17 November 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 Caterpillar's response to JCB's comments on Caterpillar's application for reconsideration**
Our client: **JCB Heavy Products Limited ("JCB")**

We refer to the response published on 29 October 2025 ("**Response**") of Caterpillar (Xuzhou) Ltd., Caterpillar SARL, Caterpillar SARL Singapore Branch, and Caterpillar (China) Investment Co., Ltd. (**"Caterpillar**") on JCB's comments on Caterpillar's application ("**Application**") for reconsideration of the Trade Remedies Authority's ("**TRA**") final determination ("**Original Decision**") in the captioned investigation ("**Investigation**").

JCB hereby submits its comments on the Response. In sum, the TRA should dismiss all claims set out in the Response, reject the Application in its entirety, and uphold the Original Decision.

1. The Application should be rejected because it far exceeds the boundaries of the reconsideration process

1. In the Response, Caterpillar takes issue with JCB's view that the Application far exceeds the boundaries of the reconsideration process. JCB takes this view because of the peculiar facts surrounding the Application:[1]

    - Caterpillar chose, entirely of its own motion, not to participate in the Investigation for a full 13 months after the Investigation was initiated. As the High Court found, "if [Caterpillar] wished to it could have participated from the outset as an interested party."[2] Instead, Caterpillar made "a tactical decision not to make itself known."[3]

    - As its tactical decision backfired, Caterpillar unsuccessfully challenged the TRA's provisional findings in the Investigation for a purported lack of procedural

[1] JCB, Comments on applications for reconsideration, Section 1.1.

[2] 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***"), para. 122.

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

fairness.[4] In the context of this failed challenge, the High Court made the exceptional finding that Caterpillar committed a serious violation of its duty of candour.[5]

- Despite Caterpillar's behaviour, and even though Caterpillar had no right to it, the TRA ultimately (and, in JCB's view, unduly) agreed to treat Caterpillar as a cooperating party in the Investigation and even calculate an individual anti-dumping duty rate for Caterpillar.[6]

- Despite the favourable treatment that Caterpillar received from the TRA, with the Application, Caterpillar is seeking reconsideration of the Original Decision, challenging essentially all findings the TRA made to give Caterpillar what it asked for (but had no right to).[7]

2. JCB sees no issues with proper use of the reconsideration process. However, JCB sees significant issues with the way that Caterpillar frames the Application given the abovementioned facts.

3. Caterpillar illustrates JCB's point when it states that the Application "should be viewed in the context of the truncated timeline of the Investigation into Caterpillar" and that Caterpillar did not have "time or resources to engage in the course of the Investigation due to the truncated timeline."[8] These statements deny reality:

    - There was no truncated timeline: the TRA took the full 18 months permitted under WTO law to complete the Investigation.

    - The only reason the TRA did not have the full 18 months to investigate Caterpillar is because Caterpillar decided not to participate for 13 months. Instead of shifting blame, Caterpillar should bear the consequences of its tactical decision not to participate. It cannot be given a chance to essentially roll back its decision by fully relitigating the Investigation via the reconsideration process.

4. Caterpillar gives as a "specific example" that it would be "reasonable and fair" for the TRA to use data provided by Caterpillar on the steel cost for its Brazilian subsidiary.[9] This specific example specifically illustrates the irrationality of Caterpillar's position:

    - The TRA invited Brazilian producers of in-scope excavators ("**Excavators**") to come forward by 1 March 2024.[10] This deadline fell three and a half months after Caterpillar obtained actual knowledge of the Investigation on 16 November 2023.[11]

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

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

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

[7] It is now clear that Caterpillar also sought an early review of the Original Decision from the Secretary of State, who rejected Caterpillar's request. *See* Caterpillar, Response, para. 7.

[8] Caterpillar, Response, paras. 11 (iii) and (iv).

[9] Caterpillar, Response, paras. 11 (iv) and 12.

[10] TRA, AD0047, Note to public file – proposed appropriate representative third country.

[11] *Caterpillar v SSBT and TRA*, paras. 117, 122, and 179.

- Caterpillar tactically decided not to submit data on behalf of its Brazilian entity by 1 March 2024. Instead, it provided such data about a year later. It is thus not reasonable or fair to consider data provided from Caterpillar's Brazilian entity.

5. Caterpillar cannot be allowed to undo the consequences of its tactical decision to sit out the Investigation via the reconsideration process. Caterpillar gambled that the outcome of the Investigation would be palatable for it. It lost the gamble. It cannot simply relitigate the Investigation via the reconsideration process.

6. Caterpillar's use of the reconsideration process seeks to undermine the effectiveness and efficiency of the UK trade remedies regime, while creating legal uncertainty and imposing an additional, undue burden on the UK industry (and the TRA) to engage.

7. On that basis, the Application should be rejected because it far exceeds the boundaries of a reasonable reconsideration process given the facts surrounding the Application.

2. The TRA should reject all grounds in the Application

8. In any event, as JCB has explained, the TRA should reject all 18 grounds in the Application because none of the 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.[12]

9. In the Response, Caterpillar fails to rebut JCB's explanations of why the TRA should reject all 18 grounds in the Application.

10. As an initial point, JCB reiterates[13] that it did not, and will not, address Caterpillar's plethora of claims. Contrary to what Caterpillar implies, the burden of proof in a reconsideration process is not on JCB. It is on Caterpillar. JCB's comments only seek to assist the TRA in weeding through Caterpillar's often convoluted claims, its mischaracterization of facts, and its erroneous reliance on UK and foreign anti-dumping law and practice. JCB will use the same approach in these comments.

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

11. With grounds 1, 2, and 5,[14] Caterpillar claims that the TRA must use the actual customs value declared by Caterpillar at CIF UK level in its injury margin calculation.[15]

12. In the Response, Caterpillar makes two flawed claims.

13. First, in the Response, Caterpillar claims that JCB's "factual observations" concerning discounts paid by Caterpillar to its UK dealer Finning after the invoice date "are factually incorrect."[16]

14. JCB recalls the facts that Caterpillar claims are "factually incorrect:"

[12] JCB, Comments on applications for reconsideration, para. 20.

[13] JCB, Comments on applications for reconsideration, para. 21.

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

[15] Caterpillar, Application, para. 3.

[16] Caterpillar, Response, para. 15.

- The TRA found that Caterpillar made "adjustments to the invoice value" between Caterpillar and its UK dealer Finning that were made "subsequent to the invoice date." The TRA made deductions from the export price for these adjustments.[17]

- Caterpillar's annual report confirms that, as a matter of company policy, it routinely provides discounts to its dealers. It reports "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."[18]

15. The basic meaning of "export price" in anti-dumping law is the price at which the goods concerned are actually sold for.[19] There is only one price at which Caterpillar actually sells Excavators to Finning, namely the price on the invoice duly adjusted for costs not included on the invoice, such as the discounts that Caterpillar grants. The TRA correctly used this price.

16. Second, in the Response, Caterpillar claims that the EU case law and practice that JCB put on the record do not support the TRA's approach. That is, Caterpillar claims, because the case law and practice concerns export price calculations where the importer is related to the exporter, whereas Caterpillar is not related to Finning.[20]

17. Caterpillar's dealer model strongly resembles the model of a related importer. Finning only sells and services Caterpillar machinery. It "is the world's largest Caterpillar dealership."[21] Finning's website is Caterpillar-branded, and its website logo even incorporates a Caterpillar logo.[22] Caterpillar considers the sale to the end user (as opposed to the sale to the dealer, such as Finning) as the sale that results in a recognised the sale in Caterpillar's books.[23] In these circumstances, case law and practice concerning export price calculations where the importer is related to the exporter is relevant for the TRA.

18. In sum, the TRA's approach of making deductions for "all adjustments to the invoice value" between Caterpillar and its UK dealer Finning that were made "subsequent to the invoice date" is correct and grounded in UK law, as well as EU case law and practice. With grounds 1, 2, and 5, Caterpillar is trying to conceal the full amount of dumping of its Chinese Excavators on the UK market and the injury Caterpillar's 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.

19. Caterpillar's grounds 1, 2, and 5 should thus be rejected.

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

[18] JCB, Comments on applications for reconsideration, para. 23, referring to Caterpillar group, 10-K 2024, available at: https://d18rn0p25nwr6d.cloudfront.net/CIK-0000018230/d10913c3-95ae-450c-9432-f55a05fa18c0.pdf, p. 66.

[19] Section 15(1) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019.

[20] Caterpillar, Response, paras. 16-17.

[21] Finning, UK website, available at: https://www.finning.com/en_GB.html.

[22] Finning, UK website, available at: https://www.finning.com/en_GB.html.

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

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

20. With ground 3,[24] Caterpillar claims that the TRA erroneously excluded XXL Excavators from the injury margin calculations and that the TRA should compare prices of Caterpillar XXL Excavators with JCB XL Excavators.

21. In the Response, Caterpillar conflates the concept of like goods with the concept of product control numbers ("**PCNs**").[25] These are distinct concepts. The like goods in the Investigation are tracked excavators with an operating weight of 11-80 tons (i.e., Excavators), which all share the same basic physical and commercial characteristics and end uses.[26] To ensure an apples-to-apples comparison when making the dumping and injury margin calculations, the TRA segmented the like goods into PCNs.[27]

22. Caterpillar's claim that the TRA should collapse two PCNs (the XL and XXL PCNs) for the injury margin calculation is tantamount to ignoring the concept and logic of PCNs (although only for the part that suits Caterpillar). This is wrong.

23. Caterpillar's ground 3 should thus be rejected.

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

24. With ground 4,[28] Caterpillar claims that (a) the 11% target profit the TRA used for the injury margin calculations is overstated; and (b) TRA should have used the 2-3% profit of Komatsu UK Limited ("**Komatsu UK**").[29]

25. First, in the Response, Caterpillar claims that even though Komatsu UK is a contract manufacturer for a related EU entity, its profit is "fully relevant" to calculate a target profit.[30] This is beyond understanding.

26. It cannot be seriously contested that the profit margin of Komatsu UK is irrelevant to determining the target profit, as Komatsu UK's margin is, by design, severed from the target profit on sales of Excavators on the UK market.[31]

27. Second, Caterpillar claims that "it is not contested by JCB nor the TRA that Komatsu UK is part of the domestic industry."[32] Whether Komatsu UK could theoretically be part of the domestic industry is irrelevant, because (a) Komatsu UK did not participate in the Investigation; and therefore (b) under UK law, JCB is the domestic industry.[33] Caterpillar is thus wrong that Komatsu UK is part of the UK industry.

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

[25] Caterpillar, Response, paras. 22-24.

[26] TRA, AD0047, Final determination, paras. 75-78.

[27] TRA, AD0047, Final determination, paras. 89-93.

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

[29] Caterpillar, Application, para. 28.

[30] Caterpillar, Response, paras. 27-28.

[31] JCB, Comments on applications for reconsideration, paras. 38-39.

[32] Caterpillar, Response, para. 29.

[33] Regulation 6 to Schedule 4 to the Taxation (Cross-border Trade) Act 2018.

28. Third, Caterpillar claims that TRA guidance prevents the TRA from relying on the sources the TRA used to establish the target profit.[34] Caterpillar's claim fails because (a) the guidance foresees that the TRA may rely on "any other information" it deems fit for purpose; and, in any event, (b) the guidance is, by definition, not binding.[35]

29. Caterpillar's ground 4 should thus be rejected.

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

30. With grounds 6 and 7,[36] Caterpillar claims that (a) the TRA erred in finding that a particular market situation ("**PMS**") exists for Caterpillar; and (b) even if there was a PMS, the PMS did not affect price comparability between Caterpillar's Excavator sales in China and to the UK.

31. In the Response, Caterpillar claims (without providing evidence) that its vice chairmanship of the China Construction Machinery Association ("**CCMA**") is not evidence of a distortion relevant to the PMS.[37] Caterpillar ignores the evidence that JCB put on the record, which shows that the vice chairmanship is evidence of a distortion.[38]

32. Caterpillar also seeks to draw a distinction between investigating authorities that treat China as a non-market economy ("**NME**") and investigating authorities that consider whether there is a PMS in China. Caterpillar's arguments are misguided.

33. First, Caterpillar errs in law in claiming that the European Commission ("**Commission**") treats China as an NME. The Commission stopped its NME methodology in investigations concerning imports from China in 2017.[39] Since 2017, the Commission applies its significant distortions methodology.[40]

34. Second, in any event, findings from investigating authorities concerning distortions in China are, in the first place, factual findings. The legal route (e.g., NME, PMS, significant distortions) subsequently used to address these distortions in the context of anti-dumping investigations is irrelevant. All legal routes seek to serve the same purpose: offset the impact of the all-encompassing distortions created and implemented by the Government of China that permeate all sectors and industries in China, including the Excavator industry, regardless of the ownership of the manufacturing entity at issue.

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[34] Caterpillar, Response, paras. 31-33.

[35] TRA, Guidance on injury margins, available at: https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/injury-margins.

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

[37] Caterpillar, Response, para. 40.

[38] JCB, Comments on applications for reconsideration, paras. 42-43, referring to recitals 109-110 and 160 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.

[39] *See*, e.g., Commission, The EU's new trade defence rules and first country report, 20 December 2017, available at: https://ec.europa.eu/commission/presscorner/detail/en/memo_17_5377.

[40] *See* 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. Article 2(6a) sets out the significant distortions methodology, whereas Article 2(7) sets out the NME methodology.

35. Third, for the same reason, it is pertinent that (a) Caterpillar did not contest "the non-market economy status of China" before the Indian investigating authority in *Wheel loaders from China*; and (b) Caterpillar's Chinese wheel loader manufacturing entity was, as a result, found to not operate on market economy principles.[41] Again, these findings are pertinent because China has NME status for the same reasons that led the TRA to find that a PMS exists for Caterpillar in the Investigation.

36. Finally, Caterpillar continues to claim that its pricing is identical in all geographical markets, despite its annual report (which is filed with the U.S. Securities and Exchange Commission) contradicting this claim. Other than in, say, the luxury industry, it is hard to imagine a company that maintains identical pricing across geographical markets. As Caterpillar itself writes, it makes changes to regional pricing and provides steep discounts to help its dealers close sales.[42]

37. Caterpillar's grounds 6 and 7 should thus be rejected.

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

38. With ground 8,[43] 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 the normal value of Caterpillar's Chinese Excavators.

39. In the Response, Caterpillar claims that the TRA should explain why it did not use sales prices to a third country to determine the normal value.[44] That is wrong.

40. Regulation 8(1) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("**D&S Regulations**") does not require the TRA to explain why it chooses one of three permissible bases to determine the normal value. Regulation 8(1) leaves the TRA the choice without, as Caterpillar acknowledges, a hierarchy between the three bases.[45] If there is no hierarchy, there is no need to explain why the TRA chooses one of three permissible options.

41. Caterpillar further reiterates its claim that purported U.S. precedent on using sales prices to a third country is relevant. Caterpillar claims that it is irrelevant that the U.S. Department of Commerce ("**USDOC**") does not use sales prices to a third country in investigations concerning imports from China because USDOC treats China as an NME.[46] Caterpillar errs.

42. As JCB explained,[47] the reasons why USDOC treats China as an NME are the same as the reasons why the TRA finds that there is a PMS in China. As USDOC explained in the first paragraph of its latest report on China's status as an NME:

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[41] JCB, Comments on applications for reconsideration, para. 46, referring to DGTR, *Wheel loaders from China*, Final findings, para. 68.

[42] *See* above, Section 2.1.

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

[44] Caterpillar, Response, paras. 47-48.

[45] Caterpillar, Application, para. 68.

[46] Caterpillar, Response, para. 50.

[47] *See* above, Section 2.4.

> The basis for the Department's conclusion [that China is an NME] is that the state's role in the economy and its relationship with markets and the private sector results in fundamental distortions in China's economy."[48]

43. Caterpillar's ground 8 should thus be rejected.

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

44. With ground 9,[49] Caterpillar claims that the TRA failed to adapt out-of-country (Brazilian) input price information that the TRA used to make PMS adjustments.

45. In the Response, Caterpillar makes three claims.

46. First, Caterpillar claims that Regulation 13(6) of the D&S Regulations pre-empts the TRA from using Brazilian costs and prices because these costs and prices are not "substantially determined by market forces."[50] Caterpillar misreads Regulation 13(6).

47. Regulation 13(6) defines the phrase "substantially determined by market forces" for the purpose of Regulation 13. That phrase is used in Regulations 13(2) and (3). Regulations 13(2) and (3) concern situations where prices and costs in the exporting country (i.e., China) are not "substantially determined by market forces." It does not concern prices and costs in the representative country (i.e., Brazil). Caterpillar thus errs in law.

48. In any event, Caterpillar also errs in fact. For instance, Caterpillar does not understand what market forces are when it claims that prices and costs in Brazil are not "substantially determined by market forces" because of the scale of Excavator manufacturing production.[51]

49. Second, Caterpillar claims that its Brazilian entity "did participate in the Investigation within the deadline set by the TRA."[52] This is another denial of facts. On 20 February 2024, the TRA invited Brazilian Excavator manufacturers to come forward by 1 March 2024.[53] Caterpillar did not register its interest in the Investigation until 13 December 2024. That is nine months after the deadline for Caterpillar's Brazilian entity to come forward lapsed.[54]

50. Third, Caterpillar reiterates that the TRA should adjust the benchmark steel cost that the TRA used by deducting "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.[55] That is still[56] wrong.

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[48] USDOC, Memorandum: China's status as a non-market economy, 26 October 2017, p. 1.

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

[50] Caterpillar, Response, para. 53.

[51] Caterpillar, Response, para. 53.

[52] Caterpillar, Response, para. 54.

[53] TRA, AD0047, Pre-sampling questionnaire (Brazilian producers).

[54] Caterpillar, Registration of interest.

[55] Caterpillar, Application, para. 90; Caterpillar, Response, para. 55.

[56] JCB, Comments on applications for reconsideration, para. 59.

51. Caterpillar does not attempt to – because it cannot – rebut JCB's explanation that it would be absurd to make these adjustments because the benchmark that the TRA used is for Brazilian domestically produced steel.[57]

52. Caterpillar's ground 9 should thus be rejected.

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

53. With ground 10,[58] 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.

54. In the Response, Caterpillar claims that JCB relies on the World Trade Organization ("**WTO**") Panel Report in *US – Oil Country Tubular Goods* ("***OCTG***") *(Korea)* to allege a violation of WTO law.[59] Caterpillar errs.

55. JCB referred to *US – OCTG (Korea)* in a single footnote to explain the interpretation of Article 2.2.2 of the WTO *Anti-Dumping Agreement*.[60] That interpretation confirms that Caterpillar misinterprets and misrepresents Article 2.2.2.[61]

56. Caterpillar further claims that JCB did not rebut its claim that the TRA should have used adjusted costs of production.[62] That is incorrect.

57. In paragraphs 61 to 63 and footnotes 62 to 71 of its comments on Caterpillar's application for reconsideration, JCB explained in detail why Caterpillar's claim (a) is wrong under UK and WTO law; and (b) goes against USDOC and Commission practice.

58. Caterpillar's ground 10 should thus be rejected.

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

59. With ground 11,[63] Caterpillar claims that the TRA erroneously made PMS cost "adjustments to every excavator component … regardless of its share in the costs."[64]

60. In the Response, Caterpillar claims that the TRA did not assess the significance of each individual input raw material in the cost of production in the context of making price adjustments.[65] According to Caterpillar, the TRA's guidance on PMS "was clearly not"

[57] JCB, Comments on applications for reconsideration, para. 59.

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

[59] Caterpillar, Response, para. 58.

[60] JCB, Comments on applications for reconsideration, footnote 62 to para. 61.

[61] JCB, Comments on applications for reconsideration, paras. 61-63.

[62] Caterpillar, Response, para. 60.

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

[64] Caterpillar, Application, para. 101.

[65] Caterpillar, Response, paras. 64, 66, 68-69.

intended to permit the TRA to make cost adjustments without assessing the significance of each individual raw material.[66] Caterpillar errs.

61. First, the guidance provides guidance. It is not the law. Regulation 13 of the D&S Regulations sets out the law. Nowhere does Regulation 13 provide or imply that the TRA must assess the significance of each individual input raw material.

62. Second, in any event, nothing in the guidance supports Caterpillar's claim that the TRA should have assessed for each individual input raw material whether it had a material impact on cost. That is only logical: it would be unreasonable to require the TRA to do so given the number of components in a product such as an Excavator.

63. Instead, the guidance provides that the TRA "should use its judgement on what constitutes a significant cost or profit element in light of the circumstances of the case."[67] The TRA did exactly that, as it found that (a) costs for tax, energy, land, and finance were not "significant;"[68] and (b) costs for raw materials were significant because they have "a material impact on costs."[69]

64. In the Response, Caterpillar also claims that the TRA found that raw materials that account for less than 5% of total production costs are insignificant so that the TRA could not make PMS adjustments to these costs.[70] Caterpillar misrepresents the TRA's finding.

65. The TRA did not state or even imply that raw materials that account for less than 5% of total production costs are insignificant. To the contrary, the TRA stated that the 5%-threshold did not work in the context of the Investigation. The paragraph cited by Caterpillar reads:

> "With respect to the data requested by the TRA, the TRA originally requested cost data for "all purchases of materials where the material type accounts for over 5% of total cost to make and sell during the POI (1% for energy)". This request led to limited information being received due to the complexity of an excavator, as demonstrated by the extensive nature of the original cost to make breakdown provided by the Liugong Group. The TRA therefore requested an aligned cost to make breakdown from the applicant, the third country benchmark producer and the sampled exporters. The purpose of this was to group together cost components to enable to TRA to obtain a better understanding of the costs making up an excavator and, ultimately, make adjustments where appropriate."[71]

66. Caterpillar's ground 11 should thus be rejected.

[66] Caterpillar, Response, para. 71.

[67] TRA, Particular market situation and costs adjustments, April 2024.

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

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

[70] Caterpillar, Response, para. 72.

[71] TRA, AD0047, Final determination, para. 380.

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

67. With grounds 12,[72] 13,[73] and 14,[74] 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.

68. In the Response, Caterpillar claims that JCB did not rebut "the substance" of its grounds of appeal and reiterates its grounds.[75] JCB disagrees.

69. As JCB explained in paragraphs 70-72 of its comments on Caterpillar's application for reconsideration, Caterpillar's grounds are baseless:

- Contrary to Caterpillar's claim, the TRA engaged with Caterpillar's arguments in the Investigation (and even made some adjustments in Caterpillar's favour).
- Caterpillar fails to meet its burden of proof for a reconsideration process. Nothing in Caterpillar's claims suggests, let alone demonstrates, that the TRA did not act reasonably in devising and applying its PMS cost adjustments.
- In any event, the TRA enjoys a wide margin of discretion in deciding, within the boundaries of the Regulations, on the methodology it finds most appropriate under the given circumstances. This is necessary because of the complexity of the economic and political situations which the TRA has to examine.

70. Caterpillar's grounds 12, 13, and 14 should thus be rejected.

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

71. With ground 15,[76] 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,[77] Caterpillar claims that the TRA erred in its price analysis of imports of Chinese Excavators.

72. In the Response, Caterpillar purports to address JCB's explanations that rebut Caterpillar's claims.[78]

73. First, Caterpillar continues to complain about the data the TRA used to make its volume analysis,[79] but it ignores that, no matter what data the TRA would have used, Chinese Excavator imports increase significantly over the injury period. Caterpillar does not claim otherwise and, as a result, its claim is inoperative.

74. Caterpillar refuses to acknowledge that, in fact, the TRA based its volume analysis on (a) country of dispatch data; (b) HMRC raw customs declaration data (i.e., country of origin

[72] Caterpillar, Application, paras. 104-105.
[73] Caterpillar, Application, paras. 106-110.
[74] Caterpillar, Application, paras. 111-120.
[75] Caterpillar, Response, para. 77.
[76] Caterpillar, Application, paras. 121-129.
[77] Caterpillar, Application, paras. 130-132.
[78] Caterpillar, Response, paras. 80-90.
[79] Caterpillar, Response, paras. 80-81.

data); and (c) confidential market data supplied by JCB. The TRA's volume analysis is thus robust.

75. What is more, the TRA even gave "due consideration" to Caterpillar volume data,[80] whereas the TRA should have disregarded this data because Caterpillar made the strategic decision to sit on that data for 13 months.

76. Second, Caterpillar claims that JCB wrongly stated that the TRA found that JCB's sales, production, capacity, and capacity utilisation indicate injury.[81] That is factually wrong. The TRA found that:

> "The following factors showed improving developments in absolute terms while in relative terms indicate that UK industry has suffered injury:
>
> • Sales: …
>
> • Output and production capacity utilisation: …"[82]

77. Third, Caterpillar repeats its claim that JCB's losses do not indicate injury.[83] The TRA already rejected this claim.[84] It remains unclear how, in Caterpillar's view, JCB's losses can indicate anything but injury.

78. Fourth, Caterpillar repeats its claim that JCB's decrease in market share does not indicate injury.[85] According to Caterpillar, JCB's argument that a decrease in market share indicates injury is undermined by an increase in sales.[86] Caterpillar forgets that market shares are a function of consumption.

79. Fifth, Caterpillar "observes" that JCB did not address its claims about JCB's negative cashflow and employment. To recall, the burden on proof is on Caterpillar, not JCB. JCB only seeks to assist the TRA. For the avoidance of doubt, Caterpillar's claims are wrong:

- JCB's negative cashflow is not "a sign of the absence of material injury."[87] JCB's negative cashflow shows that, due to price pressure from dumped Chinese Excavators, including those dumped by Caterpillar, JCB is forced to sell below cost. It is thus an indicator of injury.

- JCB's decreased employment for UK sales is not "simply a function of an incorrect allocation of labour by sales turnover."[88] As the TRA explained, JCB used a "reasonable approach" to split employment into employment for UK and for export sales.[89] As all Excavators are made on the same lines regardless of their sales destination, apportioning based on production volume is reasonable.

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

[81] Caterpillar, Response, para. 83.

[82] TRA, AD0047, Final determination, para. 720 (emphasis added).

[83] Caterpillar, Response, para. 84.

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

[85] Caterpillar, Response, para. 85.

[86] Caterpillar, Response, para. 85.

[87] Caterpillar, Response, para. 86.

[88] Caterpillar, Response, para. 86.

[89] TRA, AD0047, Final determination, paras. 617-618.

80. Sixth, Caterpillar claims that the "salient" issues in its claims about undercutting are unaddressed. These purported salient issues are that:

- Table 11 in the Original Decision reports undercutting margins that are not the same as those in paragraph 716 of the Original Decision.[90] This claim is inoperative as all margins show significant undercutting.

- The TRA did not analyse a "causal link" between UK industry and Chinese import prices in conducting its price suppression analysis.[91] Caterpillar confuses the price suppression analysis under Regulation 32 of the D&S Regulation with the causation analysis under Regulation 35. The TRA correctly separated these analyses. In any event, the TRA found that price suppression is caused by the prices of dumped Chinese Excavators, including those dumped by Caterpillar.[92]

81. Seventh, Caterpillar claims that JCB did not provide explanations or citations for why the TRA should not use the customs value of Caterpillar Excavators. That is wrong. Footnote 108 to JCB's comments on Caterpillar's application for reconsideration refers to Section 1.2(a) of JCB's comments, which contains nine paragraphs explaining why Caterpillar is wrong.

82. Caterpillar's grounds 15 and 16 should thus be rejected.

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

83. With ground 17,[93] Caterpillar claims that imports of Chinese Excavators did not cause material injury to JCB. With ground 18,[94] Caterpillar claims that any injury to JCB was caused by factors other than imports of Chinese Excavators.

84. In the Response, Caterpillar claims that JCB does not engage with Caterpillar's claims on injury and non-attribution.[95] Where JCB did not engage, JCB did so because Caterpillar's pettifoggery does not call into question the reasonableness of the TRA's findings, which is what the reconsideration process is for. These claims, like so many of Caterpillar's claims, are thus inoperative.

85. The TRA found that dumped imports of Chinese Excavators, including those dumped by Caterpillar, cause injury to the UK Excavator industry because:

- As concerns injury and causation, as Caterpillar summarises, "the volume of Chinese excavator imports more than tripled from 2019-2020 to the POI, Chinese excavators significantly undercut, undersell and suppress the prices of the UK industry, and as a result the UK industry continued to be forced to sell below cost."[96]

[90] Caterpillar, Response, para. 88.

[91] Caterpillar, Response, para. 88.

[92] TRA, AD0047, Final determination, paras. 559-565.

[93] Caterpillar, Application, paras. 133-137.

[94] Caterpillar, Application, paras. 138-155.

[95] Caterpillar, Response, para. 92.

[96] Caterpillar, Response, para. 92.

These findings confirm that the TRA's conclusions on injury and causation are robust.

- As concerns non-attribution, Caterpillar takes issue with the TRA's conclusion that imports from South Korea were not the cause of injury to the UK Excavator industry because imports from the sampled Chinese producers were priced lower than South Korean imports.[97]

  Caterpillar wants the TRA to disregard import price data from the sampled Chinese Excavator producers, which only concerns Excavators, and instead use import price data that also includes out-of-scope Excavators. This is absurd.

86. Finally, Caterpillar takes specific issue with JCB not responding to Caterpillar's claims that injury was caused by interest payable and foreign currency losses.[98] That is because:

    - The TRA has verified all JCB's data when reaching its conclusion that JCB is materially injured by dumped Chinese Excavators, including those dumped by Caterpillar, and not by foreign currency losses or interest payable.

    - Caterpillar's claims are, once again, inoperative because they cannot affect the TRA's conclusions. Even if one were to entirely disregard foreign currency losses and interest payable, JCB would still be lossmaking and thus injured.

    - In any event, the interest payable by JCB is a consequence of the injurious impact of dumped Chinese Excavators, including those dumped by Caterpillar. The level of JCB's interest costs is negatively affected by its inability to turn a profit due to unfair competition.

87. Caterpillar's grounds 17 and 18 should thus be rejected.

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

88. 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.[99]

89. In the Response, Caterpillar reiterates its claim that the TRA can analyse a price undertaking offer from Caterpillar in the reconsideration process, even though Caterpillar did not make an offer during the Investigation. That is wrong.

90. As JCB explained, paragraph 23(1) of Schedule 4 to the Taxation (Cross-border) Trade Act 2018 ("**Act**") provides that at the time the TRA recommends the imposition of anti-dumping duties in the sense of paragraphs 17(3) or (4) of the Schedule 4 to the Act, the TRA may also recommend the acceptance of a price undertaking. Paragraphs 17(3) and (4) apply "where the TRA makes a final affirmative determination."

91. The TRA made a final affirmative determination in May 2025. Caterpillar did not make a price undertaking offer before the TRA's final affirmative determination. In this

[97] Caterpillar, Response, para. 95.

[98] Caterpillar, Response, para. 96.

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

reconsideration process, the TRA cannot now consider – let alone accept – a price undertaking offer.

92. Considering, let alone accepting, a price undertaking offer from Caterpillar would, in addition to violating the Act, incentivise exporters to copy Caterpillar's tactical decision of sitting out an anti-dumping investigation before relitigating the investigation in the reconsideration process and, ultimately, potentially grant them the favour of a price undertaking. The TRA should firmly oppose this behaviour.

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