragraph 320.

[45] Final Determination, paragraphs 172, 174.

(b) whether the overseas exporter's sales to the third country or territory are in the ordinary course of trade; and

(c) any other factors it considers relevant.

74. The Caterpillar Group notes that CXL's largest third-country sales are made to [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information][46] and that such sales are made in the ordinary course of trade.[47] As a result, the TRA should set the normal value for the Caterpillar Group based on the company's sales to [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information].

75. The Caterpillar Group also notes that the U.S. Department of Commerce routinely uses sales to third countries to determine the normal value in the absence of viable domestic sales. In fact, using export price to third countries is a preferred methodology as compared to the construction of the normal value.[48]

76. Also pursuant to Article 2.2 of the Anti-Dumping Agreement,[49] "… *when, because of the particular market situation … in the domestic market of the exporting country, {sales of the like product in the ordinary course of trade in the domestic market of the exporting country} do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits*."

77. On that basis, even if PMS applies to the Caterpillar Group and affects its price comparability, the TRA should re-consider its dumping margin determination and determine the normal value for the Caterpillar Group based on its sales to the appropriate third country with the largest volume of trade, namely [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information].

Ground 9: the TRA failed to adapt out-of-country input price information to ensure that it represented the cost of production in the PRC

78. As follows from the Final Determination,[50] having concluded there was a PMS in the excavator market of the PRC and that it was not possible to use the comparable price of the like goods in the PRC to calculate the normal value, the TRA then decided to determine normal value of the goods by determining the costs of production plus a reasonable amount for administrative, selling and general costs and for profits based on Regulations 8(1) and 11(1) of the Regulations.[51]

79. The TRA further asserted that costs in the PRC, namely "*price of steel and key excavator components*", "*reflect non-commercial factors, which is reflected in a PMS in the excavator market*", and "*so do not reasonably reflect the costs in a market if those costs were substantially*

[46] Please refer to Verification Exhibits VE-29 and VE-28 which contain data on [**CONFIDENTIAL**: sensitive information removed – commercially sensitive information] sales of CXL excavators to unrelated customers in third countries with breakdown by destination.

[47] According to the Final Determination, at 416, ordinary course of trade test should be run by using unadjusted actual cost of production in the PRC.

[48] 19 CFR § 351.404(f) - Selection of the market to be used as the basis for normal value – states: "The Secretary normally will calculate normal value based on sales to a third country rather than on constructed value if adequate information is available and verifiable (see section 773(a)(4) of the Act (use of constructed value))."

[49] Agreement on Implementation of Article VI of the General Agreement on Tariffs And Trade 1994.

[50] Final Determination, Section G2.2.

[51] Final Determination, paragraphs 325 – 327.

determined by free market forces", and made PMS adjustments to the to the costs of production of the Caterpillar Group based on Regulation 13 of the Regulations.[52]

80. In accordance with Regulation 13(6) of the Regulations, "*domestic costs, prices and profits are "substantially determined by market forces" where they are substantially determined by free market forces and the costs or prices in the domestic market are not artificially low as a result of factors including substantial government intervention*". The TRA selected Brazil as a benchmark country and considered the product costs of JCB Brasil, an affiliate of JCB Heavy Products Ltd, the company that requested initiation of the Investigation and was determined to constitute the "UK industry" by the TRA, for the purposes of PMS adjustments.

81. In its comments to the dumping and injury margin disclosure of 17 April 2025, the Caterpillar Group submitted that in its *"experience, the only reason between a difference in costs of excavators between China and Brazil, that the TRA uses as an analogue country, is (a) a much smaller economy of scale at the Brazil's manufacturing facilities and (b) inflated costs of inputs in Brazil due to the very high tariffs and various protectionist measures that are maintained due to the local content requirements in Brazil."* The TRA failed to assess this information.

82. To determine whether the sampled PRC exporters' input costs are artificially low, the TRA used comparator values from Platts Connect (part of S&P Global Inc.) and the selected benchmarking country, Brazil,[53] namely datasets for CRC (cold-rolled coil) and HRC (hot-rolled coil) Ex-stock Shanghai and Brazil Dom Prod. Using the aforementioned benchmarks, the TRA further determined the percentage difference in steel prices in Brazil and the PRC and applied steel adjustment to the cost of all excavator components used by the Caterpillar Group. Thereafter, the TRA compared "*the remainder of the exporter's component cost on a per kilogram basis to the benchmarking producer in Brazil*",[54] calculated percentage differences and applied them to increase the cost of non-steel elements of the excavator components.

83. In case of the Caterpillar Group, however, any comparison should have been made using steel prices that are paid by the Caterpillar Group in Brazil and in PRC for steel that is used in excavator manufacturing. [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]. In **Annex 1** [**CONFIDENTIAL]** hereto the Caterpillar Group provides comparison of the prices reported by Platts for the datasets examined by the TRA and prices paid by the Caterpillar Group for steel, [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]. As shown in Annex 1 [**CONFIDENTIAL]**, delta between prices paid for Caterpillar Group for a similar steel grade ranges from [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]. Moreover, as shown in Annex 1 [**CONFIDENTIAL]** hereto, both the PRC and Brazil prices for steel decreased significantly after POI, thus lowering the cost of production in both the PRC and Brazil, and therefore, the dumping margin.

84. The Caterpillar Group recalls that while it requested the TRA to examine data pertinent to its Brazil operations in the course of the investigation, the TRA failed to do so. The Final Determination explains that it could not take into account data relating to Caterpillar Brazil due to the truncated schedule of the investigation, "*so as not to impede progress on the case*".[55] That being the case, and since a re-consideration procedure provides for additional time to consider facts that could not have been considered in the course of the investigation, the TRA is

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[52] Final Determination, paragraphs 320, 324, 327, 354 and Section G2.2.2.

[53] Final Determination, paragraph 342.

[54] Final Determination, paragraph 357.

[55] Final Determination, at 341.

respectfully invited to re-consider factors of production for the Caterpillar Group by using data provided by Caterpillar Brazil.

85. The Caterpillar Group further submits that while using the out-of-country price information, the TRA failed to adapt it to ensure that it represented the cost of production in the PRC as required by the Regulations and the Anti-dumping Agreement:

    (a) For the purposes of regulation 8(1), Regulation 11(1) of the Regulations requires the TRA to "*determine the cost of production of the like goods* ***in the exporting*** *country or territory*";

    (b) According to regulation 13(2) of the Regulations: "*The purpose of the adjustments made in accordance with this regulation is to calculate what the overseas exporter's costs and profits would be* ***in the market of the exporting country*** *or territory if costs, prices and profits* ***in that market*** *were substantially determined by market forces*".

86. Article 2.2 of the Anti-Dumping Agreement establishes that "*… when, because of the particular market situation ... in the domestic market of the exporting country, {sales of the like product in the ordinary course of trade in the domestic market of the exporting country} do not permit a proper comparison, the margin of dumping shall be determined by comparison with a* ***comparable price of the like product when exported to an appropriate third country****, provided that this price is representative, or with the* ***cost of production in the country of origin*** *plus a reasonable amount for administrative, selling and general costs and for profits*." According to the WTO jurisprudence, while using out-of-country information, the authority must ensure that such information is used to arrive at the cost of production in the country of origin and that the costs of production established by the authority reflect conditions prevailing in the country of origin:

    (a) In *EU – Biodiesel (Argentina)*, the Appellate Body ruled that under certain circumstances the investigating authority is not prohibited from using out-of-country evidence to calculate costs of the exporter or producer:

    "This, however, does not mean that an investigating authority may simply substitute the costs from outside the country of origin for the 'cost of production in the country of origin'. Indeed, Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 make clear that the determination is of the 'cost of production […] in the country of origin'. Thus, whatever the information that it uses, an investigating authority has to ensure that such information is used to arrive at the 'cost of production in the country of origin'. Compliance with this obligation may require the investigating authority to adapt the information that it collects".[56]

    (b) In *EU – Cost Adjustment Methodologies II (Russia)*, the Panel referred to the above as well as to the ruling of the Appellate Body in *Ukraine – Ammonium Nitrate*:

    "…Hence, where an investigating authority uses information other than that contained in the records kept by the exporter or producer to construct the cost of production, it has to ensure that the information is suitable to determine a 'cost of production' 'in the country of origin'. An investigating authority is not allowed to simply substitute the costs from outside the country of origin for the 'cost of production in the country of origin'.

    In Ukraine – Ammonium Nitrate, the Appellate Body confirmed that the phrase 'cost of production in the country of origin' indicates that whatever information or evidence is used

[56] Appellate Body Report, EU – Biodiesel (Argentina), para. 6.73

to determine the 'cost of production', it must be apt to yield or capable of yielding a cost of production 'in the country of origin' and that compliance with this obligation may require the investigating authority to adapt that information. We agree with the Appellate Body's interpretation of the obligation in Article 2.2 to determine 'the cost of production in the country of origin'."[57]

87. The Panel further concluded that *" …the Cost Adjustment Methodology, by providing for the use of out-of-country input price information, without establishing whether, or explaining how, such information is adequate to reflect or represent the cost of production in the country of origin, contravened Article 2.2 of the Anti-Dumping Agreement*."[58]The WTO jurisprudence interprets Article 2.2 of the Anti-Dumping Agreement as meaning that whatever the information that an investigating authority uses, it has to ensure that such information is used to arrive at the "*cost of production in the country of origin*". As confirmed by the Statutory Guidance, "*to achieve this, the TRA should adjust data from third countries or international benchmarks where necessary to reflect the specific circumstances in the exporting country or territory*".

88. In this context, nothing in the Final Determination or otherwise demonstrates that the TRA acted in line with this obligation and adapted surrogate values established in Brazil to the market conditions in the PRC. In doing so, the TRA inappropriately disregarded information submitted by the Caterpillar Group which indicates that Brazil has inflated costs due to the very high tariffs and various protectionist measures that are maintained due to the local content requirements in Brazil.

89. Moreover, instead of adapting the out-of-country price information to ensure that it represents the cost of production in the PRC and reflects conditions prevailing in the PRC, in paragraph 366 of the Final Determination the TRA simply stated that "*it is the TRA's view that the adjusted costs reflect the costs incurred in the PRC if those costs were substantially determined by market forces. The difference in price between the PRC steel costs and the benchmark data is therefore representative of the level of distortion in PRC steel prices*."

90. On that basis, the Caterpillar Group requests the TRA to re-consider cost adjustment co-efficients and ensure that whatever the information that the TRA uses, that such information should allow it to arrive at the "*cost of production in the country of origin*". At the very least, the TRA should ensure that in line with the Statutory Guidance, costs of transportation of steel between China and Brazil, any customs and anti-dumping duties, as well as transhipment costs and costs of delivery of steel to JCB Brazil within Brazil are deducted from the Platts steel prices for Brazil as used by the TRA.[59] Thus, **Annex 2** highlights the level of customs duties in Brazil and China applicable to imports of hot-rolled and cold-rolled coils referred to in Platts price quotations. Since in the period of investigation Brazil applied on average a 8% customs duty to imports of hot-rolled coils and a 9.6% customs duty to imports of cold-rolled coils, while China applied respectively 3% and 4.9%, TRA is kindly requested to adjust Brazil prices per Platts on the account of difference in customs duties by at least, respectively, 5% and 4.7%. Similar adjustments should be implemented for other selling costs affecting comparability such as transportation and other costs referred to above. Finally, TRA should also re-consider factors of production for the Caterpillar Group by using data provided by Caterpillar Brazil.

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[57] Panel Report, EU – *Cost Adjustment Methodologies II* (Russia), paras. 7.122-7.123

[58] Panel Report, *EU – Cost Adjustment Methodologies II (Russia)*, para. 7.131

[59] The Caterpillar Group is aware that as mentioned in paragraph 357 of the Final Determination Platts index reflects prices for domestically produced steel. Nevertheless, those domestic steel prices compete and are affected by prices of imports from China and thus essentially constitute a proxy for prices for imports from China, inclusive of customs duties, transportation and other selling expenses. As a result, in order to adjust prices for steel locally produced in Brazil to the level of steel prices in China, TRA should adjust prices of steel locally produced in Brazil for the expenses that should be borne to deliver steel from China to end users in Brazil.

Ground 10: the Final Determination overstates the amount of profit used in the construction of normal value

91. For the purpose of constructing the normal value the Final Determination calculates a reasonable level of profit using the weighted average profit margin for all PCNs sold in China.[60] When doing so the Final Determination compares actual domestic sales prices in the PRC with unadjusted cost of production.[61] The Final Determination justifies the use of unadjusted cost of production based on regulation 12 (2) of the Regulations which states that the TRA must determine reasonable amounts for the administrative, selling and general costs and for profits on the basis of the actual data pertaining to the production and sales by the overseas exporter of the like goods, in the ordinary course of trade, in the domestic market of the exporting country or territory.

92. The Caterpillar Group considers that the TRA should interpret a reference in Regulation 12 (2) of the Regulations to the "*actual data pertaining to the production*" consistently with Regulation 11(2) of the Regulations. The latter provides that costs of production of the like goods in the exporting country or territory must "normally" be calculated by the TRA on the basis of records kept by the overseas exporter of the goods concerned. Since in the investigation at hand the TRA considered that the price of steel and key excavator components reflects non-commercial factors, and since such factors amount to abnormal circumstances that preclude the TRA from calculating the costs of production based on exporters' records, a reference to the actual data pertaining to the production in Regulation 12 (2) of the Regulations should be interpreted as referring to the actual data pertaining to the production as adjusted by the TRA in light of abnormal circumstances. To put it differently, the TRA cannot calculate a "reasonable" profit margin under Regulation 12 (2) of the Regulations using the cost of production that the TRA itself found to be abnormal based on Regulation 11 of the Regulations that governs the calculation of the cost of production. On that basis, profit margin used in the construction of normal value should be re-considered. Based on the existence of abnormal circumstances that necessitate an adjustment to the actual cost of production, a "reasonable" profit margin should be determined based on the cost of production as adjusted to remove the abnormalities established by the TRA.

93. Furthermore, the current construction of the statute by the TRA is unreasonable and thus is inaccurate since, on the one hand, the TRA finds that the PMS precludes it from relying upon actual domestic sales prices and costs of Chinese producers while on the other hand, in the context of the ordinary course of trade test, it takes at face value costs and domestic sales prices of Chinese producers as being in the ordinary course of trade. The Caterpillar Group notes in this regard that the issue has been litigated at length in the U.S., where the courts have found that in the context of the ordinary course of trade test, an investigating authority is precluded from implementing a cost adjustment only where the normal value is based on the domestic sales prices, i.e. in a situation where the cost-based PMS does not result in the sales-based PMS:[62]

"when normal value is based on home market sales, 19 U.S.C. § 1677b does not permit Commerce to make a particular market situation adjustment to the costs of production for purposes of the sales-below-cost test of 19 U.S.C. § 1677b(b)."

94. However, when the cost-based PMS results in the price-based PMS or price-based PMS exists regardless, the U.S. Department of Commerce runs the ordinary course of trade test using the

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[60] Final Determination, paragraph 414.

[61] Final Determination, paragraph 416.

[62] Hyundai Steel v. U.S., 19 F.4th 1346, 1352 (Fed. Cir. 2021).

cost of production adjusted based on the cost-based PMS findings. In the absence of viable domestic sales in the OCOT, the U.S. Department of Commerce concludes that it cannot establish a reasonable profit margin on the basis of the actual data pertaining to the production and sales by the overseas exporter of the like goods, in the ordinary course of trade, and establishes it, among others, based on sales to third countries that are not affected by the cost-based or sales-based PMS.[63]

95. The Caterpillar Group notes that the use of cost of production adjusted for PMS factors would be also consistent with the EU practice. In case of raw material distortions, the European Commission conducts an ordinary course of trade test, including for the purpose of determining a reasonable profit margin, using adjusted cost of production.[64] Any other approach would be inherently inconsistent, unreasonable and thus legally incorrect.

Cost adjustment issues

96. The Final Determination concludes that excavator prices reflect non-commercial factors. Therefore, the TRA *"considered the impact of such factors on the costs of production…, and where they have a material impact on the costs of production, the TRA has made adjustments…"*.[65] In respect of the Caterpillar Group, the TRA has made the following adjustments to the cost of production data:

- Steel adjustment of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]%,
- Non-steel adjustment of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]%,
- Non-steel adjustment (hydraulics only) of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]%.

97. While the Caterpillar Group maintains that the conditions in the PRC are substantially determined by market forces and no PMS exists, it considers that the following aspects of the cost adjustment methodology should be re-considered.

Ground 11: no adjustments should be applied to inputs of the Caterpillar Group that do not have significant share in the costs

98. According to the Statutory Guidance[66] issued by the Secretary of State on the conduct of PMS assessments, the TRA should (a) only make adjustments in relation to significant cost or profit elements, (b) use its judgment on what constitutes a significant cost or profit element in light of the circumstances of the case, and (c) make assessment of whether adjustments are justified on an exporter-by-exporter basis.

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[63] Issues and Decision Memorandum for the Final Results of the 2014-2015 Administrative Review of the Anti-dumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea, Unpublished Decision Memoranda, April 10, 2017; Comment 1: Calculation of Constructed Value Profit, available here.

[64] *"The production cost provided by NAK Azot was therefore recalculated in order to take account of the adjusted gas prices. On the basis of this recalculated cost of production, all sales of the domestic product which were directly comparable with the sole product type exported by the company were found to be nonprofitable, i.e. not made in the ordinary course of trade. Therefore, normal value had to be constructed. This was done on the basis of the manufacturing costs of the product type exported to the Community, after the adjustment for the gas cost mentioned above, plus a reasonable amount for selling, general and administrative costs ('SG&A costs') and for profits, in accordance with Article 2(3) and Article 2(6) of the basic Regulation."* Council Regulation (EC) No 661/2008 of 8 July 2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96, recital (36), accessible here.

[65] Final Determination, paragraph 211.

[66] https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/particular-market-situation-and-costs-adjustments

99. In the case of the Caterpillar Group, the TRA has applied steel and non-steel adjustments to every excavator component (input), regardless of its share in the costs. In particular, the TRA has made adjustments to components with share in costs ranging from [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]%. In doing so, the TRA has failed to assess whether the costs of the each of the components to which the adjustment has been applied is considered significant.

100. The TRA's argument at paragraph 379 that "*cumulative effect of the individual costs of all raw materials is significant*" lacks merit. Indeed, the Statutory Guidance recommends the TRA to assess each input:

"Where the allegation is that a particular market situation results from government intervention that affects upstream inputs into the like goods, for example where the investigation concerns steel, but the interventions directly affect the market for iron ore, the TRA will need to be satisfied that the artificially low price of the inputs has fed through to prices of the like goods in the domestic market of the exporter. ***This implies that the relevant input is sufficiently important to have a material impact on domestic sales prices of the downstream product****.*

Similar considerations apply where a claim is made that adjustments under regulation 13 should be applied due to substantial government intervention. The TRA should consider whether there is sufficient evidence that substantial government intervention exists which has had a ***material impact on costs or profits such that they are unrepresentative****. Again, the aims and the objectives of the government intervention are not relevant –* ***only the effects on prices and costs are****."*

101. The approach outlined in the Statutory Guidance does not appear to have been followed by the TRA: paragraph 350 of the Final Determination provides: "the TRA was able to determine the cost of steel within each PCN (~20%) and how much of the steel was manufactured in the PRC" based on the information on "*steel content (by mass) of an average excavator in each PCN category*". After this, the TRA appears to have applied adjustments to every excavator component (input), in case of the Caterpillar Group, regardless of its share in the costs.

102. In the course of the investigation, the Caterpillar Group submitted cost breakdowns which identify its main inputs (mainly [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]). These inputs should have been individually assessed by the TRA to determine whether or not any of them is significant enough for an adjustment to be justified.

103. The Caterpillar Group submits that no adjustments should have been applied to insignificant cost elements (excavator components), including those with the share in cost of less than 17%.[67]

Ground 12: the TRA should have performed pass-through analysis to determine cost of steel in inputs prior to applying steel adjustment

104. As mentioned above, paragraph 350 of the Final Determination provides "*the TRA was able to determine the cost of steel within each PCN (~20%) and how much of the steel was manufactured in the PRC*" based on the information on "*steel content (by mass) of an average excavator in each PCN category*". In case of the Caterpillar Group, the TRA determined steel share in cost of PCN to be equivalent to its steel content (by mass) and, for the PRC steel content, applied steel adjustment of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]%. This resulted in an *overstated adjustment* because: (a)

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[67] 17% is referred to here by analogy with Article 7.2a of the EU basic Anti-dumping regulation that considers for the purpose of the lesser duty rule application only cost distortions that affect 17% or more of the production cost.

each PCN includes complex inputs, such as engines, whereas steel does not represent major cost, and (b) no allowance was made for value added by excavator component producers (suppliers of the Caterpillar Group).

105. In light of the above, the Caterpillar Group respectfully requests the TRA to perform a pass-through analysis and determine allowance for value added by excavator component producers and sound steel cost share in complex excavator components.

Ground 13: no steel adjustment should be applied to inputs that do not contain steel and to inputs that do not have significant share of steel in the cost

106. According to the Statutory Guidance issued by the Secretary of State on the conduct of PMS assessments, the TRA should (a) only make adjustments in relation to significant cost or profit elements, (b) use its judgment on what constitutes a significant cost or profit element in light of the circumstances of the case, and (c) make an assessment of whether adjustments are justified on an exporter-by-exporter basis.

107. The TRA failed to satisfy these requirements with respect to Caterpillar Group and instead applied steel adjustment to all inputs, including those that:

(a) do not contain steel, and
(b) have insignificant steel content (and thus, insignificant steel share in costs).

108. Based on the information contained in the Final Determination, it appears that the TRA considers 50% steel content in an excavator component to be "significant":

(a) Paragraph 241 of the Final Determination provides: *"As explained in paragraph 167 of the SEF, the TRA considers that the* ***high proportion of steel in most*** *excavator parts means that the prices of those parts reflect non-commercial factors in the steel market. Information provided by* ***a sampled exporter*** *showed that for the six major components of excavators, all but the counterweight contained* ***more than 50% steel****, with some components being 100% steel."*

(b) Paragraph 238 of the Final Determination provides: "*As explained above, however, the* ***high proportion of steel in many*** *excavator components like engines means that many of the non-commercial factors that are reflected in the price of PRC steel flow through into the price of these components. For example, according to information provided by* ***a cooperating exporter****,* ***around 60% of an engine is made of steel***."

(c) Paragraph 229 of the Final Determination provides: "*Although there is a clear distinction between the production of steel and the various excavator components listed above, the* ***high proportion of steel in many*** *excavator components means that many of the non-commercial factors that are reflected in the price of PRC steel flow through into the price of the components themselves. Information provided by* ***a sampled exporter*** *showed that for the six major components of excavators, all but the counterweight contained* ***more than 50% steel****, with some components being 100% steel. As such, even if there was no other evidence of state intervention in the excavator component market, it becomes difficult to see how the prices of these inputs could not reflect non-commercial factors due to the high proportion of steel present in these inputs*.

109. In its Questionnaire Response verified by the TRA, the Caterpillar Group submitted that [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]. Importantly, [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] components have steel content within [**CONFIDENTIAL:** sensitive information

removed – commercially sensitive information]. Moreover, the PRC steel content in costs of most components used by the Caterpillar Group is much smaller and for [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] of the excavator components it ranges from [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]. Correspondingly, based on the 50% threshold adopted by the TRA, the steel content of at least [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information] used by the Caterpillar Group is not significant.

110. Based on the above, the Caterpillar Group submits that steel adjustments should be re-considered. In particular, it is submitted that no steel adjustments should be applied by the TRA to the excavator components that have *no steel content* or to components with less than 20% steel content.[68]

<u>Ground 14</u>: non-steel adjustment should not be applied because it is not substantiated by the TRA

111. According to the Statutory Guidance issued by the Secretary of State on the conduct of PMS assessments, the TRA should only make adjustments to those elements of cost or profit that are not substantially determined by market forces. Otherwise, cost elements or profits that are substantially determined by market forces should be based on the exporter's records.

112. As mentioned above, the TRA adjusted costs of the Caterpillar Group by applying the following adjustments in the dumping margin calculation:

- Steel adjustment of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]%,
- Non-steel adjustment of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]%, and
- Non-steel adjustment (hydraulics only) of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]%.

113. The Caterpillar Group submits that the application by the TRA of the non-steel adjustment of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]% to all excavator components is unfounded in the case of the Caterpillar Group.

114. It follows from paragraphs 161, 162, 169, 306, and 307 of the Final Determination that the TRA has based its conclusion on the existence of a PMS in the PRC on its finding that the price of excavators reflects **non-commercial factors as a result of government influence and control** in steel and key excavator component costs:

*"161. The TRA investigated the allegations to determine whether the overseas exporters" prices are artificially low or **reflect non-commercial factors** and cause a PMS in the domestic excavator market in the PRC, to the extent that the exporters" domestic sales do not permit a proper comparison.*

*162. Following these assessments, the TRA concluded that a PMS exists in the domestic excavator market in the PRC, as the price of excavators **reflect non-commercial factors as a result of government influence and control in steel and key excavator component** costs."*

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[68] As follows from paragraph 350 of the Final Determination, based on data provided by sampled PRC exporters and JCB and JCB Brasil, "*the TRA was able to determine the cost of steel within each PCN (~20%)*". It appears that the TRA considered that 20% share of steel in costs to be sufficiently important to have a material impact on domestic sales prices of the excavators, that thus warrants adjustments.

"169. ... the TRA considers that the ***non-commercial factors*** *identified in Section G2.1 are reflected in the cost of steel and key excavator components which has the effect of lowering the PRC producers" costs."*

"306. ... a PMS exists in the domestic excavator market in the PRC, as the price of excavators reflect ***non-commercial factors*** *as a result of government influence and control in steel and key excavator component costs."*

"307. ... the TRA has concluded that a PMS exists in the PRC for the industry of the like goods in the exporting market on the basis that the market reflects ***non-commercial factors"***

115. At the same time, in paragraph 229 of the Final Determination the TRA acknowledged that it obtained **no evidence of state intervention in the excavator component market** other than that caused by distortion in steel industry, but stated that due to the high proportion of steel in many excavator components, many of the non-commercial factors that are reflected in the price of PRC steel flow through into the price of the components themselves:

"229. Although there is a clear distinction between the production of steel and the various excavator components listed above, the high proportion of steel in many excavator components means that many of the non-commercial factors that are reflected in the price of PRC steel flow through into the price of the components themselves. Information provided by a sampled exporter showed that for the six major components of excavators, all but the counterweight contained more than 50% steel, with some components being 100% steel. As such, even if there was ***<u>no other evidence of state intervention in the excavator component market</u>****, it becomes difficult to see how the prices of these inputs could not reflect non-commercial factors due to the high proportion of steel present in these inputs."*

116. Given that the TRA confirmed absence of state intervention in the excavator component market, its conclusion on the presence of government influence and control with respect to the **excavator components** appears to be based in turn on its finding that non-commercial factors that are reflected in the price of steel feed through into the prices of the components.

117. The TRA provided no other plausible substantiation for its conclusion on the "*government influence and control*" in the key excavator component cost that would be applicable to the market as a whole and to the Caterpillar Group in particular, other than allegedly "*high proportion of steel in many excavator components*":

(a) the TRA's statement that "*many PRC steel companies have consolidated with and acquired companies that manufacture steel machinery components*" (paragraph 230 of the Final Determination) is not linked to the producers of excavator components but refers broadly to the producers of machinery. In any event, the TRA only discusses the ripple effect of the PRC steel industry.

(b) the TRA's examples of "*evidence of direct state interference in the excavator parts market"* (paragraph 231 and 232 of the Final Determination) would appear to be without merit:

i. the TRA refers to listing of excavator parts among products needed for "*upgrading the industrial base and modernizing the industrial chain, and to implement the task requirements of the Party Central Committee and the State Council*" in the Catalogue of Industrial Base Innovation and Development (2021), but fails to provide evidence of any state interventions due to the such listing;

ii. the TRA mentions the 14th Five-Year Development Plan for the Construction Machinery Industry which allegedly "*lists over 119 kinds of products, parts, and technologies from the construction machinery industry which should be encouraged*", but fails to identify any excavator component in that list;

iii. the TRA claims that a "*multitude*" of SOEs manufacture excavator parts and then cites three examples: (1) Shanghai Jintai, a manufacturer of diesel engines for excavators, (2) Shantui Construction Machinery which is engaged in track assembly; and (3) Yongsheng Heavy Industry also engaged in track assembly. However it does not explain why these examples would be capable of affecting the market (for example, no information is provided on the overall number of producers of excavator parts in the PRC is available in the Final Determination) Most importantly, as the TRA fails to assess the fact that none of these SOEs are supplying to the Caterpillar Group, it acted contrary to the Statutory Guidance issued by the Secretary of State requiring the TRA to assess whether adjustments are justified on an exporter-by-exporter basis.

(c) The TRA appears to substantiate the presence of government influence and control with respect to the excavator components by feeding through non-commercial factors reflected in the price of steel (paragraphs 238 and 241 of the Final Determination):

"238. … *the high proportion of steel in many excavator components like engines means that many of the non-commercial factors that are reflected in the price of PRC steel flow through into the price of these components. For example, according to information provided by a cooperating exporter, around 60% of an engine is made of steel. Given the large overcapacity and low volume of imports in the PRC steel market, it is highly unlikely that a PRC based producer of engines would not benefit from GoC intervention in this market, regardless of whether the company is foreign owned, a joint venture, or an SOE*"

"241. … *the TRA has conducted a holistic assessment of the information available before concluding that prices of key excavator parts reflect non-commercial factors. As explained in paragraph 167 of the SEF, the TRA considers that the high proportion of steel in most excavator parts means that the prices of those parts reflect non-commercial factors in the steel market. Information provided by a sampled exporter showed that for the six major components of excavators, all but the counterweight contained more than 50% steel, with some components being 100% steel. Furthermore, paragraphs 172 and 173 of the SEF indicate that the hydraulics industry receives direct state support.*"

118. Having made a conclusion on ***absence of state intervention in the excavator component market*** other than that caused by distortion in the steel industry (paragraph 229 of the Final Determination), and having failed to demonstrate evidence of direct state interference (other than that due to pass through of non-commercial factors that are reflected in the price of steel) that affects costs of the Caterpillar Group, the TRA, nevertheless, applied non-steel adjustment to all excavator components (inputs) used by the Caterpillar Group.

119. Thus, it seems that based on the single ground, i.e. alleged flow of non-commercial factors that are reflected in the price of steel into the price of the excavator components, the TRA adjusted cost of each component **twice**, via steel adjustment and via non-steel adjustment.

120. For these reasons, the Caterpillar Group respectfully submits that the application by the TRA of the non-steel adjustment of [**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]% to all excavator components is unfounded in case of the Caterpillar Group and should thus be re-considered.

SECTION 3: ISSUES RELATING TO THE INJURY AND CAUSAL LINK DETERMINATION

<u>Ground 15</u>: material injury determination is not based on an objective examination of positive evidence on the record

121. Under Regulation 32(1) of the Regulations, in order to determine whether a UK industry is suffering or has suffered injury the TRA must consider —

    (a) the volume of the dumped goods during the injury period;

    (b) the effect of the dumped goods on prices of the like goods in the United Kingdom during the injury period;

    (c) the consequent impact of the dumped goods on a UK industry during the injury period; and

    (d) any other factors it considers relevant.

122. The Final Determination starts by determining the volume of imports from PRC and other countries based on the country of dispatch citing limitations of the data based on the country of origin.[69] The Final Determination determines the volume of imports from third countries and thus consumption and market shares of imports and of the UK industry based primarily on the country of dispatch data as well.

123. Final Determination then determines that the existence of material injury based on the following factors:[70]

    (a) Profits: UK industry reported negative profit margins and increased losses on sales of its domestically sold like goods over the injury period.

    (b) Market share: UK industry's market share decreased by 11% over the injury period (based on the best available information covering the full injury period).

    (c) Growth: UK industry did not grow its market share despite increased domestic sales, UK production and UK consumption.

    (d) Employment and productivity: Both total employment and number of employees involved in the production of the domestically sold like goods decreased during the injury period. Productivity increased over the entirety of the injury period. However, this is to be expected based on the increase in sales volumes.

    (e) Investments and cash flow: The level of investments increased during the injury period. However, UK industry continued to experience a negative cash flow for the domestically sold like goods.

124. The Final Determination acknowledges that the UK industry did not suffer material injury due to the volume of sales, production volume, capacity and capacity utilization, wages and stocks.[71]

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[69] Final Determination, paragraphs 468-489.

[70] Final Determination, paragraph 719.

[71] Final Determination, paragraphs 720-721.

125. For the reasons below, the Caterpillar Group believes that the material injury determination requires re-consideration as it is not based on a proper establishment of facts that have been objectively evaluated.

126. First, the TRA failed to properly establish the volume of imports. Despite the Caterpillar Group providing a questionnaire response that was verified by the TRA and used in calculating an individual duty for the Caterpillar Group and despite the Caterpillar Group being the largest Chinese exporter of relevant goods, the Final Determination in its volume analysis continues to disregard the volume of imports of excavators manufactured by the Caterpillar Group in China:[72]

25 November 2024	3 March 2025	14 May 2025
Volume of imports from China, Statement of Essential Facts, tons	**Volume of exports from China to the UK, Questionnaire response by the Caterpillar Group, tons**	**Volume of imports from China, Final Determination, tons**
15,958	[**CONFIDENTIAL:** sensitive information removed – commercially sensitive information]	15,958

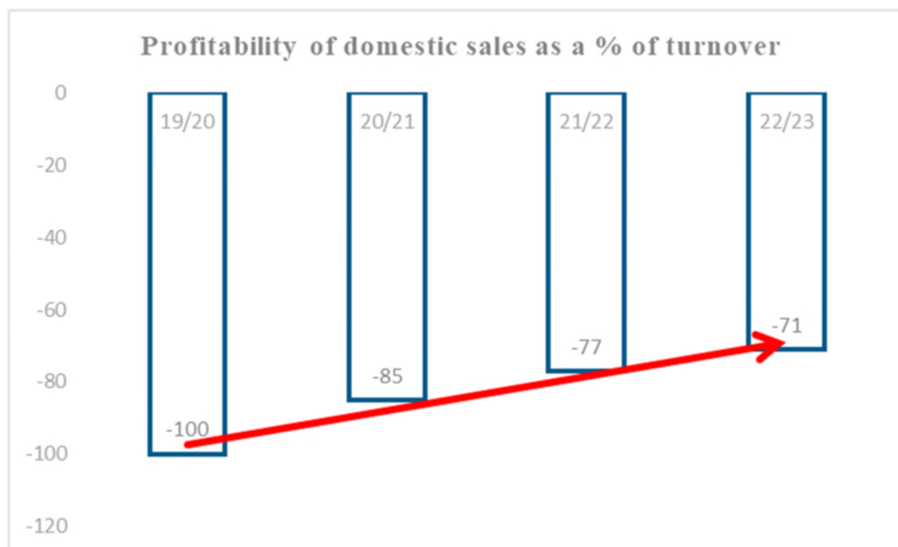
127. The Caterpillar Group understands that the TRA's refusal to account for the volume of imports of excavators manufactured by the Caterpillar Group in China as part of imports from the PRC has to do with the principled decision by the TRA to rely for the purposes of injury determination on the volume of imports from China based on the country of dispatch as opposed to the country of origin. However since the Final Determination recommends imposition of anti-dumping duties on excavators originating in China, such recommendation has to be supported by a corresponding determination of injury being caused by imports of excavators originating in China. As demonstrated by unaccounted excavators that the Caterpillar Group supplied from China, a determination based on the volume of imports by country of dispatch is inadequate as it fails to accurately determine the volume and value of imports of China origin. TRA's injury determination is therefore not based on a proper establishment of the volume of imports which vitiates entire volume and price analysis. Thus, as an initial matter the TRA should re-consider the volume of imports based on the country of origin. And if TRA lacks fact to establish the volume of imports based on the country of origin, it lacks the factual basis to recommend an imposition of definitive anti-dumping measures based on the country of origin. Since conditions for the imposition of anti-dumping measures are not met in such case, TRA should thus recommend a termination of the anti-dumping investigation altogether.

128. Secondly, TRA's evaluation of the performance of the UK industry is flawed. The Caterpillar Group believes that a wholistic analysis of the injury indicators of the UK industry does not point to the existence of material injury, contrary to the Final Determination:

(a) The Caterpillar Group disagrees that JCB's profitability is an indicator which points to the existence of a material injury. Since JCB was in a loss-making position in the beginning of injury investigating period where Chinese imports were at a low and non-injurious level and since JCB was in the same loss-making position during and in the end of the

[72] The volume of imports from China does not differ between Table 7 of the Final Determination and Table 7 of the Statement of Essential Facts.

investigation period,[73] profitability of domestic sales of JCB is a neutral factor that does not positively support a finding of material injury. Furthermore and contrary to the Final Determination, UK Industry's losses decreased in a stable fashion over the four years of the injury investigation period and not increased, despite alleged increase in imports from China:[74]



(b) The Final Determination exaggerates the loss of the market share by JCB. While the Final Determination presents it as a loss of 11%, this is based on an index which reflects a trend relative to the beginning of the investigation period and not a loss of market share in absolute terms. Based on the data disclosed in Table 25 of the Final Determination, the Caterpillar Group's calculations indicate the UK industry's market share over 4 years declined only by -1.4% which cannot be considered material.[75] Furthermore, in the last two years of the injury investigation period UK industry market share was stable, despite an increase in the market share of Chinese imports. Indeed, the UK industry lost -1.2% of market share in 20/21 i.e. a year when Chinese imports lost even more market share (-1.9%):

Market share	**19/20**	**20/21**	**21/22**	**22/23**
China	4.0%	2.1%	5.2%	8.8%
year to year trend		*-1.9%*	*3.1%*	*3.6%*
UK industry	10.9%	9.7%	9.7%	9.5%
year to year trend		*-1.1%*	*0.0%*	*-0.1%*

(c) Since profitability of the UK industry does not point to the existence of material injury caused by imports; since there was no significant decline in the market share of the UK industry due to imports from China; and since over the injury investigation period the UK industry significantly increased production and sales by 43% in 19/20 – 22/23 and by 25%

[73] Final Determination, Table 17.

[74] Final Determination, Table 19.

[75] Please refer to **Annex 3** for detailed calculations. For the purpose of the argument the Caterpillar Group relies on the import statistics as determined by the TRA based on country of dispatch. As mentioned, however TRA should rely in its analysis on the import statistics based on the country of origin.

in 21/22-22/23, the TRA should conclude that the UK industry did not suffer a material injury.

(d) The Caterpillar Group considers that negative trends in terms of employment and cashflow from domestic sales do not affect this conclusion:

i. Negative cashflow is a function of a continuous loss-making position of JCB and thus is a neutral injury indicator in the same way as profitability. At the same time, the fact that negative cashflow increased is just another sign of increased sales in the domestic market, i.e. it is a sign of the absence of material injury rather than the evidence of its existence.

ii. An alleged decrease of employment in domestic sales is simply a function of an incorrect allocation of labour by sales turnover. As follows from the Final Determination, the total number of JCB employees involved with the relevant goods remained largely stable showing a decrease of just 3% over the four-year investigation period using end-to-end point comparison. At the same time in the most recent period of 21/22 - POI employment at JCB went up by 14%. Against that background an alleged 23% decrease in the total number of employees involved with the domestic sales is likely a result of an allocation that splits employees by market depending on the volume of sales, without actually determining whether the employment for domestic sales increased or decreased. As follows from Tables 15, 20 and 21 employment for domestic sales decreased because export sales increased by more (+112%) than domestic sales (+43%). This however does not mean that in real terms there was any decrease in the employment in the UK industry's excavator business which remained stable. To put it differently an alleged decreased in the domestic sales employment is another side of exports growing faster than domestic sales. That however is not an indicator of injury but only a result of allocations.

iii. Since JCB is seemingly not in the position to determine on an actual basis a number of employees involved with the domestic and export sales, TRA should examine a trend in the number of employees regardless of the sales markets. In such case, as mentioned, employment remained stable over the entire injury investigation period and significantly increased by +14% over the most recent period.

129. Finally, the Caterpillar Group requests a proper disclosure of the data that the Final Determination uses in supports of its injury findings:

(a) Consumption, market shares and sales by the UK industry can all be calculated based on the disclosure of the market shares of third country imports in Table 25 of the Final Determination. The TRA should therefore amend the Final Determination and disclose data on consumption, market shares and the volume of sales by the UK industry using absolute figures rather than indexes.

(b) Data on the value of Chinese imports indicated in Table 7 should be disclosed in the same way as it is disclosed for imports from third countries in Table 25.

Ground 16: the evidence suggests imports from the PRC did not affect JCB prices

130. Regulation 32 of the Regulations provides that in considering the effect of the dumped goods on prices of the like goods in the United Kingdom during the injury period the TRA must consider whether —

(a) there has been significant price undercutting by the dumped goods as compared with the price of the like goods produced in the United Kingdom; or

(b) the dumped goods or subsidised imports have depressed or suppressed domestic prices of the like goods produced in the United Kingdom to a significant degree.

131. Final Determination determines a negative price effect of imports from PRC due to price undercutting and price suppression:[76]

(a) The TRA determined that in the POI there had been significant **price undercutting** of 17.72%. This was calculated by comparing sales prices of the dumped imports of the goods concerned in the initial sample of PRC exporters against the price of the like goods produced in the UK. This margin was 3.24% when comparing the sales prices for the expanded sample of PRC exporters against the price of the like goods produced in the UK.

(b) The TRA obtained evidence of **price suppression** and determined that this was caused by the considerably lower priced dumped PRC imports. Throughout the injury period UK industry was selling its like goods at a loss while the average PRC import price continued to be significantly below that of the UK industry's domestic sales price.

132. The Caterpillar Group considers that the findings of price undercutting and price suppression should be re-examined:

(a) First, undercutting calculations in Table 11 of the Final Determination and in its paragraph 716 do not match the POI and they should match.

(b) Secondly, as discussed under Ground 13 above, before making any price comparisons, the TRA should properly establish the volume of imports from China and other countries based on their origin. Only in such case a price comparison will be meaningful and will lend support to a conclusion that prices of imports had an impact on prices of the UK industry, if any, and thus that they can serve as a basis for the imposition of anti-dumping duties on excavators originating in China.

(c) Thirdly, before making any model-specific price comparison, the TRA should compare prices for imports from China, including prices for the Caterpillar Group excavators originating in China, as they appear in the HMRC statistics and prices of the UK industry on average. The TRA provides such average-to-average comparison when discussing a price impact of third country imports. The same methodology should be applied to determine the impact of China's prices.

(d) Fourthly, TRA's price suppression analysis consists of an evaluation of UK industry and Chinese import prices in parallel. However, an applicable legal standard requires an investigating authority to establish a causal link between prices of imports and prices of the domestic industry and in particular demonstrate that it is the price of imports that is "an explanatory force" behind a suppression of the prices of the domestic industry.[77] The Final Determination does not demonstrate this.

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[76] Final Determination, paragraphs 716-718.

[77] "[A]n investigating authority is required to examine domestic prices in conjunction with subject imports in order to understand whether subject imports have explanatory force for the occurrence of significant depression or suppression of domestic prices". Appellate Body Report, *China – GOES*, para. 138.

<u>Ground 17</u>: imports from the PRC did not cause material injury to JCB

133. Regulation 27(2)(b) of the Regulations requires the TRA to determine whether dumped goods have caused or are causing injury to UK industry.

134. The Final Determination concludes that because of time coincidence between an increase in the volume and market share of PRC imports at low prices, the UK industry suffered a material injury in terms of profitability, employment and cashflow:[78]

The TRA is satisfied that the identified volume trends and the associated price effects of the imports of the relevant goods, show a timely coincidence with corresponding negative changes in economic factors to indicate causation.

135. In particular, the UK industry lost market share as a direct result of the price undercutting and price suppression of imports from the PRC:[79]

"Despite increased domestic sales, and with increased UK consumption, UK industry has still lost market share during the injury period. Imports of the relevant goods have not only captured market share from UK industry but during the injury period also increased its share of all imports into the UK. The TRA is satisfied this was as a direct result of the pricing levels of the dumped goods."

136. The Caterpillar Group considers that the causal link findings in the Final Determination should be re-examined:

(a) Firstly, as demonstrated above, there has been no material loss of a market share by the UK industry and analysis of intervening trends demonstrates that a very minor loss of the market share by the UK industry of -1.2% occurred in 20/21 and cannot be attributed to imports from China. There is no time coincidence between the gain of market share by imports from China and the loss of market share by the UK industry:[80]

Market share	19/20	20/21	21/22	22/23
China	4.0%	2.1%	5.2%	8.8%
year to year trend		*-1.9%*	*3.1%*	*3.6%*
UK industry	10.9%	9.7%	9.7%	9.5%
year to year trend		*-1.1%*	*0.0%*	*-0.1%*

(b) Secondly, there is no correlation between either the price or volumes of imports from China and profitability of the UK industry. As discussed, UK industry profitability improved over the investigation period and did not deteriorate. Similarly, imports from China did not impact employment in the UK industry or cashflow: the former was stable while the cashflow increased due to increased domestic sales and not imports.

137. On that basis, the Final Determination does not provide for a positive causal link determination and should therefore be re-considered.

[78] Final Determination, paragraphs 722-725.

[79] Final Determination, paragraph 724.

[80] Supporting calculations are attached as **Annex 3**. For the purpose of the argument Caterpillar Group relies on the import statistics as determined by the TRA based on country of dispatch. As mentioned, however TRA should rely in its analysis on the import statistics based on the country of origin

<u>Ground 18</u>: injury, if any, was caused by other factors, such as imports from Korea and other countries[81] as well as JCB increased costs

138. Regulations 35(1) and 35(2) of the Regulations provide that the TRA must examine whether any known factors other than the dumped goods have caused or are causing injury to a UK industry. The TRA must ensure that injury caused by other known factors must not be attributed to the dumped goods imports.

139. The Final Determination considers third countries as a potential source of injury to the UK industry. The TRA concludes that third country imports did not cause material injury to the UK industry because such imports did not increase at the same rate as PRC imports, while their market share decreased and PRC import prices were below that of imports from the "*significant exporting third countries*":[82]

"With regards to third country imports and prices, it was identified that the volumes of imports did increase during the injury period. However, this was not at the same rate as PRC imports. Importantly, the market share of imports from all third countries decreased over the injury period, and this share was captured by PRC imports. In addition, PRC import prices were below that of imports from the significant exporting third countries throughout most of the injury period and in particular in the POI. The TRA therefore determined that the impact of third country imports overall was not sufficient to break the causal link between the relevant goods and the injury suffered by the UK industry."

140. The Final Determination however appears to take no position on whether imports from one third country taken in isolation, namely from Korea, are a factor that caused injury to the UK industry.

141. The Caterpillar Group considers, first, that the TRA should re-consider its findings on the injury caused by imports from Korea.

142. In that context, we note the Final Determination acknowledges that Korean imports were priced *<u>lower than prices from the PRC</u>*. On that basis it follows that such prices therefore undersold the prices of JCB:[83]

"It has been identified that the price of imports from the Republic of Korea were lower than that of the significant exporting countries, as well as PRC imports. This was the case throughout the injury period. It was noted that these prices were not subject to the same level of volatility as the price of PRC imports, and the increase over the injury period was at a much lower rate than the exporting countries, named or otherwise."

143. Based on the information in the Final Determination, it appears that cheaper imports from Korea also increased by more than imports from China and gained a larger market share at a faster pace:

Volume of imports, tons	19/20	22/23	Diff
China	4,537	15,958	11,421
Korea	4,554	17,101	12,547

Market share	19/20	22/23	Diff
China	4.0%	8.8%	4.8%
Korea	4.0%	9.4%	5.4%
UK industry	10.9%	9.5%	-1.3%

[81] For the purpose of the argument the Caterpillar Group relies below on the import statistics as determined by the TRA based on country of dispatch. As mentioned, however TRA should rely in its analysis on the import statistics based on the country of origin

[82] Final Determination, paragraph 734.

[83] Final Determination, paragraph 705.

144. On that basis, a higher volume of imports from Korea that increased at a faster pace and at a lower price would appear to be responsible for the alleged injury to UK industry and not higher-price and lower-in-volume imports from the PRC. It is immaterial in this context whether a partial analysis of certain models of Korean imports allegedly renders higher or lower price as compared to imports from the PRC.[84] Nothing on the record supports this claim (we understand that the TRA did not solicit cooperation from the Korean producers and thus did not receive model-specific sales data). Regardless, the TRA established price undercutting and price suppression by taking imports from China as a whole and based on the values as reflected in OTS import statistics. Using the same methodology, it appears that Korean imports were cheaper than imports from China and gained a much larger market share than imports from China. Thus their price and volume impact breaks a causal link between developments in imports from PRC and alleged injury.

145. Secondly, the TRA should re-consider its findings on the causality in part relating to imports from the Netherlands.

146. In particular, data in the Final Determination demonstrates that imports of relevant goods from the Netherlands increased in 2019/2020-POI in terms of the market share by 4.8%. In the most recent period of 2021/2022-POI imports from the Netherlands increased their market share by 5.2% and thus by more than any other imports, including those of China.

Market share	**19/20**	**20/21**	**21/22**	**22/23**
China	4.0%	2.1%	5.2%	8.8%
Korea	4.0%	4.0%	6.5%	9.4%
Japan	36.3%	37.5%	27.8%	22.3%
Belgium	5.7%	9.3%	9.1%	8.3%
Netherlands	13.7%	12.8%	13.4%	18.5%
Other imports	25.3%	24.5%	28.4%	23.0%
UK industry	10.9%	9.7%	9.7%	9.5%

147. Thus, based on the TRA's own data, the magnitude and the pace of an increase in imports from the Netherlands exceeded the magnitude and the pace of an increase in imports from the PRC. Since based on the data provided by the TRA imports from the Netherlands seem to undersell JCB prices,[85] and since they increased in absolute and relative terms by significantly more than imports from the PRC, material injury to the UK industry would appear to be caused by imports from the Netherlands and not imports from the PRC

148. Thirdly, Regulations 35(1) and 35(2) of the Regulations provide that the TRA must examine whether *any* known factors other than the dumped goods have caused or are causing injury to a UK industry. The TRA has so far examined only the impact of the total volume of third country imports combined. However, nothing under the Regulations precludes the TRA from considering as an injury factor imports from Korea and the Netherlands, individually or combined. Moreover, the Caterpillar Group believes that the TRA is under an obligation to examine those imports as a cause of injury.

149. In that context, based on the import statistics relied upon by the TRA, end-to-end point comparison imports from Korea and the Netherlands show a combined increased of 10.2% in

[84] Final Determination, paragraph 707.

[85] Based on tables 5 and 9 of the Final Determination.

2019/2020-POI and 8.1% in the most recent period of 2021/2022-2022/2023, by far exceeding China imports' increases of, respectively 4.8% and 3.6%:

Market share	**19/20**	**20/21**	**21/22**	**22/23**
China	4.0%	2.1%	5.2%	8.8%
Korea and Netherlands combined	17.8%	16.9%	19.8%	28.0%

150. Since based on the data provided by the TRA imports from both countries seem to undersell JCB prices,[86] and since they increased in absolute and relative terms by significantly more than imports from the PRC, material injury to the UK industry would appear to be *caused by imports from the Netherlands and Korea and not by imports from the PRC.*

151. It is submitted that it is immaterial in this context whether prices of the PRC imports are higher or lower than prices from Korea and the Netherlands. Assuming prices of imports from Korea and the Netherlands undersell JCB prices (which as set out above seems a reasonable assumption) and given a major increase in those imports, the TRA should have considered imports from Korea and the Netherlands, individually or combined to be the cause of material injury to the UK industry.

152. Fourthly, financial statements of JCB Heavy Products Ltd. as available in the non-confidential file demonstrate that the company suffered from significant costs relating to interest payable and to foreign currency losses:[87]

In GPB '000	**2023**	**2022**	**2021**	**2020**	**2019**
Turnover	222,165	316,925	261,403	156,834	243,262
Operating loss/profit	- 9,317	2,359	- 6,858	- 20,665	- 13,546
Interest payable and similar expenses	- 3,606	- 2,364	- 736	- 776	- 1,209
Loss before taxation / Profit	**- 12,923**	**- 5**	**- 7,594**	**- 21,441**	**- 14,755**
Profit as a % of Turnover	-6%	0%	-3%	-14%	-6%
Operating loss is stated after charging:					
Hire of machinery and equipment	602	825	722	299	674
Auditor's services	62	57	45	43	35
Foreign currency losses/gains	952	35	4,180	691	2,302
Depreciation of tangible assets	1,108	1,157	1,550	1,734	1,723
R&D expenses	12,352	9,194	8,707	10,180	13,001
	15,076	**11,268**	**15,204**	**12,947**	**17,735**

153. Since sales in the UK are made in GBP they cannot be affected by foreign currency losses. Similarly, interest payable is not part of operating loss and thus cannot relate to the production and sales of the excavators. The Caterpillar Group requests the TRA to re-consider the impact of these two factors on performance of the UK industry and ensure that the negative impact of interest payable and foreign currency losses is not incorrectly attributed to the impact of prices from the PRC.

154. Fifthly, the Caterpillar Group notes that even if the TRA determines as a result of re-consideration that imports from Korea and the Netherlands, individually or combined, are a cause of material injury but do not break a causal link between imports from the PRC and the material injury to the UK industry, it is respectfully submitted that the TRA should still ensure

[86] Based on tables 5 and 9 of the Final Determination.

[87] JCB financial statements are provided for reference in Annex 5.

that their injurious impact is not attributed to imports from China as part of the injury margin calculation. In particular, the Caterpillar Group believes that in accordance with paragraph 18(6)(b) of the Act, the TRA should ensure that the amount of the anti-dumping duty imposed does not exceed that which is necessary to counter the injurious effects of the dumped imports, including by ensuring that the amount of the anti-dumping duty does not take into account injurious effects caused by factors other than those imports.[88] The determination of the injury margin should therefore be adjusted to reflect notably:

(a) The impact of imports from Korea;

(b) The impact of imports from the Netherlands as well as of any other underselling imports that the Final Determination does not highlight individually and that have significantly increased; and

(c) The impact of interest payable and foreign currency losses.

155. In order to account for injurious impact of imports from above mentioned sources and in order not to attribute their impact to imports from China, injury margin should be reduced in proportion to volume of those imports as a percentage of the total volume of imports from China, Korea and the Netherlands as follows:

Volume in Tons	22/23	% of the total
China	15,958	24%
Korea	17,101	26%
Netherlands	33,521	50%
TOTAL	66,580	100%

Based on this data the alleged injury to be attributed to imports from the PRC should amount in case of the Caterpillar Group to 24% of 18.81% or maximum to 4.51%. Furthermore, the cost of production of JCB used for the determination of the target price should be reduced by the amount of non-operating interest payable and foreign currency losses that are all unrelated to the production and sales of excavators in the UK. The Caterpillar Group requests the TRA to re-consider its injury margin and a resulting anti-dumping duty accordingly.

SECTION 4: FORM OF THE MEASURES

156. Paragraph 23(5) of the Act provides the TRA may request an undertaking in respect of goods only at a time after it has made a provisional affirmative determination in. Similarly, exporting producers can make a price undertaking offer only after a provisional affirmative determination is made.

157. Given the Caterpillar Group's late entry to the Investigation, the Caterpillar Group did not have an opportunity to propose an undertaking for the TRA's consideration following the provisional affirmative determination not least because no individual dumping and injury margin was assigned to it at the time by the TRA.

158. For that reason, and assuming the TRA does not terminate the anti-dumping investigation with regard to the Caterpillar Group based on the preceding grounds for re-consideration, the

[88] See, for example, Judgment of the European Court of Justice of 27 March 2019, *Canadian Solar Emea and Others v Council*, C-236/17 P, EU:C:2019:258, para. 169.

Caterpillar Group submits in the alternative that as part of its request for reconsideration, the TRA should re-consider the *form of measures* applicable to the Caterpillar Group and that, instead of ad valorem duties, a price undertaking could be explored. The Caterpillar Group reserves its right to submit such price undertaking once the TRA reaches its provisional findings on other grounds of this re-consideration request.

SECTION 5: OUTCOME SOUGHT

159. Based on the foregoing, the Caterpillar Group respectfully requests that the TRA reconsiders the Original Decision as follows:

(a) Re-consider the injury margin, and in particular:

i. use actual customs value declared during the investigation period in the denominator as well as the numerator;

ii. include prices of XXL excavators into the calculation of injury margin and compare them to JCB prices for XL excavators;

iii. use profit margin of Komatsu UK Limited as normal rate of profit.

(b) Re-consider the dumping margin, and in particular:

i. use *actual customs value* declared during the investigation period to calculate CIF value in the denominator;

ii. determine that no PMS applies to the Caterpillar Group;

iii. if a PMS is nevertheless found to be applicable to the Caterpillar Group:

1. determine that PMS does not affect price comparability;

2. in the alternative, determine normal value for the Caterpillar Group based on sales price to the appropriate third country with the largest volume of trade;

3. if, nevertheless, the normal value for the Caterpillar Group is determined based on costs of production plus a reasonable amount for administrative, selling and general costs and for profits:

a. correct the flaws in application of the cost adjustments, and in particular:

i. eliminate all costs adjustments for inputs (excavator components) which do not have significant cost;
ii. eliminate steel cost adjustment for inputs (excavator components) which do not contain steel;
iii. eliminate steel cost adjustments for inputs (excavator components) with insignificant steel share in costs;
iv. perform pass-through analysis and determine allowance for value added by excavator component producers and sound steel cost share in complex excavator components
v. eliminate non-steel cost adjustment for all inputs (excavator components);

b. adapt out-of-country input price information to ensure that it represents the cost of production in the PRC; and

c. calculate profit using adjusted cost.

(c) Re-consider material injury and causal link determination and in particular:

i. Properly establish volume of imports, consumption and market shares based on the import statistics by country of origin and not by country of dispatch;

ii. Evaluate performance indicators of the UK industry in an objective manner;

iii. Properly disclose the data on the value of imports from the PRC and on indicators of the UK industry and consumption in absolute terms;

iv. Perform price undercutting and price suppression analysis based on properly established volume and value of imports from the PRC;

v. Disclose the total value of the PRC imports based on country of dispatch as well as based on the country of origin, and perform average-to-average comparison with the price of the UK industry;

vi. Provide adequate and substantiated reasoning to the effect that prices of imports from the PRC are an explanatory force behind alleged price suppression;

vii. Demonstrate based on objective examination of positive evidence on the record that imports from the PRC caused material injury to the UK industry;

viii. Re-evaluate the impact of imports from Korea that appear to break a causal link between imports from the PRC and alleged material injury; in any case, ensure that any injurious impact of Korean imports is not attributed to imports from the PRC.

(d) In the alternative, reconsider the form of the anti-dumping measures once the TRA reaches its provisional findings on other grounds of this re-consideration request