11 August 2025

Trade Remedies Authority
North Gate House
21-23 Valpy Street
Reading
Berkshire
RG1 1AF

via UK Trade Remedies Services

OPEN

Dear Mesdames,
Dear Sirs,

Re: AD0047 – Comments on applications for reconsideration
Our client: JCB Heavy Products Limited ("JCB")

We refer to the applications ("**Applications**") for reconsideration of the Trade Remedies Authority's ("**TRA**") final determination ("**Original Decision**") in the captioned investigation ("**Investigation**") submitted by:

- Caterpillar (Xuzhou) Ltd., Caterpillar SARL, Caterpillar SARL Singapore Branch, and Caterpillar (China) Investment Co., Ltd. (**"Caterpillar**");[1] and

- LiuGong Machinery (UK) Limited, LiuGong Changzhou Machinery Co., Ltd., Liuzhou LiuGong Excavator Co., Ltd., Guangxi LiuGong Machinery Co., Ltd., and LiuGong Machinery Hong Kong Co. Ltd. ("**LiuGong**").[2]

JCB hereby submits its comments on the Applications. JCB first addresses Caterpillar's Application (Section 1) and then turns to LiuGong's Application (Section 2). In sum, the TRA should reject the Applications and uphold the Original Decision.

1. The TRA should reject Caterpillar's Application and uphold the Original Decision

1. As an initial point, Caterpillar's Application far exceeds the boundaries of a reasonable reconsideration process and should be rejected for that reason alone (Section 1.1).

2. Further, although superabundant, none of Caterpillar's 18 grounds of reconsideration demonstrate that the TRA did not act reasonably in the Original Decision, so that the Application should in any event be rejected (Section 1.2(a)).

3. Finally, the TRA should reject Caterpillar's proposal to consider a price undertaking in the reconsideration process (Section 1.3).

[1] Caterpillar, AD0047, Application for reconsideration, 13 June 2025.

[2] LiuGong, AD0047, Application for reconsideration, 13 June 2025.

1.1 Caterpillar's Application far exceeds the boundaries of the reconsideration process

4. The Investigation was initiated on 15 November 2023. Court records show that Caterpillar had actual knowledge of the Investigation on 16 November 2023, i.e., the day after initiation.[3]

5. Despite having knowledge of the Investigation from the day after initiation, Caterpillar chose not to participate in the Investigation until Caterpillar (Xuzhou) Ltd. registered its interest in the Investigation on 13 December 2024,[4] a full 13 months after initiation.

6. Under Article 5.10 of the World Trade Organization's ("**WTO**") Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("***Anti-Dumping Agreement***"), the TRA was required to complete the Investigation within 18 months from initiation, i.e., by 14 May 2025.

7. When Caterpillar approached the TRA to finally register its interest in the Investigation, as well as in proceedings before the High Court brought by Caterpillar, Caterpillar claimed repeatedly that it had only become aware of the Investigation in late 2024.[5]

8. Caterpillar built on this lack of awareness argument a series of (flawed) arguments about a purported lack of procedural fairness. For instance, Caterpillar argued baselessly that the TRA erred in law because it did not make Caterpillar aware of the Investigation (which is not an obligation on the TRA).[6] Caterpillar pleaded with the TRA to not only treat Caterpillar as a cooperating party (which Caterpillar was not) but even calculate an individual anti-dumping duty level for Caterpillar's exports (which Caterpillar was not entitled to).[7]

9. Caterpillar also brought proceedings against the TRA's provisional determination in the Investigation before the High Court built on the lack of awareness argument. These proceedings were surprising, because WTO and European Union ("**EU**") case law confirm that it is, to put it diplomatically, "premature" to challenge a provisional determination.[8] The High Court came to the same conclusion and rejected all of Caterpillar's claims for being academic.[9]

10. During the High Court proceedings, Caterpillar had to disclose – but only after J. Saini "pressed" Caterpillar – that it had, in fact, actual knowledge of the Investigation as of 16 November 2023. The High Court found Caterpillar's failure to disclose this key fact,

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[3] High Court before J. Saini, *Caterpillar (Xuzhou) Ltd. v Secretary of State for Business and Trade and Trade Remedies Authority*, AC-2025-LON-000523, 9 May 2025 ("***Caterpillar v SSBT and TRA***"), paras. 117, 122, 179.

[4] Article 5.10 of the

[5] *See*, e.g., Caterpillar (Xuzhou) Ltd., AD0047, Comments on Statement of Essential Facts, 13 January 2025, p. 2.

[6] *See*, e.g., Caterpillar (Xuzhou) Ltd., AD0047, Comments on Statement of Essential Facts, 13 January 2025.

[7] *See*, e.g., Caterpillar (Xuzhou) Ltd., AD0047, Comments on Statement of Essential Facts, 13 January 2025, p. 6.

[8] *See*, e.g., Appellate Body Report, *US – Continued Zeroing*, WT/DS350/AB/R, para. 210; judgment of 10 March 2016, *SolarWorld v Commission*, C-312/15 P, EU:C:2016:162, para. 25.

[9] *Caterpillar v SSBT and TRA*, para. 135.

which was the basis for Caterpillar's claims, so serious that it found Caterpillar to have committed a serious violation of its duty of candour.[10]

11. Despite Caterpillar's behaviour, and even though Caterpillar had no right to it, the TRA ultimately agreed to treat Caterpillar as a cooperating party and even calculate an individual anti-dumping duty rate for Caterpillar.[11]

12. This still does not seem to satisfy Caterpillar in these proceedings.

13. With the Application, Caterpillar is seeking reconsideration of the Original Decision. In no less than 18 grounds, Caterpillar challenges essentially all of the TRA findings made to give Caterpillar what it asked for (but had no right to): the normal value calculation, the export price calculation, the dumping margin calculation, the injury margin calculation, the injury analysis, and the causation analysis.

14. In the way Caterpillar frames the Application, this amounts to nothing less than a full re-assessment of the Investigation that Caterpillar willingly chose not to participate in.[12]

15. In addition, Caterpillar asks the TRA to grant it a price undertaking, which Caterpillar never offered during the Investigation because it "did not have time" because of the "truncated Investigation timeline" that Caterpillar itself orchestrated.[13]

16. As J. Saini put it, "if [Caterpillar] wished to it could have participated from the outset as an interested party."[14] Instead, Caterpillar seems to have made "a tactical decision not to make itself known."[15] Now, Caterpillar is attempting to abuse the reconsideration process to relitigate the Investigation. In no less than 18 grounds, Caterpillar throws the kitchen sink at the Original Decision in the hope that some of its claims will stick.

17. In doing so, Caterpillar fundamentally misrepresents the scope of a reconsideration process. As the TRA put it in its first reconsideration decision, the reconsideration process tests "whether the decisions made during the original investigation, when assessed against the grounds in the application for the reconsideration, were reasonable."[16]

18. Given the circumstances, it is hard to understand how Caterpillar can consider that the TRA has not acted reasonably in the Investigation. The TRA went above and beyond to grant Caterpillar's unjustified request to treat it as a cooperating party and grant it an individual duty rate. If any party acted unreasonably in the Investigation, it certainly was not the TRA.

19. As Caterpillar's Application far exceeds the boundaries of a reasonable reconsideration process in the context of the Investigation, the Application should be rejected for that reason alone.

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[10] *Caterpillar v SSBT and TRA*, para. 174.

[11] TRA, AD0047, Addendum to statement of essential facts.

[12] *See* above, para. 4.

[13] Caterpillar, Application, p. 3.

[14] *Caterpillar v SSBT and TRA*, para. 122.

[15] *Caterpillar v SSBT and TRA*, para. 117(2).

[16] *See*, e.g., TRA, AD0012, Reconsideration of the final negative determination of certain goods in aluminium extrusions from Peoples Republic of China, paras. 6, 16, 31-32, 40, 61-62, 76-78.

1.2 The TRA should reject all of Caterpillar's grounds

20. None of Caterpillar's 18 grounds call into question the reasonableness of the Original Decision. The grounds are either simple repetition of arguments the TRA already assessed but rejected, or mere disagreements with approaches the TRA took in exercising its wide margin of discretion.

21. JCB will not address all of Caterpillar's claims but wishes to correct some incorrect or misleading statements and add some information that the TRA may consider useful.

(a) Grounds 1, 2, and 5: Caterpillar is wrong that the TRA must use Caterpillar's actual CIF customs value

22. To calculate the dumping and injury margins for Caterpillar, the TRA established a CIF UK and an EXW China price for Caterpillar's sales of in-scope excavators ("**Excavators**") originating from China. In doing so, the TRA made deductions for "all adjustments to the invoice value" between Caterpillar and its UK dealer Finning that were made "subsequent to the invoice date."[17]

23. This means that where Caterpillar provided discounts to its dealer because the dealer provided discounts to its customers, the TRA used the net price after discount at CIF UK level. The TRA's approach is only logical. It is also the way Caterpillar accounts:

> "We provide discounts to dealers through merchandising programs. We have numerous programs that are designed to promote the sale of our products. The most common dealer programs provide a discount when the dealer sells a product to a targeted end user. Generally, we estimate the cost of these discounts for each product by model by geographic region based on historical experience and known changes in merchandising programs. We report the cost of these discounts as a reduction to the transaction price when we recognize the product sale. We accrue a corresponding post-sale discount reserve in Statement 3, which represents discounts we expect to pay on units sold. If discounts paid differ from those estimated, we report the difference as a change in the transaction price.[18]

24. With grounds 1, 2 and 5,[19] Caterpillar claims that "as a matter of mathematics" the TRA must use the actual customs value declared by Caterpillar at CIF UK level in its injury margin calculation.[20]

25. Caterpillar thus wants the TRA to use a price that is not the actual net sales price (and not the price Caterpillar uses in its accounts) but a higher price that is of no real-world relevance but would result in a lower injury margin for Caterpillar. This is baffling.

26. Caterpillar claims that the TRA is somehow prevented from using a CIF price from which these discounts are deducted.[21] Caterpillar then states, without providing a source, that

[17] TRA, AD0047, Final determination, para. 421.

[18] Caterpillar group, 10-K 2024, available at: https://d18rn0p25nwr6d.cloudfront.net/CIK-0000018230/d10913c3-95ae-450c-9432-f55a05fa18c0.pdf, p. 66 (emphasis added).

[19] Caterpillar, Application, paras. 3-14, 15-22, and 33-35.

[20] Caterpillar, Application, para. 3.

[21] Caterpillar, Application, para. 8.

the European Commission ("**Commission**") "takes actual customs value as declared at CIF EU border level."[22]

27. The TRA already rejected Caterpillar's claims.[23] "Going back to first principles,"[24] as Caterpillar purports to do, the TRA rightly did so. It would simply be nonsensical to not use Caterpillar's actual net sales price after discount at CIF UK level.

28. Contrary to what Caterpillar baselessly claims,[25] the TRA's approach is in fact supported by EU case law and practice. For instance:

    - In *Commission v Hansol*, the Court of Justice of the EU ("**CJEU**") found that it was within the Commission's discretion to deduct costs from the actual CIF EU price and use this adjusted CIF EU price for the price analysis of its injury determination.[26] According to the CJEU, this may be necessary or appropriate "to ensure an objective comparison" of prices.[27] This is also the case in the Investigation.

    - The Commission has been deducting costs from actual CIF EU prices for a long time. For instance, *Rebars from Belarus* from 2017 is an example of a regulation imposing anti-dumping duties that applies this approach.[28] It is also not exceptional for the Commission to deduct costs from actual CIF EU prices: the Commission followed the same approach in *Epoxy resin from China, Taiwan, and Thailand*, the most recent regulation imposing duties at the time of writing.[29]

29. Finally, Caterpillar makes much of the TRA's statement that the TRA was not suggesting that Caterpillar was violating customs law in how it sets its CIF UK prices and that under customs rules, retrospective price adjustments are possible.[30] It is not the first time in the Investigation that Caterpillar confuses customs law and anti-dumping law. Customs law is not anti-dumping law and actions acceptable under customs law may – as is the case here – not be appropriate under anti-dumping law.

30. In sum, with grounds 1, 2, and 5, Caterpillar does no more than try to conceal the full amount of dumping of its Chinese Excavators on the UK market and the injury these dumped sales are causing. That full amount must be calculated using the net sales price at CIF UK (and EXW China) level, taking full account of what appear to be steep discounts offered by Caterpillar to its customers.

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[22] Caterpillar, Application, para. 13.

[23] TRA, AD0047, Final determination, paras. 743-744.

[24] Caterpillar, Application, para. 3.

[25] Caterpillar, Application, paras. 13 and 34.

[26] Judgment of 12 May 2022, *Commission v Hansol*, C-260/20 P, EU:C:2022:370, para. 105.

[27] Judgment of 12 May 2022, *Commission v Hansol*, C-260/20 P, EU:C:2022:370, para. 105.

[28] Recital 77 to Commission Implementing Regulation (EU) 2017/1019 of 16 June 2017 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain concrete reinforcement bars and rods originating in the Republic of Belarus, OJ L 155, 17.6.2017, p. 6.

[29] Recital 122 to Commission Implementing Regulation (EU) 2025/1505 of 25 July 2025 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of epoxy resins originating in the People's Republic of China, Taiwan, and Thailand and terminating the investigation on imports of epoxy resins originating in the Republic of Korea, OJ L, 28.7.2025.

[30] Caterpillar, Application, paras. 11-12 and 20-22, referring to TRA, Final determination, para. 745.

(b) Ground 3: Caterpillar is wrong that the TRA should have compared XL and XXL Excavators for the injury margin calculations

31. Product control numbers ("**PCNs**") serve to ensure that dumping and injury margin calculations are made by comparing comparable product models. The TRA adopted a PCN structure that distinguishes between XL (30 to 55 tons) and XXL (55 to 80 tons) Excavators.[31] This means that when calculating Caterpillar's injury margin, the TRA compared the export price of Caterpillar XL Excavators with the target price of JCB XL Excavators.

32. In the period of investigation ("**POI**"), JCB produced and sold XL Excavators. It did not produce and sell XXL Excavators.[32]

33. With ground 3,[33] Caterpillar claims that the TRA erroneously excluded XXL Excavators from the injury margin calculations and that it should compare prices of Caterpillar XXL Excavators with JCB XL Excavators.

34. Caterpillar's claim goes against the logic of PCNs. The TRA followed the standard practice of investigating authorities, such as the Commission, for calculating Caterpillar's injury margin. That approach is to disregard export sales of products in a certain PCN if there are no equivalent sales by the domestic industry in that same PCN.

35. It follows that the TRA correctly calculated the injury margin for Caterpillar.

(c) Ground 4: Caterpillar is wrong that the TRA should have used Komatsu UK's profit as the target profit

36. To calculate Caterpillar's injury margin, the TRA used an 11% target profit, which it corroborated with data from JCB as well as the cooperating Chinese exporting producers.[34]

37. With ground 4,[35] Caterpillar claims the 11% target profit is overstated and that the TRA should have used the 2-3% profit of Komatsu UK Ltd. ("**Komatsu UK**").[36]

38. The first page of Komatsu UK's annual reports, on which Caterpillar bases its claims, explains that:

> "The company operates as a 'limited risk contract manufacturer' and manufactures excavators for, and sells them exclusively to, [Komatsu Europe International NV, Komatsu UK's immediate parent] at pricing set to generate a return on cost."[37]

39. Komatsu UK is thus a contract manufacturer that receives a 2-3% profit margin for the manufacturing it does on behalf of a related entity. Its profit margin therefore is irrelevant in assessing the target profit necessary to manufacture and sell Excavators.

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[31] TRA, AD0047, Notification of proposed change to PCN structure, 11 July 2024.

[32] TRA, AD0047, Final determination, para. 96.

[33] Caterpillar, Application, paras. 23-25.

[34] TRA, AD0047, Final determination, para. 98.

[35] Caterpillar, Application, paras. 26-29.

[36] Caterpillar, Application, para. 28.

[37] *See*, e.g., Komatsu UK, Annual report 2024, p. 1; Komatsu UK, Annual report 2017, p. 1.

(d) Grounds 6 and 7: Caterpillar is wrong that there is no particular market situation that affects price comparability for Caterpillar

40. With grounds 6 and 7,[38] Caterpillar claims that the TRA erred in finding that a particular market situation ("**PMS**") exists for Caterpillar and that, even if there was a PMS, the PMS did not affect price comparability between Excavator sales in China and to the UK.

41. The TRA's PMS analysis is robust, and Caterpillar raises nothing new – let alone anything that could call into question the conclusion that there is a PMS for Caterpillar. To assist the TRA, it is nonetheless worth adding four points that further corroborate the TRA's finding that there is a PMS that affects price comparability for Caterpillar in China.

42. First, Caterpillar Investment (China) Co. Ltd., which Caterpillar identified as relevant,[39] is a vice chairman company to the China Construction Machinery Association ("**CCMA**").[40]

43. In the EU case *Mobile access equipment* ("***MAE***") *from China* (which, like the Investigation, concerns construction machinery), the Commission has found that "government control and policy supervision can be also observed at the level of the relevant industry associations, in particular the [CCMA]."[41] According to CCMA articles of association, "the persons in charge of the association" – like a vice president – "need to '[a]dhere to the leadership of the Communist Party of China, support socialism with Chinese characteristics, resolutely implement the Party's line, principles, and policies, and have good political qualities.'"[42] The Commission considered this to be evidence of Chinese state influence in members of the CCMA, like Caterpillar Investment (China) Co. Ltd.

44. Second, it is standard practice for investigating authorities to find that foreign-invested companies like Caterpillar's Chinese entities are affected by the same non-commercial factors as Chinese-owned companies. That is because the distortions in the Chinese economy "apply throughout the country and across the sectors of the economy."[43]

45. For instance, in *MAE from China*, the Commission applied its significant distortions methodology for calculating normal value equally to JLG and Terex, both U.S.-headquartered construction machinery manufacturers.[44] Neither company objected.

46. Third, in the 2023 Indian case *Wheel loaders from China* (which, like the Investigation, concerns construction machinery), Caterpillar – including Caterpillar SARL Singapore Branch – did not contest "the non-market economy status of China" and were thus treated as not operating on market economy principles.[45] Caterpillar's acquiescence

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[38] Caterpillar, Application, paras. 36-48, 49-66.

[39] Caterpillar, Application, para. 39.

[40] CCMA, Board members, available at: http://www.cncma.org/en/col/en_xiehuijianjie?code=BoardMembers.

[41] Recital 109 to Commission Implementing Regulation (EU) 2024/1915 of 11 July 2024 imposing a provisional anti-dumping duty on imports of mobile access equipment originating in the People's Republic of China, OJ L, 12.7.2024.

[42] Regulation 2024/1915, recital 110.

[43] Regulation 2024/1915, recital 160.

[44] Regulation 2024/1915, recitals 160-163 and 265.

[45] DGTR, *Wheel loaders from China*, Final findings, para. 68.

corroborates that there is a PMS for Caterpillar in China that also affects Caterpillar in the Investigation.

47. Fourth, Caterpillar group's annual report explicitly and repeatedly contradicts Caterpillar's claims that its pricing is identical in all geographical markets:

> "In all markets, we compete on the basis of product performance, customer service, quality and price. From time to time, the intensity of competition results in price discounting in a particular industry or region. Such price discounting puts pressure on margins and can negatively impact operating profit. Outside the United States, certain competitors enjoy competitive advantages inherent to operating in their home countries or regions."[46]
>
> "We provide discounts to dealers through merchandising programs. We have numerous programs that are designed to promote the sale of our products. The most common dealer programs provide a discount when the dealer sells a product to a targeted end user. The amount of accrued post-sale discounts was $2.2 billion and $2.1 billion at December 31, 2024 and 2023, respectively."[47]
>
> "Generally, we estimate the cost of these [post-sale] discounts for each product by model by geographic region based on historical experience and known changes in merchandising programs. We report the cost of these discounts as a reduction to the transaction price when we recognize the product sale."[48]

(e) Ground 8: Caterpillar is wrong that the TRA should have used Excavator sales prices to a third country to determine the normal value

48. With ground 8,[49] Caterpillar claims that the TRA should not have constructed normal value but should have used sales prices to a third country as the basis for normal value of Caterpillar's Chinese Excavators.

49. Caterpillar undermines its own claim by acknowledging that the applicable rules "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)" of the Dumping and Subsidies Regulation ("**Regulations**").[50]

50. Caterpillar thus agrees that it was within the TRA's discretion to construct normal value. This alone merits rejecting the ground.

51. Caterpillar further claims that under U.S. law, sales to a third country is "a preferred methodology as compared to the construction of normal value."[51] This statement is false for cases involving imports from China, like the Investigation.

52. As the U.S. Department of Commerce ("**USDOC**") noted when initiating *L-lysine from China*, one of its most recent investigations:

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[46] Caterpillar group, 10-K 2024, p. 6 (emphasis added).

[47] Caterpillar group, 10-K 2024, p. 44.

[48] Caterpillar group, 10-K 2024, p. 66 (emphasis added).

[49] Caterpillar, Application, paras. 67-77.

[50] The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019.

[51] Caterpillar, Application, para. 75.

> "Commerce considers China to be an [non-market economy ("**NME**")] country. … any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of this [less than fair value] investigation. Accordingly, we base [normal value] on [factors of production] valued in a surrogate market economy country."[52]

53. In other words, contrary to what Caterpillar claims, USDOC consistently constructs normal value for Chinese exporters using costs in a representative country.

54. For completeness, since at least the early 1980s,[53] JCB notes that the Commission has not used sales to third countries as the basis for normal value and instead consistently constructs normal value. This further corroborates that it was within the TRA's discretion to construct normal value.

(f) Ground 9: Caterpillar is wrong that the TRA failed to adapt out-of-country input price information when making PMS adjustments

55. With ground 9,[54] Caterpillar claims that the TRA failed to adapt out-of-country (Brazilian) input price information that the TRA used to make PMS adjustments.

56. The TRA simply applied Regulation 13(2) of the Regulations, which provides that the TRA may make PMS adjustments "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."[55]

57. As the TRA found, costs, prices, and profits in China are not substantially determined by market forces but distorted. The TRA's adjustments seek to ensure costs, prices, and profits reflect costs, prices, and profits as they would be without these distortions. This is the TRA's consistent practice, in line with Regulation 13(2).[56] Caterpillar's claim is thus baseless.

58. Caterpillar further claims that the TRA should have used Caterpillar's Brazilian subsidiary's costs to adjust costs.[57] Caterpillar's Brazilian subsidiary chose not to come forward in the Investigation as a representative country producer (even though Caterpillar knew of the Investigation),[58] so suffice to say that this claim is outside the scope of the reconsideration process.

59. Finally, Caterpillar claims that the TRA should adjust the benchmark steel cost that the TRA used. Caterpillar acknowledges that its claim is baseless, as the benchmark cost is

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[52] Department of Commerce, L-Lysine from the People's Republic of China: Initiation of less-than-fair-value investigation, 90 FR 26782, 17 June 2025.

[53] Council Regulation (EEC) No 407/83 of 21 February 1983 amending Regulation (EEC) No 3439/80 imposing a definitive anti-dumping duty on imports of certain polyester yarn originating in the United States of America, OJ L 50, 23.2.1983, p. 1

[54] Caterpillar, Application, paras. 78-90.

[55] Emphasis added

[56] *See*, e.g., TRA, AD0021, Final determination: Optical fibre cables imported into the United Kingdom from the People's Republic of China, Sections G2-G7.

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[57] Caterpillar, Application, paras. 83-85.

[58] *See* above, para. 4.

for Brazilian domestically produced steel.[59] It is nonsensical to deduct "costs of transportation of steel between China and Brazil, any customs and anti-dumping duties" applicable to Chinese steel, "as well as transhipment costs and costs of delivery" from Brazil to China from the prices of Brazilian domestically produced steel.[60] This would violate Regulation 13(2), because it would not reflect in a cost that reflects that cost "would be" without distortions.

(g) Ground 10: Caterpillar is wrong that the TRA should have based the profit it used to construct normal value on adjusted costs of production

60. With ground 10,[61] Caterpillar claims that the TRA erroneously based the profit it used to construct normal value on unadjusted costs of production of Excavators sold on the Chinese domestic market. Caterpillar claims that the TRA should have, instead, used adjusted costs of production.

61. Caterpillar errs. The chapeau of Article 2.2.2 of the *Anti-Dumping Agreement* requires the TRA, as it did in the Investigation, to base the profit it uses to construct normal value on actual data from the exporting producer covering all sales in the ordinary course of trade. WTO case law confirms this point.[62] There is no "separate reasonability test" for the data that is used for this purpose.[63]

62. Caterpillar's proposed interpretation of reading Regulation 12(2) of the Regulations "consistently with Regulation 11(2) of the Regulations"[64] is thus at odds with settled WTO case law on Article 2.2.2 and should be rejected.

63. To support its erroneous interpretation, Caterpillar refers to three sources. All three sources are inapposite to, or even contradict, Caterpillar's claim:

- First, Caterpillar refers to U.S. litigation in *Hyundai Steel v United States*,[65] which concerns a USDOC normal value determination based on sales in the domestic market of the exporting country, and, specifically, how USDOC calculated which home market sales were above cost.

  These questions pertain to the equivalents under U.S. law of Articles 2.2 and 2.2.1 of the *Anti-Dumping Agreement*.[66] This is inapposite to Caterpillar's claim,

[59] Caterpillar, Application, footnote 59 to para. 90.

[60] Caterpillar, Application, para. 90.

[61] Caterpillar, Application, paras. 91-97.

[62] Appellate Body Report, *EC – Tube and Pipe Fittings*, WT/DS/219/AB/R, paras. 96-97; Panel Report, *EC – Salmon (Norway)*, WT/DS337/R, para. 7.304.

While, as the WTO Panel in *US – OCTG (Korea)* noted, this may render Article 2.2.2 "somewhat perplexing" in the "overall coherence of Article 2" of the *Anti-Dumping Agreement*, that still "does not allow an interpretation that does not fully comport with the express language of Article 2.2.2." *See* Panel Report, *US – OCTG (Korea)*, WT/DS488/R, para. 7.45.

[63] Panel Report, *Thailand – H-Beams*, WT/DS122/R, para. 7.125.

[64] Caterpillar, Application, para. 92.

[65] Caterpillar claims to cite, but the citation in para. 93 of Caterpillar's Application does not appear in the text of the decision that Caterpillar refers to.

[66] U.S Court of Appeals Federal Circuit, *Hyundai Steel v United States*, 19 F.4th 1346 (2021), 2021-1748, available at: https://www.cafc.uscourts.gov/opinions-orders/21-1748.OPINION.12-10-2021_1877312.pdf ("**Fed. Cir, *Hyundai Steel***").

which is under the equivalent under UK law of Article 2.2.2 of the *Anti-Dumping Agreement*.

In any event, if anything, *Hyundai Steel v United States* corroborates the TRA's position as the U.S. Court of Appeals found that USDOC should use unadjusted costs to assess whether sales are below cost.[67]

- Second, Caterpillar refers to "Comment 1" to USDOC's normal value determination in *OCTG from Korea*.[68]

  In this case, USDOC did not calculate profit based on actual data from the exporter in question based on the chapeau of Article 2.2.2 of the *Anti-Dumping Agreement*. Instead, USDOC relied on the alternative bases in Article 2.2.2 to ultimately use the profit on sales of OCTG in Canada from another producer.[69] This determination is thus inapposite to Caterpillar's claim.

- Third, Caterpillar refers to the Commission's findings in *Ammonium nitrate from Russia*, claiming that "the use of cost of production adjusted for PMS factors would be also consistent with the EU practice" for "determining a reasonable profit margin."[70]

  Ammonium Nitrate from Russia does not support Caterpillar's position. The recitals following the recital referred to by Caterpillar explain that the Commission used profit data from U.S. and Canadian fertilizer producers to determine normal value for Russian fertilizers.[71] This finding is thus inapposite to Caterpillar's claim.

(h) Ground 11: Caterpillar is wrong that the TRA should not have made cost adjustments for certain raw materials

64. With ground 11,[72] Caterpillar claims that the TRA made PMS cost "adjustments to every excavator component (input) … regardless of its share in the costs."[73]

65. As an initial point, the TRA assessed whether costs are "significant" before making PMS adjustments. For instance, the TRA did not make adjustments for tax, energy, land, and finance costs because the TRA considered that these costs were not "significant."[74]

66. As concerns raw materials, the TRA made adjustments only for "excavator components" and not for all other raw materials.[75] The TRA explained that it made "adjustments only

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[67] Fed. Cir., *Hyundai Steel*, p. 15 ("Congress simply and unambiguously allowed for a PMS adjustment to constructed value but not to the costs of production for purposes of the sales-below-cost test").

[68] USDOC, Issues and decision memorandum for the final results of the 2014-2015 Administrative Review of the antidumping duty order on certain oil country tubular goods from the Republic of Korea ("**USDOC, *OCTG from Korea* I&DM**"), pp. 9-14.

[69] USDOC, *OCTG from Korea* I&DM, p. 14.

[70] Caterpillar, Application, para. 95.

[71] Recitals 37-38 to 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, OJ L 185, 12.7.2008, p. 1.

[72] Caterpillar, Application, paras. 98-103.

[73] Caterpillar, Application, para. 101.

[74] TRA, AD0047, Final determination, para. 343.

[75] TRA, AD0047, Final determination, para. 349.

for inputs where the TRA has determined that a PMS exists which is having a material impact on costs."[76] Caterpillar's claim is thus baseless.

67. Further, Caterpillar claims that no adjustments should be made for raw materials that do not account for at least 17% of cost.[77] Caterpillar bases this percentage "by analogy" on the percentage used under EU anti-dumping law to determine whether the lesser duty rule applies.[78]

68. This is a false analogy. The 17% rule under EU anti-dumping law does not concern cost adjustments for the purpose of calculating dumping (which the Commission applies much more aggressively than the TRA). The 17% rule not even concerns dumping calculations. The 17% rule relates to an assessment of whether the distortion of raw material costs suffices to disapply the lesser duty rule: it can thus only result in a higher anti-dumping duty level and not, as Caterpillar wants it, a lower level.

(i) Grounds 12, 13, and 14: Caterpillar is wrong that the TRA erred in devising and applying cost adjustments

69. With grounds 12,[79] 13,[80] and 14,[81] Caterpillar claims that the TRA erred in devising and applying PMS cost adjustments for steel components and non-steel components. Caterpillar's claims target the methodology used by the TRA to devise the cost adjustments and the purported lack of reasoning to substantiate the adjustments.

70. The TRA provided 45 paragraphs of reasoning on how it devised and applied its cost adjustments.[82] Caterpillar already commented on the TRA's adjustments and the TRA already made changes in Caterpillar's favour based on Caterpillar's comments.[83] It is hard to see how the TRA did not meet its burden of explaining the adjustments.

71. Further, nothing in Caterpillar's claims suggests, let alone demonstrates, that the TRA did not act reasonably in devising and applying its PMS cost adjustments for steel and non-steel components. It simply signals Caterpillar's disagreement with decisions the TRA took. That disagreement is irrelevant in a reconsideration process.

72. As the facts of each anti-dumping case are very different, the TRA must "enjoy a wide margin of discretion" in deciding, within the boundaries of the Regulations, on "the methodology it finds most appropriate under the given circumstances, provided that … it is reasonable, applied in an objective and consistent manner, and thus leads to plausible

[76] TRA, AD0047, Final determination, para. 349.

[77] Caterpillar, Application, para. 103.

[78] Article 7(2a) of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, OJ L 176 30.6.2016, p. 21.

[79] Caterpillar, Application, paras. 104-105.

[80] Caterpillar, Application, paras. 106-110.

[81] Caterpillar, Application, paras. 111-120.

[82] TRA, AD0047, Final determination, paras. 347-392.

[83] Caterpillar, Application, para. 384.

outcomes."[84] This is necessary because of "the complexity of the economic and political situations which [the TRA has] to examine."[85]

(j) Grounds 15 and 16: Caterpillar is wrong that the TRA erred in its injury analysis

73. With ground 15,[86] Caterpillar claims that the TRA erred in its injury determination and, specifically, in (a) its volume analysis of imports of Chinese Excavators; and (b) assessing the state of the UK Excavator industry. With ground 16,[87] Caterpillar claims that the TRA erred in its price analysis of imports of Chinese Excavators. All three claims fail.

74. First, Caterpillar claims that the TRA's volume analysis is wrong because the TRA relied primarily on OTS data that reports country of dispatch.[88]

75. As an initial point, Caterpillar claims the TRA should have done more with data that Caterpillar provided at least 13 months late in the proceedings.[89] It was Caterpillar's strategic decision to provide data late in the proceedings, making it hard to understand how Caterpillar can complain that not enough was done with the data.[90]

76. In any event, Caterpillar misrepresents the TRA's findings. Contrary to what Caterpillar claims, the TRA did not only look at country of dispatch data to assess the volume of imports of Chinese Excavators. The TRA corroborated the trends for country of dispatch data using (a) "HMRC raw customs declaration data;"[91] and (b) "confidential market data" supplied by JCB "with due consideration given to the Caterpillar Group and Finning subsequent submissions regarding the origin of the Caterpillar-branded excavators."[92]

77. No matter what way volumes of Chinese Excavator imports are looked at, they increase significantly over the injury period. Caterpillar's claim is thus baseless.

78. Second, Caterpillar claims that the TRA erred in assessing the state of the UK Excavator industry.[93]

79. As an initial point, Caterpillar claims that the TRA "acknowledges that the UK industry did not suffer material injury due to the volume of sales, production volume, capacity and

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[84] *See*, by analogy, opinion of Advocate-General Emiliou of 12 January 2023, *Severstal v Commission* and *Novolipetsk Steel v Commission*, C-747/21 P and C-748/21 P, EU:C:2023:20, para. 33.

[85] *See*, e.g., judgment of 28 September 2023, *Changmao Biochemical Engineering v Commission*, C-123/21 P, EU:C:2023:708, para. 136; judgment of 20 January 2022, *Commission v Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, para. 35.

[86] Caterpillar, Application, paras. 121-129.

[87] Caterpillar, Application, paras. 130-132.

[88] Caterpillar, Application, paras. 126-127.

[89] Caterpillar, Application, para. 126.

[90] *See* above, Section 1.1.

[91] TRA, AD0047, Final determination, para. 495.

[92] TRA, AD0047, Final determination, paras. 502-504.

[93] Caterpillar, Application, para. 128.

capacity utilization."[94] That is factually wrong. The TRA explicitly found that these factors "indicate that UK industry has suffered injury."[95]

80. Further, Caterpillar takes issue with the TRA's conclusions that:

- JCB's profitability is a factor indicating injury.[96] The CCCME made this exact same claim in the Investigation,[97] and he TRA rightly rejected it.[98] Caterpillar makes no new claim, which is reason enough for rejection.

  In any event, it is hard to understand how JCB's making losses is not a key indicator of the state of the domestic industry. Losses obviously do not ensure the "long-term viability" of the UK industry.[99]

- The evolution in the UK Excavator industry's market share is a factor indicating injury.[100] As the TRA found, the UK industry's market share declined every year from 2019-2020 to the POI, with the total decline being 11 percentage points. The TRA's conclusion is thus sound.

  In any event, and contrary to what Caterpillar claims (without citing a source), practice shows that even small decreases in market shares (which the present loss of market share is not) are indicators of injury.[101] In some cases, even stable market shares supported injury findings.[102] In *Ironing boards from Türkiye*, the TRA even found that the fact that the UK industry's market share increased was a factor suggesting injury because the market share of the subsidised goods increased more.[103]

81. Third, Caterpillar claims that the TRA's price analysis is flawed.[104] Specifically, Caterpillar claims that the TRA:

- Erred by using country of dispatch data and not country of origin data to calculate undercutting.[105] That is factually wrong. The TRA used the questionnaire

[94] Caterpillar, Application, para. 124.

[95] TRA, AD0047, Final determination, para. 720.

[96] Caterpillar, Application, para. 128(a).

[97] TRA, AD0047, Final determination, para. 587.

[98] TRA, AD0047, Final determination, paras. 592-593.

[99] *See*, by analogy, recitals 62 and 66 to Commission Regulation (EC) No 1802/1999 of 17 August 1999 imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes originating in Croatia and Ukraine, OJ L 218, 18.8.1999, p. 3.

[100] Caterpillar, Application, para. 128(b).

[101] *See*, e.g., Table 7 to Commission Implementing Regulation (EU) 2017/1480 of 16 August 2017 imposing a provisional anti-dumping duty on imports of certain cast iron articles originating in the People's Republic of China, OJ L 211, 17.8.2017, p. 14; recital 58 to Commission Regulation (EC) No 1888/2006 of 19 December 2006 imposing a provisional anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand; Table 5 to Commission Regulation (EU) No 1072/2012 of 14 November 2012 imposing a provisional anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China, OJ L 318, 15.11.2012, p. 28.

[102] *See*, e.g., recital 60 to Regulation 1802/1999.

[103] TRA, AS0020, Final determination: Ironing boards imported into the United Kingdom from the Republic of Türkiye, Section H5.4.

[104] Caterpillar, Application, paras. 131-132.

[105] Caterpillar, Application, para. 132(b).

responses of the sampled Chinese exporting producers (including Caterpillar),[106] which are based on country of origin.

- Should have used the actual customs value of Caterpillar Excavators.[107] As explained,[108] the TRA was right to reject Caterpillar's claim because doing so would (a) mask the full amount of dumping of Caterpillar's Chinese Excavators and the injury they cause to the UK industry; (b) go against basic principles of anti-dumping law; (and (c) go against Caterpillar's own accounting practices.

82. Caterpillar's claims thus do not call into question the reasonableness of the TRA's findings on injury.

(k) Grounds 17 and 18: Caterpillar is wrong that the TRA erred in its causation analysis

83. With ground 17,[109] Caterpillar claims that imports of Chinese Excavators did not cause material injury to JCB. With ground 18,[110] Caterpillar claims that any injury to JCB was caused by factors other than imports of Chinese Excavators.

84. First, Caterpillar claims that JCB's profitability and market share development and imports of Chinese Excavators do not coincide and that, therefore, these imports do not cause injury.[111]

85. This simplistic claim disregards the reality of the UK Excavator market, which, as the TRA has shown, is being upended by injuriously priced, dumped Chinese Excavators from among others Caterpillar. As the TRA summarised:[112]

- The volume of Chinese Excavator imports more than tripled from 2019-2020 to the POI.[113] As a result, the market share of Chinese Excavators more than doubled over the same period.[114]

- Chinese Excavator imports made these inroads in the UK market only because Chinese Excavators significantly undercut the prices of the UK industry.[115] What is more, Chinese Excavators significantly undersell the prices of the UK industry,[116] and suppress the prices of the UK industry.[117]

- As a result of the sharply increased volume of Chinese Excavator imports and the price pressure that these imports exert on the UK Excavator market, the UK

[106] TRA, AD0047, Final determination, Table 11 and para. 716.
[107] Caterpillar, Application, para. 132(c).
[108] *See* above, Section 1.2(a).
[109] Caterpillar, Application, paras. 133-137.
[110] Caterpillar, Application, paras. 138-155.
[111] Caterpillar, Application, para. 136.
[112] TRA, AD0047, Final determination, paras. 722-727.
[113] TRA, AD0047, Final determination, Table 7.
[114] TRA, AD0047, Final determination, Table 18.
[115] TRA, AD0047, Final determination, Table 11.
[116] TRA, AD0047, Final determination, Table 29.
[117] TRA, AD0047, Final determination, paras. 564-565.

industry, despite increases in productivity[118] and tight cost control,[119] continued to be forced to sell below cost.[120] Despite selling below cost, the UK industry still lost market share[121] – which was grabbed by Chinese Excavator producers.

86. It follows that Chinese Excavator imports are the cause of injury to the UK industry.

87. Second, Caterpillar claims that Excavator imports from South Korea and/or the Netherlands cause injury to the UK industry.[122]

88. South Korean Excavator imports are not the cause of injury, as volumes are lower and prices are higher than of Chinese Excavator imports:

- Throughout its Application, Caterpillar claims that the TRA should use data for Excavators based on country of origin, not country of dispatch. As the TRA found, "HMRC raw customs declaration data," which is based on country of origin, "suggests the volume of imports actually originating from the PRC was significantly higher than that from the Republic of Korea."[123]

- The TRA also found that Chinese Excavator imports were priced lower than South Korean Excavator imports: "the price of imports from the Republic of Korea are still higher than what was calculated for the import prices of the goods concerned … using data obtained from the sampled PRC exporters."[124]

89. For similar reasons, Dutch Excavator imports are also not the cause of injury:

- The volume of Dutch Excavator imports increased from 2019-2020 to the POI[125] at a slower pace than the volume of Chinese Excavator imports, which more than tripled.[126] As a result, the market share of Dutch Excavator imports increased only by a third,[127] whereas the market share of Chinese Excavator imports more than doubled.[128]

- The price of Dutch Excavator imports was higher than the price of imports from South Korea and, thus, higher than the price of the sampled Chinese exporting producers.[129]

90. In sum, imports from South Korea and/or the Netherlands are not the main cause of injury to the UK industry. That is because imports of Chinese Excavators are.

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[118] TRA, AD0047, Final determination, para. 622.
[119] TRA, AD0047, Final determination, Table 13.
[120] TRA, AD0047, Final determination, Table 17.
[121] TRA, AD0047, Final determination, Table 18.
[122] Caterpillar, Application, para. 142-152.
[123] TRA, AD0047, Final determination, para. 703.
[124] TRA, AD0047, Final determination, para. 707.
[125] TRA, AD0047, Final determination, Table 25.
[126] TRA, AD0047, Final determination, Table 7.
[127] TRA, AD0047, Final determination, Table 25.
[128] TRA, AD0047, Final determination, Table 7.
[129] TRA, AD0047, Final determination, Figure 9 and para. 707.

1.3 The TRA should reject Caterpillar's proposal to consider a price undertaking in the reconsideration process

91. Finally, Caterpillar claims that, due to its "late entry to the investigation," Caterpillar "did not have an opportunity to propose an undertaking." Caterpillar claims that the TRA should "explore" a price undertaking in the reconsideration process.[130]

92. Caterpillar's claim is too late. As Paragraphs 17 and 23(1) of Schedule 4 to the Taxation (Cross-border) Trade Act 2018 ("**Act**") make clear, the TRA can accept a price undertaking only up until the moment it makes a final affirmative determination. The TRA made that final affirmative determination, the Original Decision, on 13 May 2025. (Even in its Application, Caterpillar has not proposed a price undertaking – it merely suggests "exploring" a price undertaking.) This alone means Caterpillar's proposal should be rejected.

93. In any event, a reconsideration process cannot be used to propose a price undertaking. The TRA has found that "the appropriate approach to [a] reconsideration is to review whether the original decision made by the TRA was correct at the time it was made."[131] Similarly, the TRA has found that "… events occurring outside the timeframe of the [investigation] fell outside the scope of the reconsideration."[132] Caterpillar did not propose a price undertaking at the time the TRA made the Original Decision, and it thus cannot do so during the reconsideration process.

2. The TRA should reject LiuGong's Application and uphold the Original Decision

94. In its Application, LiuGong's raises a single ground for reconsideration, with which LiuGong claims that battery-powered Excavators should be excluded from the scope of the anti-dumping duties on Chinese Excavators because they are not "like goods."[133]

95. Placed in the applicable legal framework (which LiuGong omits from the Application), LiuGong's Application falls flat.

96. The definition of what constitutes "like goods" is central to any anti-dumping investigation. Paragraph 7(1) of Schedule 4 to the Act defines "like goods" as "(a) goods which are like those goods in all respects, or (b) if there are no such goods, goods which, although not alike in all respects, have characteristics closely resembling those of the goods in question."

97. The definition of "like goods" in Paragraph 7(1) largely mirrors Article 2.6 of the *Anti-Dumping Agreement*. Article 2.6 clarifies that the first step in determining the scope of an anti-dumping investigation is defining the product under consideration, which is the product that is being dumped. The second step is determining the like product, which is the product that is like the product under consideration in all respects or has characteristics closely resembling the product under consideration.

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[130] Caterpillar, Application, paras. 156-158.

[131] TRA, TD0001, Reconsideration of transition review relating to certain welded tubes and pipes of iron or non-alloy steel originating in the Republic of Belarus, the People's Republic of China and the Russian Federation, para. 12.

[132] TRA, TF0006, Reconsideration of transition review of safeguard measures on certain steel products, para. 100.

[133] LiuGong, Application, paras. 10-37.

98. WTO case law provides that that the fact that WTO law contains no definition of what constitutes the product under consideration means that "investigating authorities [have a] wide discretion to determine a product under consideration."[134] The CJEU confirmed this case law in proceedings concerning the UK pre-Brexit.[135]

99. The TRA thus has a wide margin of discretion in determining the goods concerned (in WTO terms, the product under consideration) and the like goods (in WTO terms, the like product) for the purpose of an anti-dumping investigation, like the Investigation. This is confirmed by the TRA's practice, which shows that the TRA has grouped together a wide range of products into the goods concerned. For instance, in *Aluminium extrusions from China*, the goods concerned and the like goods were described as:

> "Aluminium extrusions that are supplied to meet customer design needs (usually identified in the form of drawing specifications, tolerance level and 20 aluminium alloy specification), including but not limited to bars, rods, profiles (whether or not hollow), tubes, pipes; unassembled; whether or not prepared for use in structures (e.g., cut to length, drilled, bent, chamfered, threaded); made from aluminium alloy containing less than 99% of aluminium."[136]

100. Grouping together such a relatively wide range of products is common. As the CJEU put it, the key question is ultimately whether the goods concerned and the like goods have the same "basic physical and technical characteristics."[137]

101. To recall, the TRA ultimately imposed anti-dumping duties on the all "[s]elf-propelled track-laying (i.e. tracked) excavators with a 360° revolving superstructure and with an operating weight of 11,000 kg (i.e., 11 tonnes) or more but less than 80,000 kg (80 tonnes)."[138] The TRA included electric Excavators in this description.[139] This description defines the like goods.

102. LiuGong claims that electric Excavators should be excluded from the duties and thus from the like goods. LiuGong's claims mirror claims made by Chinese interested parties in the EU case *MAE from China*. The Commission's response is instructive because MAE and Excavators (a) are both types of construction machinery; and (b) can be powered by internal combustion engines ("**ICE**") or electric engines. The Commission rejected the Chinese interested parties' scope claims and found that:

> "The Commission disagreed that the different power source, and the fact that electrical or hybrid MAE were generally used inside and conventional ICE MAE outside, the different components and different production/assembly line justified an exclusion of the electrical or hybrid MAE from the product scope. To the contrary, these MAE were to a large extent interchangeable, both categories fell under the product definition, and it was justified that both categories were part of the product scope.

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[134] Panel Report, *EC – Fasteners (China)*, WT/DS497/R, para 7.271.

[135] *See*, e.g., judgment of 17 March 2016, *Portmeirion v HMRC*, C-232/14, EU:C:2016:180, paras. 47-48.

[136] TRA, AD0012, Final determination in investigation into alleged dumping of aluminium extrusions from the People's Republic of China, paras. 79 and 89.

[137] Judgment of 17 March 2016, *Portmeirion v HMRC*, C-232/14, EU:C:2016:180, para. 48.

[138] TRA, AD0047, Final determination, para. 78.

[139] TRA, AD0047, Final determination, paras. 108-121.

> The Commission also recalled that the description of the product scope entailed the main physical and technical characteristics of the product to include self-propelled MAE designed for the lifting of people, and it defined the minimum height of the platform. Both the conventional ICE MAE and electric or hybrid MAE complied with the description and had thus according to the Commission the same basic use and main physical characteristics."[140]

103. The reasoning from the Commission in *MAE from China* applies by analogy to the Investigation:

- Electric Excavators fall within the description of the goods and like goods.
- Electric Excavators and ICE Excavator are to a large extent interchangeable.
- Electric Excavators have the same basic physical and technical characteristics as ICE Excavators: they are self-propelled, tracked Excavators within a defined operating weight.
- Electric Excavators and ICE Excavators have the same basic use: they excavate.

104. The U.S. anti-dumping duties on MAE from China also cover all MAE, regardless of the engine type.[141]

105. For those reasons, LiuGong's Application should be rejected.

106. For completeness, JCB notes that LiuGong makes two claims to support its Application. First, LiuGong claims that the TRA's findings are internally inconsistent essentially because JCB invested in hydrogen-powered construction machinery.[142] Second, LiuGong claims that the TRA's findings are externally inconsistent with UK policy objectives.[143]

107. Both claims fail because LiuGong misunderstands the legal standard for determining the goods concerned and the like goods. The TRA has a wide margin of discretion in determining the goods concerned. All goods that share the same basic physical and technical characteristics as the goods concerned are like goods. Case law and the TRA's practice confirm that it was reasonable for the TRA to find that electric Excavators and ICE Excavators are goods concerned and/or like goods.[144]

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[140] Regulation 2024/1915, recitals 45-46.

[141] *See*, e.g., USDOC, Issues and decision memorandum for the final results of the antidumping duty administrative review of certain mobile access equipment and subassemblies thereof from the People's Republic of China; 2022-2023, Section III; USDOC, Decision memorandum for the preliminary results of the antidumping duty administrative review of certain mobile access equipment and subassemblies thereof from the People's Republic of China; 2023-2024, Section III.

[142] LiuGong, Application, paras. 11-22.

[143] LiuGong, Application, paras. 26-37.

[144] *See* above, paras. 98-103.