



UK TRA Anti-Dumping and Anti-Subsidy Investigations:  
Certain Excavators from the People's Republic of China  
(AD0047 and AS0046)

**Comments of the CCCME**

Submitted on Behalf of  
China Chamber of Commerce for Import and Export of  
Machinery and Electronic Products  
("CCCME")

**1 August 2024**



## Comments of the CCCME

### I. INTRODUCTION

- [1] As mandated by the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (“CCCME”)<sup>1</sup>, we hereby submit the CCCME’s Comments concerning key elements of the UK Trade Remedies Authority (“TRA”) anti-dumping and anti-subsidy investigations concerning Certain Excavators exported from the People’s Republic of China (denoted as investigations AD0047 and AS0046, respectively). These CCCME Comments shall apply equally as regards the common injury and causation elements of both investigations.
- [2] The Notices of Initiation of these investigations were published in the TRA’s public files for these investigations on 15 November 2023. The CCCME timely submitted, on 29 November 2023, its registration of interest in both cases. In that context, the CCCME responded on the several substantive issues raised in the TRA Registration Form and further concluded that, “CCCME reserves the right to present its views on the absence of injurious status of UK producers of the like goods, absence of causal link between any such alleged injury and imports of the goods concerned from China and other elements of the present investigation such as the product scope subject to the investigations, PCN structure, absence of particular market situation or subsidisation to the Chinese industry of the goods concerned, once more information is available to it.”
- [3] The CCCME additionally responded to the TRA’s respective investigation Questionnaires for Contributors. As regards the injury and causation issues commonly raised in these Questionnaires, the CCCME’s substantive comments were identical. Central to the CCCME’s comments overall was its strong criticism of multiple defects in the Applicant’s methodology and the insufficiency of the data set out in the non-confidential version of the Application as regards the JCB allegations of injury and of causation thereof by the imports from China. CCCME highlighted, *inter alia*, that, “the evidence and indicators of injury submitted by the Applicant [are] unsubstantiated and speculative” and gave specific examples of these defects.
- [4] As regards causation, the CCCME’s Questionnaire reply noted several specific “other factors” which were more likely the actual and primary cause of any negative JCB economic performance during the specified injury period. CCCME concluded in this regard that, “other known factors which include but are not limited to the above-mentioned provide a more credible explanation of the negative trend that the Applicant

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<sup>1</sup> The PoA provided by the CCCME to East & Concord Partners and Searles & Associates was duly submitted to the TRA on 29 April 2024.



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alleges to have suffered during the investigation period.” Finally, in response to the respective Questionnaires’ request for any other information which may be relevant to the TRA’s investigation, the CCCME replied, “On behalf of its members, CCCME is willing to provide further information when requested and reserves its right to comment further in the course of this proceeding.”

- [5] Indeed, the present CCCME Comments further elaborate the CCCME’s concerns and contentions as initially set out in its Registration Form and Questionnaire Reply. Beyond elaborating on the evidentiary and other serious deficiencies of the Application, the CCCME also responds herein to JCB’s more recent “Comments on interested parties’ comments and questionnaires”, published in the respective AD and AS public files on 25 June 2024.
- [6] As a final introductory remark, it is important to highlight that the excavator market is not as simple as the Applicant would have the TRA believe. These are expensive and complex machines that are needed for important infrastructure and other construction projects, often government supported, and are subject to strict UK regulatory requirements not least operator safety and emissions regulations. Moreover, while some excavators are sold as standard models, many others are specially configured to the customers’ specific project requirements. Such special orders may involve differences in the travel system, work equipment, cabin and electrical systems, leading to variations in price and also comparability. Such modifications also benefit local employment as they are generally carried out by specially trained fitters<sup>2</sup> at the UK dealership. Even if main components, such as power and hydraulic systems, are the same for a particular model, these only account for approximately 50% of the overall cost – there are still important differences in design and configuration for structural components and electrical systems.
- [7] Even more importantly, these excavators are not purchased based simply on lowest price, as the Applicant contends. Customers normally take purchase decisions based on an important mix of factors, notably quality, performance, after-sales service capability and finally price. And price assessment is not simply having regard to the sticker price but also assessing the operational and maintenance costs and residual value of the excavator as and when it’s eventually re-sold<sup>3</sup>. It’s thus not simply sticker price competition but overall cost competition and the Chinese producers are very well aware of this and have

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<sup>2</sup> These are often major modifications carried out locally by skilled workers. For example, modifications for full demolition specifications can entail inclusion of heavy-duty bucket tipping ram guards, strengthened side skirt protection, FOPS cab guard protection, boom and dipper arm check valves, and ‘boxing ring’ style cables slung on poles on the machines’ upper structure to provide fall protection.

<sup>3</sup> A large proportion of UK excavator sales, around [39-41]%, are made to rental companies (CEA, Construction Equipment Report 2023, p. 18) which typically purchase a number of new excavators at one time to periodically renew/upgrade their rental fleet. At these times they may also sell off their older excavators, which are attractive to second-hand buyers if after-sales services and maintenance costs are good.



been focusing on building UK customer confidence on this basis. It's therefore important to look carefully behind the Applicant's contentions in all these regards.

## II. CCCME COMMENTS

### 1. The Alleged Particular Market Situation is Not Substantiated

- [8] Article 7(4) of the UK Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("UK Regulations") lists three situations that can be defined as a particular market situation (PMS) as referenced in Article 7(2)(b): a) prices are artificially low; b) there is significant barter trade; c) prices reflect non-commercial factors. On this basis the Applicant contends that the normal value of Chinese excavators should be constructed using undistorted costs and profits from other sources because the PRC market is distorted by a PMS, specifically referencing "*prices are artificially low*" and "*prices reflect non-commercial factors*".
- [9] CCCME submits that the Applicant's allegations of PMS are not adequately substantiated, for the following reasons.
- [10] First, the WTO Appellate Body in *US - Countervailing Measures* indicates that the existence of price distortion resulting from government intervention has to be established and adequately explained. That is to say, it is firstly the Applicant and potentially the TRA who bear the burden of proof to demonstrate the existence of PMS. However, for the Applicant's part, JCB does not provide adequate evidence to substantiate its claim of PMS. The Application merely states that the PMS stems from artificially low prices and prices that reflect non-commercial factors<sup>4</sup> and provides only speculation that the Chinese excavators or input market is the subject of actual intervention via governmental power or mandate.
- As regards the frequent reference to China's 14<sup>th</sup> Five-Year-Plan (14<sup>th</sup> FYP) by Applicant to assert governmental control on the excavator market, the Applicant wrongly interprets the nature and legal position of 14<sup>th</sup> FYP. In nature, the 14<sup>th</sup> FYP should be read only as a guidance document which positively pictures the future development, not as a binding dictate intertwined with state compulsory forces. The Chinese government neither attempts to fulfil the economic goals set up in 14<sup>th</sup> FYP via compulsory national instruments nor imposes punishment on those individual producers or sectors which do not satisfy the FYP objectives.
  - As regards the Applicant's reference to FYP in the construction machinery industry to demonstrate that the excavator industry is under intensive state regulation, the

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<sup>4</sup> Appendix E.2.1.001: Methodology for calculating normal value



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Applicant only lists so-called “market distorting objectives” (for example: optimizing and upgrading the construction machinery industry, which actually is a positive and very general policy goal which might be put forward by any government) in the Machinery Plan, without providing any solid evidence to demonstrate that the GOC has materially exercised any powers to intervene in the market. The Machinery Plan only indicates that a certain sector is encouraged by the government plan. Clearly, encouragement does not entail any compulsory binding force or actual governmental intervention to influence market forces in the excavators sector.

- As regards the Applicant’s allegation of CCP control over decisions and operations in private companies, the Applicant wrongly interprets the position and power of the CCP in the management of these companies. The structure of the company, as well as the decisive power of nomination, appointment and removal of key members and business operations, remains in the board members and shareholders, the practice of which aligns with the Chinese Company Law. The CCP can by no means play a role in the company’s decision-making process and must carry out its activities in accordance with the charter of the CCP.

[11] Second, Article 7(2) of UK Regulation notes that the normal value of the goods concerned shall not be determined based on the comparable price “*where such sales do not permit a proper comparison between the like goods destined for consumption in the exporting country or territory and the goods concerned.*” “ In relation to this, CCCME notes that the TRA's practice has so far involved not only a determination of the existence of a PMS but also the analysis whether or not the PMS affects the prices and costs of the goods concerned. For example, in its aluminum extrusions case, when assessing allegations of a PMS, the TRA<sup>5</sup> :

- 1) examined whether the PMS allegations were specific in the way they affected the market for the goods concerned or the market for the key cost inputs;
- 2) analysed the supporting evidence to ensure it was specific to the aluminum extrusions industry or cost area, and was within a reasonable time period of the POI;
- 3) examined whether the alleged distortions have either a negligible or material impact on the costs and final prices of the goods concerned.

[12] Even if, *arguendo*, a PMS would exist (with which the CCCME disagrees), the Applicant would still need to provide further evidence to prove the PMS actually affects the prices and costs of the goods concerned. However, the Applicant has failed to establish that the alleged PMS in China has in fact affected the prices and costs of the excavators.

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<sup>5</sup> Final Determination, Case AD0012, Investigation into alleged dumping of aluminium extrusions from the People’s Republic of China, dated 16 December 2022, Para.144



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[13] In summary, the Applicant has failed to provide sufficient evidence to substantiate the actual existence of PMS in China's excavator market and subsequently affects the price comparability. The CCCME hereby requests the TRA to fully reject the Applicant's allegation of PMS and to use the relevant data of the Chinese exporting producers to calculate the dumping margin.

## **2. Need for Supplemental Data and Significantly Greater Transparency Relating to the Non-Confidential Version of JCB's Injury/Causation Claims**

[14] The CCCME's prior submissions as regards the issues of injury/causation centred on two main points, first the lack of transparency and/or bias in the methodology applied by the Applicant/JCB in providing data ostensibly in support of the claims set out in its Application and, second, any injury experienced in the latter part of the injury period under investigation was not mainly caused by the imports from China (i.e., causation of any injury allegedly suffered by JCB was predominantly caused by "other factors").

[15] The CCCME presumed at the time of submitting its initial comments that important supplemental data would be submitted by the Applicant in order to provide more transparency and to establish an adequate factual foundation in support of the injury/causation allegations set out in the Application. However, while JCB has seen fit to criticise the initial CCCME and cooperating exporters' submissions, JCB itself has failed to provide any further transparency and supplemental data, thus leaving a huge question mark over both the soundness of the Application and JCB's request for imposition of AD and AS duties on the imports of certain excavators from China.

[16] Indeed, JCB's Application for this investigation appears to be largely a smoke and mirrors attempt at securing trade protection, comprising primarily bluster without providing the essential underlying objective economic data to support its various injury and causation allegations. When confronted with serious counterclaims by the CCCME and other individual interested parties, JCB merely responds with an over-the-top reply that, "[T]hese [CCCME] claims are baseless" and then repeats, again and again, its central but unsupported claim that all alleged injury suffered during the injury period was caused solely by a "flood" of low-priced imports from China. JCB appears to believe that merely numerous repetitions, without adequate factual support, might eventually cause someone to believe that its claim is true. But the TRA certainly cannot accept this tactic and notably in the absence of adequate supporting facts. Indeed, an Application based on such a poor foundation of relevant factual evidence, which situation has not improved since the initiation of the excavator investigations, should have been rejected by the TRA, but now it is the TRA's responsibility to sift through the JCB bluster to determine what if any reliable evidence exists, and to carry out an objective assessment based solely on reliable factual evidence.



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- [17] The CCCME and cooperating producers represented by the CCCME consider the JCB's specific claims and general approach to these investigations to also be seriously lacking the transparency that is essential in international trade remedy investigations such as these, with the direct consequence being that, to date, the CCCME's and cooperating exporting producers' rights of defence are being seriously undercut. Article 6 of the WTO ADA and Article 12 SCM establish clear evidentiary rules as well as a framework of transparency, procedural and due process obligations that must be respected in all investigations and reviews. These provisions taken together are intended, *inter alia*, to ensure that interested parties can properly defend their interests in these investigations. As the specific language of these provisions, and notably Article 6.2 ADA, creates an obligation on the investigating authority to provide opportunities for interested parties to defend their interests, the CCCME thus requests the TRA to facilitate the CCCME's transparency requests herein and to insist on JCB providing substantially greater transparency in its non-confidential filings as regards all key elements of its claims and notably relating to the trends and components of the respective injury indicators, as indicated herein.
- [18] Clearly, no-one is requesting disclosure of legitimate business sensitive JCB data, but JCB must thoroughly rework its whole approach to its non-confidential submissions. Specific information points and remedial suggestions are set out in para. 19 and corresponding footnotes below. And where the data in question is allegedly subject to copyright (e.g., obtained from an external expert report), a JCB request to the expert/publisher for permission to disclose solely for purposes of these UK Government international trade investigations should be made to enable disclosure in AD0047 and AS0046. Where the data in question is truly JCB business sensitive data, JCB should in each instance newly provide an adequate alternative non-confidential presentation (e.g., notably to provided tightly ranged figures in conjunction with indexation) in order that the CCCME and other interested parties can reasonably gauge the trends, nature and significance of the non-disclosed confidential data. JCB has thus far failed to provide adequate transparency in these regards.
- [19] The CCCME is particularly concerned, for example, that inadequate or no data at all has been provided by the Applicant in its non-confidential filings concerning multiple factors bearing directly on assessment of injury and causation thereof. The CCCME sets out below the data that should be provided by JCB, if necessary upon request by the TRA, to ensure that the CCCME can properly exercise its rights of defence (in each instance, the data needed should cover whole years 2019 - 2022<sup>6</sup> and the POI):

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<sup>6</sup> CCCME notes that JCB in its Deficiency response dated 3 May 2024 ("Tables, Annex 11 – Injury") sets out data including its injury indicators on a split-year basis. However, for comparability and analytical purposes and as the great majority of financial and economic data relevant to an objective TRA assessment and to the CCCME's exercise of its rights of defence is compiled and available solely on a calendar year basis (e.g., JCB Annual Accounts, the industry performance reports of the British Construction Equipment Association ((CEA)) as well as



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- annual overall UK market sales (consumption) of the in-scope excavators<sup>7</sup> covered by these investigations (in weight, units and value);
- total UK industry (JCB plus Komatsu)<sup>8</sup> sales of the excavators covered by these investigations (in weight, units and value);
- respective UK market shares (absolute market shares, not just indexing of changes) of the UK excavator industry (JCB plus Komatsu) and of the major country suppliers to the UK market for covered excavators<sup>9</sup>;

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independent expert reports on the UK construction equipment industry, etc.), the CCCME requests that, except for the POI of 1 July 2022 - 30 June 2023, all data and related analysis/commentary should relate to the respective whole calendar years covered by the injury period, i.e., 2019 - 2022 – just as set out in JCB’s formal Applications for these investigations.

<sup>7</sup> Total UK market sales (consumption) in absolute numbers is not provided in the Application (Table 9), only indexing. Total UK consumption is of fundamental importance to analysis of the UK market and cannot be considered JCB business sensitive data. Moreover, CCCME understands from the Application that the investigation scope excludes lower-operating weight excavators, such as so-called “mini excavators”, but notes that all data submitted by the Applicant concerning import volumes and value from China cover both in-scope and, as confirmed in the Application, “significant volumes” of out-of-scope excavators and further provides no objective basis or explanation for separating out the respective volumes/values. On the other hand, the CCCME understands that the UK construction equipment industry and independent expert reports typically distinguish a category of “crawler excavators” from smaller (denominated “mini-midi”) excavators and provide reliable sales, production, market share, etc. data per corporate supplier (UK producers and third country exporters) for these respective market indicators. The CCCME thus requests that JCB’s injury indicator data which presently in part mixes “in-scope” and out-of-scope excavators for purposes of injury/causation analysis and notably for analysing import volumes and values and hence prices, be based rather on the standard UK industry category “crawler excavators” as consistently utilised for market trends analysis in the UK construction equipment sector itself. If not, clear explanation is therefore requested as to how the Applicant calculates in-scope excavators for purposes of these investigations vis-à-vis the category of “crawler excavators” as normally used within the British construction equipment industry. This could also help explain apparent divergences between the UK construction equipment association data and the Applicant’s figures on certain key market trends, e.g., relating to excavator sales and market shares.

<sup>8</sup> Given the major importance in the UK industry of the production/sales of Komatsu, it is essential for the CCCME to be provided with the actual total UK industry sales in units/value, which can be provided in non-confidential form by ranged figures albeit in tight ranges (see also fn. 9 below) in addition to indexing.

<sup>9</sup> CCCME notes that JCB in non-confidential Appendix B.1.001 to its Application indicates that its market share data cannot be summarised and disclosure would constitute a breach of copyrights. This is simply misleading and unacceptable. This fundamental data is certainly not confidential for the Applicant and in any event is susceptible to meaningful non-confidential summary (ranged absolute values) and moreover is essential for CCCME to exercise its rights of defence in these TRA investigations. CCCME notes that sales and market share data per supplier per equipment segment is provided in certain independent expert reports so is not JCB confidential in itself. In any event, the market share data as requested by CCCME is not in fact commercially sensitive at the total country levels (total UK industry and total per main supplier country) and must at least be disclosed in a small range manner in addition to indexing. More generally and as the TRA will know, industry-level production, production capacity and capacity utilisation, as well as sales volume and market shares, average unit sales price and unit cost of production, and pre-tax profitability and investments, are all routinely meaningfully and necessarily disclosed in non-confidential submissions in EU trade remedy investigations by means of a tight range indication (e.g. production and sales in a 5% range and profitability within a 2% range for a specified year) in addition to appropriate indexing. Further, the CCCME suggests that, if necessary, JCB should request an exemption from any applicable copyrights expressly for purposes of very limited but necessary disclosure in these UK Government trade remedy proceedings. This permission would likely be granted given that it would entail disclosure of only several specific figures included in the expert report for the respective year, of course with



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- overall UK industry production<sup>10</sup> of covered excavators (weight, units and value);
- imports of covered excavators from each major supplying country (weight, units and value);
- also, for each of the above indicators, at least best estimates should be provided on the breakdown of the totals between the six PCN size categories<sup>11</sup>;
- trends of the cost of production (COP) overall per unit and of major inputs (notably cost of main purchased raw materials/components and of energy)<sup>12</sup>, as well as the overall per unit cost of sales (COS)<sup>13</sup> for covered excavators;
- as regards price data, CCCME understands from its members that JCB prices are generally 5-15% lower than the prices of the other UK producer, Komatsu (which appears to be suffering no injury at all, quite the contrary), so requesting an average UK industry price indication per unit/PCN category would tend to distort assessment of the Applicant's/JCB's specific situation and causation thereof. Nonetheless, as JCB has already included data on its own pricing (indexed only) in its Application, CCCME would request that JCB additionally provide actual price data in non-confidential form for itself and the average for the UK industry, using ranged figures, again in fairly tight ranges<sup>14</sup>; and

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proper reference to the respective expert source. If need be, the TRA might assist by assuring full disclosure solely to the CCCME's legal counsel providing an NDA.

<sup>10</sup> See fn. 6 as regards appropriate non-confidential disclosure of, *inter alia*, total UK industry production. CCCME expressly requests the Applicant to provide UK total production figures in tightly ranged figures as well as indexing, relating to excavator sales by KG, by units and by value (per TRA deficiency specification). CCCME notes that JCB provided ranged unit and value sales figures in its pre-sampling questionnaire reply concerning the POI but in such broad ranges to make these figures useless as meaningful non-confidential disclosure.

<sup>11</sup> CCCME highlights that KG quantity data alone is inadequate because important changes in sales patterns, for example a change in marketing to focus on sales of larger-sized (heavier) excavators, can significantly impact an assessment based on KG trends alone. Thus production for the UK market and UK sales data on the unit basis and also broken out per the new six PCN categories needs to be provided in adequate non-confidential form.

<sup>12</sup> Adequate non-confidential disclosure and transparency concerning the evolution of COP over the fairly extraordinary years covered by the injury period of these investigations (when Covid/resultant major supply chain constraints in 2020 caused important price rises for components, the energy price crisis starting 2021 and peaking in 2022 caused by Russia's weaponisation of its energy exports and the Ukraine war plus related general spiralling inflation caused COP to rise hugely across most industries) is essential to disclose because of its direct impact on company profitability. This is especially important regarding JCB given that JCB is understood to be very dependent on imports of major components used in its excavator production and particularly components produced in Japan, these including larger engines, motors and pumps for hydraulics, transmissions and undercarriages. Effective exercise of CCCME rights of defence and an objective TRA assessment of causation of alleged injury in this same period cannot exist without adequate non-confidential disclosure of at least the specified COP elements. CCCME notes that the Applicant's deficiency questionnaire reply included COP and COS data (Annex 3) but its non-confidential version unacceptably provides nothing at all.

<sup>13</sup> COS should be extrapolated from the figures provided in the publicly available JCB annual global accounts.

<sup>14</sup> CCCME has noted that UK construction industry expert reports, specifically concerning "crawler excavators" (see fn. 7), appear to provide selected transaction prices per tons category per year, so JCB providing the requested industry level price data in a tight range as well as a UK industry average price per PCN category would be appropriate for objective TRA analysis and rights of defence purposes in these investigations.



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- profitability before tax (PBT)<sup>15</sup>, which is the standard indicator in other major trade remedy investigation jurisdictions such as the EU (China is not responsible for UK corporate tax rates and notably the major increase in UK corporate tax from 19% to 25% effective from April 2023 and which higher rate was applied already in the JCB 2022 annual accounts for calculation of deferred tax assets and liabilities<sup>16</sup>).

[20] The CCCME is confident that JCB remedying its data transparency deficiencies as requested above for purposes of protecting the CCCME's and cooperating Chinese exporting producers' rights of defence could be completed fairly quickly and would not delay the TRA's investigation schedule. Other interested parties including downstream users would certainly also benefit from the resulting significantly enhanced transparency relating to JCB's injury/causation claims. And to the extent that the TRA would itself receive certain additional data highly relevant to its assessment of injury and causation, the benefits would be clear. CCCME thus respectfully requests that the TRA fully support the CCCME's data transparency requests herein, if necessary by means of a deficiency procedure<sup>17</sup>.

### 3. Alleged Injury is Not Supported by the Applicant's Data

[21] With regard to the standard primary indicators of injury or not, the Applicant's allegations of material injury are not adequately substantiated and certainly are not borne out by what data has been provided by the Applicant. Indeed, all but one of the most important indicators are positive, i.e., confirming no material injury:

- Applicant's production and capacity utilisation increased significantly (23% and 24% respectively) over the injury period overall (temporary drops in 2020 and 2021 confirmed to be due to Covid-related own measures, very significant lost downstream customer orders and continuing component supply chain constraints mixed with rising raw material prices – see also below);

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<sup>15</sup> The Application does not specify whether its profitability data (indexed only) concerns before or after tax profitability, but the TRA questionnaire for producers specifies in Annex 11, and the JCB reply provides, profitability data (indexed only) for net operating profit and margin solely after tax (NOPAT). The CCCME identifies an important disparity in that the TRA questionnaire for exporters expressly requires the cooperating exporting producer to report profitability before as well as after tax (Table D-2). As profitability data deriving from these investigations and which is essential for fair injury determinations should enable comparability among interested parties subject to varying tax rates/regimes, CCCME requests that JCB additionally provide its profitability data before tax to both avoid potential local tax distortions and for consistency with trade remedy practice elsewhere, e.g., in EU trade remedy investigations. And as also indicated in fn 9, profitability data in non-confidential form should be provided in tight ranges of 2% as well as being indexed.

<sup>16</sup> JCB Directors' Report and Financial Statement for 2022, p. 18.

<sup>17</sup> See para. 17 herein concerning WTO ADA/SCM obligations on investigating authorities to ensure that interested parties' rights of defence are respected by, *inter alia*, the appropriate provision of meaningful non-confidential versions of data that is used for the investigation.



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- Total UK excavator industry sales followed the same strong positive trend, with an increase of 23% over the injury period (Application figures);
- Applicant's average sales price on the UK market increased by 14% over the injury period (Application figures) - the CCCME notes that while the UK inflation rate was higher in the same time period, as highlighted by the Applicant, the high inflation in the UK in this period clearly had nothing to do with excavator imports from China);
- The UK excavator industry's UK market share increased by 12% over the injury period (Application figures);
- Applicant's profitability rose strongly to 2021 (+26%) but then dropped in 2022/first half of 2023. While the causation of this single negative injury indicator is attributed by the Applicant solely to low-priced imports from China, the actual and predominant cause of the drop in profitability towards the end of the injury period is clearly in major doubt given the continuing significant impact on profitability of the energy price crisis due to the Russia/Ukraine conflict, high inflation, rapidly rising interest rates<sup>18</sup> and, not least, the serious downturn in the UK construction equipment market overall and for crawler excavator sales in particular (-9% and -18%, respectively) in 2023<sup>19</sup>. These "other factors" than imports from China were clearly the predominant cause of any profitability downturn in the POI – as elaborated in section 4. below.

[22] These comments of the CCCME regarding the alleged existence of material injury are necessarily limited due to the fact that the Applicant has failed to provide in the non-confidential version of its respective submissions an adequately meaningful indication of key data that JCB has submitted to the TRA in support of its allegations. The CCCME reiterates that numerous elements of additional data bearing directly and significantly on an objective determination of the existence of material injury or not, as fully explained in section 2. above, are still required from the Applicant in order for the CCCME and cooperating Chinese exporters to appropriately exercise their rights of defence in these investigations.

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<sup>18</sup> CCCME reserves the right to comment further on this profitability aspect of the injury allegations when the Applicant provides the requested greater transparency regarding, in particular, the trend of its COP and COS over the injury period – see also section 2. above.

<sup>19</sup> See "UK construction equipment sales fell by 9% in 2023", article published by CEA on 30 January 2024, indicating more specifically that crawler excavator sales fell by 18% in 2023 vs. 2022.



#### 4. The Alleged Injury is Caused by a Combination of Factors Other than the Imports from China

[23] As a general prefatory remark, it appears to the CCCME that the Applicant, JCB Heavy Products Ltd, is historically a loss-making company<sup>20</sup> and which, as regards crawler excavators<sup>21</sup> specifically, has had a relatively small market share in its own home/UK market ([10-12%]) for a number of years and notwithstanding that the number of UK excavator producers has dropped from four to two. In the UK market for crawler excavators, the market has historically been dominated by imports – and certainly not from China<sup>22</sup>. As will be elaborated below, an accurate picture of import trends is essential for assessing what significance, if any, has been played by imports from China.

[24] Moreover, JCB annually derives the great percentage of its total turnover, approximately two-thirds, from its export markets<sup>23</sup>. A significant percentage of its UK production goes to these export markets and its overall annual profitability or loss thus depends significantly on global and often diverse regional economic developments which impact the construction equipment markets in each of the national markets where JCB sells. Developments in certain very large JCB export markets, notably growth or contraction of the USA and China markets where the construction markets are very large, are indicated in the JCB annual reports as having a notable impact on JCB global results. JCB's publicly available annual Directors' Report and Financial Statements provide details in these regards for the years covered by the injury period. To the extent that these JCB annual reports refer to specific economic or other developments that are known to have definitely impacted the UK market, these will highlighted later in this section on "other factors" of causation.

##### (1) Import Substitution and Pricing

[25] JCB's Comments published 25 June refer to a "flood of Chinese Excavator imports" and it being "worse than expected."<sup>24</sup> To put the alleged "flood" into context, JCB then refers a possible increase in Chinese market share in the UK market (based on unit sales reported in pre-sampling replies) as set out in Table 2 of those JCB Comments, but then utterly

<sup>20</sup> Based on JCB annual accounts, profit/loss before taxation during the injury period was (in £'000): 2019, -14,755; 2020, -21,441; 2021, -7,594; 2022, -5; (accounts for 2023 to be published in September 2024).

<sup>21</sup> See fn 7 regarding the CCCME's request for use of the standard UK construction equipment industry category of "crawler excavators".

<sup>22</sup> E.g., in 2019, supplier company market shares in the UK crawler excavator market were reported, in descending order down to 1%, as: Hitachi (Japan), [16-18%]; Volvo (Sweden), [14-16%]; **JCB (UK), [10-12]%**; Caterpillar (US), [10-12%]; Komatsu (Japan/UK), [8-10%]; Doosan (S Korea), [7-9%]; Kubota (Japan), [6-8%]; Kobelco (Japan), [4-6%]; Case (USA), [4-6%]; Hyundai (S Korea), [2-4%]; Takeuchi (Japan), [1-3%]; **LiuGong (China), [0-2]%**; Wacker Neuson (German), [0-2%]; Bobcat (USA), [0-2%]; Liebherr (Germany), [0-2%].

<sup>23</sup> JCB annual reports indicate the percentage of total global turnover deriving from the respective JCB markets internationally, including breaking out the percentage from the UK or UK+Ireland market.

<sup>24</sup> JCB "Comments on interested parties' comments and questionnaires", para 39, submitted by unidentified legal counsel.

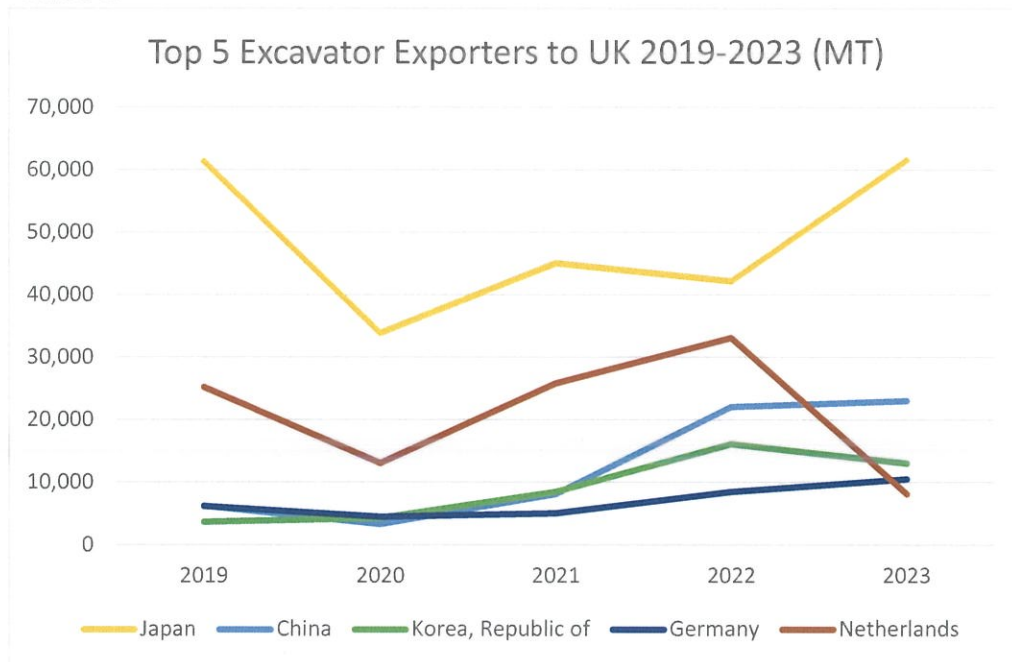


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fails in the non-confidential version of Table 2 to provide any corresponding market share indications whatsoever! As highlighted above in section 2, it is essential for rights of defence purposes for JCB to disclose its market share data in meaningful non-confidential form, specifically in tight range form regarding the absolute market shares of the UK industry and by exporting country, as well as by indexing.

- [26] International trade data does, however, provide important revelations concerning China exports to the UK vis-à-vis the exports from the actual major supplier countries. The international trade data thus also serves to severely undercut the causation allegations of JCB.
- [27] Table 1 below sets out the excavator<sup>25</sup> exports to the UK from the five largest individual supplier countries in 2023, based on ITC Trademap data (in MT). It can clearly be seen that exports from China were at a very low level in 2019<sup>26</sup> going into 2020 and then, when exports from the two largest exporters Japan and The Netherlands dropped dramatically in 2020 (presumably Covid effects), exports from China started increasing in 2021 and into 2022 to fill the gap and then stabilised in 2023. The drop in exports from Korea 2022-2023 and huge drop in exports reported from The Netherlands<sup>27</sup> 2022-2023 (from 33,090MT to 8,107MT) were together far larger than the exports from China 2022-2023. China's exports clearly and only very partially substituted for the major drop in exports from these two other individual exporting countries.

**Table 1**



<sup>25</sup> Like the trade data presented by JCB in its Application, the data presented herein by CCCME is based on exports under the HS heading 84295210 (“Self-propelled track-laying excavators, with a 360° revolving superstructure”), thus covering both in-scope and certain out-of-scope excavators.

<sup>26</sup> See fn. 22, *infra*, where Chinese market share in the UK market in 2019 is indicated to be [0-2%], i.e., legally negligible under Article 5.8 of the WTO ADA.

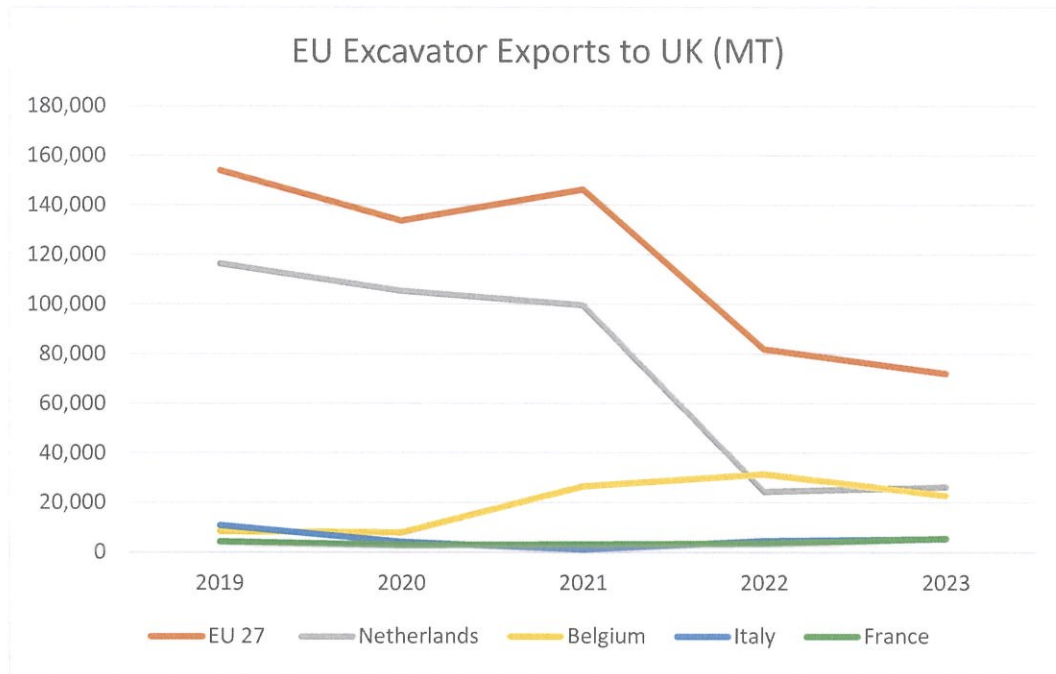
<sup>27</sup> Perhaps export sales from a collection of EU producers were exported to the UK vis Rotterdam.



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[28] To be added to the analysis and confirmation that Chinese exports only (partially) substituted export declines from much more important supplier countries, is the import trend into the UK from the EU as a whole. Table 2 below, based on Eurostat data, shows that from 2019 through 2023, total EU (EU-27) excavator exports to the UK decreased by 111,185 MT while, based on the above Table 1 data, Chinese excavator exports to the UK over the same period increased by only 16,814MT.

**Table 2**



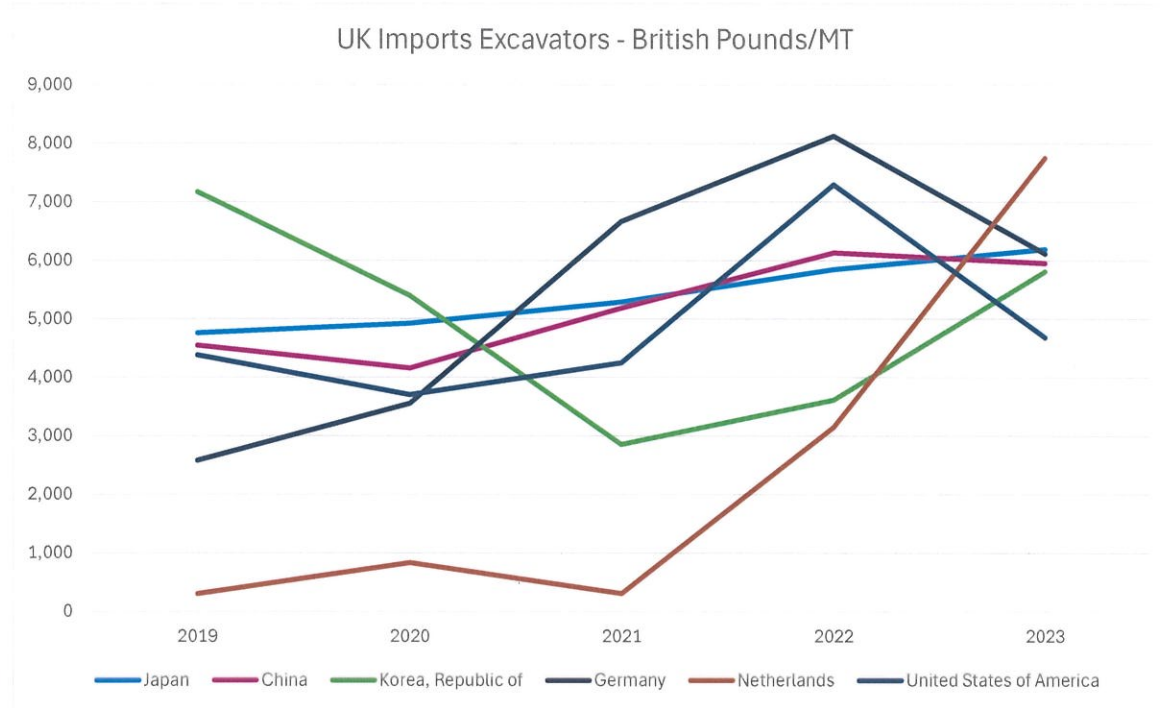
[29] As regards the Applicant’s claims of aggressive low-pricing of increasing imports from China being the only cause of its alleged injury, the trade data indicates otherwise. Table 3 below, based on ITC Trademap data, indicates that the average GBP/MT price of excavator imports into the UK from most of the major supplier countries shifted significantly over the economically and geopolitically tumultuous years covered by the injury period. However, Chinese along with Japanese excavator prices trended fairly closely, were clearly more stable over the period and were certainly not the lowest-priced. Prices of exports reported from The Netherlands, the single largest exporter to the UK after Japan up through 2022 (see Table 1), were substantially lower than the Chinese prices.

[30] From 2020 to 2021, Korean prices also moved significantly lower than Chinese prices and remained lower than Chinese prices up through 2023. In 2022, Chinese prices were also higher than the Japanese prices. In brief, while Chinese prices may have been competitive they were definitely not lower than the prices from much larger excavator exporters to the UK market. It can only be concluded that the Chinese pricing could not have been the sole cause of the alleged injury as claimed by the Applicant. Given the



magnitude of lower prices of higher volume exports to the UK, any injury from import volumes and prices would have been caused rather by other excavator exporters to the UK. The Applicant should look elsewhere for a culprit.

**Table 3**



[31] In short, neither the volume nor the price of excavator exports to the UK from China could have been a significant cause of the injury as alleged by the Applicant.

(2) Other Factors More Likely to Have Caused any Injury to the Applicant

[32] As indicated above in section 3, what little appears from JCB’s Application (non-confidential version) is that the Applicant’s microeconomic indicators across the injury investigation period are all positive except for the alleged downturn in profitability solely in 2022/POI (after very positive profitability growth 2019-2021). Pending CCCME receipt of meaningful non-confidential indications of, *inter alia*, COP/COS details which would bear directly on profitability, CCCME can only have regard to publicly available information about what may have happened in the UK economy that would have impacted JCB’s profitability. One small signal from the Application itself is that, compared to finance costs in 2019, the Applicant’s finance costs more than doubled in 2022 and stayed high in the POI.

[33] JCB’s own Annual Reports are helpful in highlighting other likely causative factors. To be clear concerning the causation of the serious downturn in JCB’s indicators relating to 2020, this was clearly the impact of the Covid-19 pandemic which, apart from the



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negative social effects, seriously affected industrial output, supply chains and sales globally – including in the UK. JCB temporarily closed a significant number of its factories and furloughed a proportion of its workforce in its respective markets including in the UK. In addition, “[G]rowth was impacted by specific local, regional and global political landscapes, creating a mixture of market expansions and contractions as follows: UK & Ireland -27%...”<sup>28</sup> The noted downturn in the UK/Ireland market is confirmed specifically relating to the UK excavator market by data that is set out in publicly available specialised UK construction industry reports. For example, in February 2021 it was reported that while Covid related effects caused the UK construction equipment market to drop by 24.5% in 2020 compared to 2019, UK unit sales of crawler excavators specifically dropped by a whopping 35.4% by comparison to 2019, to 3,900 units<sup>29</sup>.

- [34] Regarding 2021, the JCB annual report indicates that the UK construction market rebounded and global turnover increased significantly, but “growth was impacted by local, regional and global dynamics including significantly disrupted global supply chains and specific supply constraints.” Despite the turnover increase, continuing “supply chain pressures and increasing raw material prices resulted in a JCB operating loss of £6.9m”<sup>30</sup> (albeit less than in 2020). These figures of course relate to JCB global results, but JCB UK production and sales operations nonetheless would have had a significant impact on the global results. We leave it to JCB to provide more specifics whether its UK excavator production operations were impacted or not, or to what degree, by supply chain disruptions and increasing raw material prices<sup>31</sup>. The latter should be seen or not in the requested new data relating to JCB’s COP developments over the injury period.
- [35] Not to be forgotten, JCB’s UK operations specifically were significantly impacted also by very high UK inflation across the years of the injury period (24% increase), as confirmed by JCB itself in its Application<sup>32</sup>.
- [36] As regards specifically 2022 when it appears that JCB’s UK profitability fell significantly for the first time and was allegedly caused solely by low-priced imports from China, CCCME notes that specifically JCB’s UK/Ireland operations’ turnover increased significantly year on year, by £36,422,000<sup>33</sup>, so JCB had a good sales year in the UK including specifically for excavators. At the same time, however, it is apparent from JCB’s global accounts that JCB’s global cost of sales (COS) grew even more substantially year on year, which of course would have an important negative impact on profitability

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<sup>28</sup> JCB Heavy Products Ltd Directors’ Report and Financial Statements for the year ended 31 December 2020, p.2.

<sup>29</sup> “UK construction machinery sales in 2020”, Earthmovers Magazine, article of 1 February 2021 by Kyle Molyneux (citing statistics of Systematics International).

<sup>30</sup> JCB Heavy Products Ltd Directors’ Report and Financial Statements for the year ended 31 December 2021, p.2.

<sup>31</sup> See fn. 12, *infra*, concerning reported heavy JCB dependence on imports of major components, notably from Japan.

<sup>32</sup> Page 48 and fn. 69.

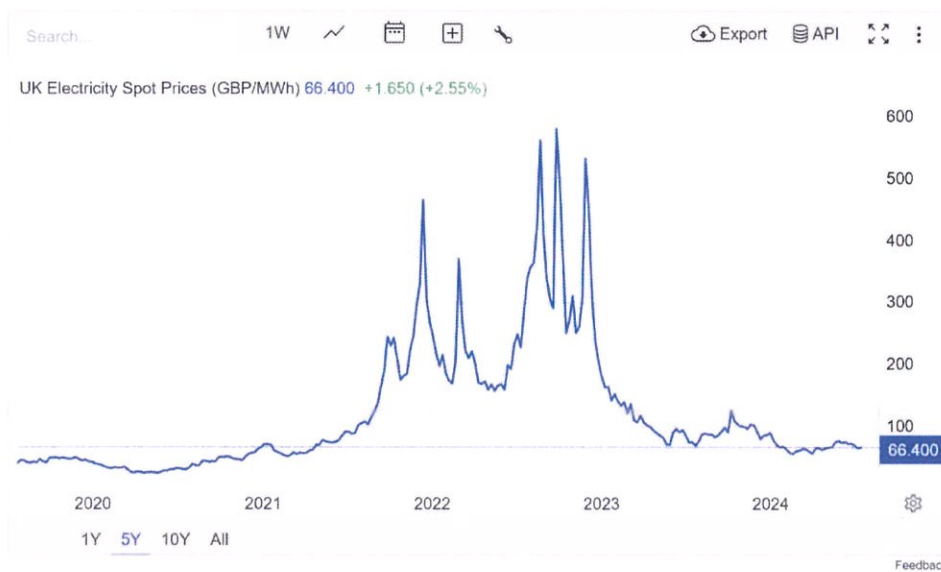
<sup>33</sup> JCB Heavy Products Ltd Directors’ Report and Financial Statements for the year ended 31 December 2022, p.17.



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in 2022. Indeed, the JCB global accounts record a loss before taxation for 2022 notwithstanding a very major increase in global turnover.

- [37] Calculation of the COP and overall COS would normally take into account changes in energy charges for the excavator production. As noted above, JCB has itself referred to the effects of UK inflation, and an important component of inflation during this period were the spiraling electricity prices which occurred following the outbreak of the Russia/Ukraine war in early 2022. It is evident from the chart below (Source: Trading Economics) that electricity prices in the UK peaked in 2022/first half of the POI before starting to reduce in 2023.



- [38] The JCB COS at UK/Ireland level is not broken out in the JCB global accounts like they do for turnover. It therefore remains crucial for JCB, as already requested herein, to provide this data in meaningful non-confidential form so that CCCME can effectively comment on the significance and impact of the respective component costs on the financial results in the UK market especially in 2022 - but also for the whole injury period. CCCME also notes that JCB Heavy Products Ltd will likely publish its audited full year 2023 financial results within the next few months, i.e., before the expected October TRA publication of its Statement of Essential Facts in these investigations. The CCCME thus expects JCB to duly and timely amend its existing submissions relating to its financial results in the POI, notably concerning profitability before taxation, and to provide adequately meaningful non-confidential versions as requested herein.



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- [39] As the POI covers the first half of 2023, UK construction equipment industry reports on full year 2023 may be useful to take into account. One key report<sup>34</sup> indicates that the overall UK market experienced quite different trends over the two halves of the year. The first half saw growth over 2022 but this was largely due to catching up from the supply chain constraints experienced in 2022, which had extended the lead time for delivery of machines, notably from Japan. In the second half of 2023, overall market growth was 25% below that of 2022, notably because of declining levels of downstream construction activity. Citing Systematic International data, the article indicates that total UK crawler excavator unit sales dropped 18% in 2023 by comparison to 2022, to 5,400 units.
- [40] Last but not least, the CCCME can only wonder at the disparity in economic performance achieved in the UK market as between the two UK excavator producers – the Applicant and Komatsu UK Ltd. Both are important producers of excavators and of other important construction industry equipment, have fairly similar UK crawler excavator market shares (both between [9-11%]) and are generally competing for the same business in a very competitive excavator market. But while both producers have similar commercial profiles in the UK market, Komatsu appears to be succeeding in the UK market (e.g., excavator sales up 71% over the period of injury investigation<sup>35</sup> and successive years of good profitability before taxes<sup>36</sup>, all this despite reports – to be confirmed – of having higher excavator prices than JCB) while JCB alone is claiming to have been materially injured during this same period and seeks AD and AS duty protection in order to remedy its alleged ills. To the CCCME’s understanding, Komatsu UK Ltd is not supporting JCB in requesting these AD/AS investigations nor did it even register as an interested party and thus is not intending to provide any evidence in support of JCB’s injury and causation allegations. CCCME can only ask, if Komatsu can do well in the UK excavator market notwithstanding imports from China, what is the real problem of JCB?
- [41] Based on the evidence available, the primary cause of JCB’s problems clearly appears not to be the imports from China but rather the abovementioned combination/cumulation of critical “other factors” occurring during the fairly extraordinary years covered by these investigations’ injury period - Covid pandemic and consequent supply chain constraints/impact on production in 2020, Russian weaponisation of its energy supplies to Europe starting in 2021 and outbreak in 2022 and still continuing Russia/Ukraine war and economic consequences including major utility price increases, general inflation and rising raw material prices, and finally the cited major downturn in the UK excavator market in 2023.

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<sup>34</sup> See “UK Construction equipment sales fell by 9% in 2023”, UK Construction Industry Association, Press Release of 8 February 2024.

<sup>35</sup> According to the JCB Application, Table 7.

<sup>36</sup> According to the 2021, 2022 and 2023 Annual Reports of Komatsu UK Limited, publicly available.



### III. CONCLUSIONS

[42] The CCCME appreciates this opportunity to submit its additional Comments concerning key substantive elements of the TRA's anti-dumping and anti-subsidy investigations of certain excavators from the People's Republic of China. The CCCME's Comments can be briefly summarised as:

- While the Applicant, JCB, contends in the anti-dumping investigation that the normal value of Chinese excavators should be constructed using undistorted costs and profits from other, external sources because the Chinese market and producers' costs are distorted by a "particular market situation" (PMS), the CCCME highlights that JCB's contentions are not adequately substantiated both as regards the existence of a PMS as such or, even if a PMS would exist (*arguendo*), as regards whether the alleged PMS actually affects the costs and prices of the Chinese excavator producers. The applicable WTO rules require adequate evidentiary substantiation and explanation in both regards before the TRA can decide to not use the Chinese producers' own costs and profit data to determine the normal value;
- As regards the issues of material injury and causation thereof common to both the anti-dumping and anti-subsidy investigations, the CCCME first highlights that what data has been provided by JCB indicates that the main injury indicators are, in fact, positive, thus substantially undercutting JCB's injury claim. More generally, CCCME is strongly concerned that inadequate or no data at all has been provided by the Applicant in acceptable non-confidential form concerning multiple factors bearing directly on a fair and objective assessment of injury and causation. The CCCME explains in detail how JCB's specific claims and general approach are seriously lacking the transparency that is essential in international trade remedy investigations, with the direct consequence being that the CCCME's and cooperating exporting producers' rights of defence are being seriously undercut. Consistent with the relevant WTO provisions, the CCCME trusts the TRA to support these CCCME concerns by requiring JCB to provide substantially greater transparency as regards all key elements of its claims and notably relating to the trends and component elements of the respective injury indicators;
- Specifically concerning the causation of the alleged injury, the CCCME sets out detailed trade and market data to demonstrate how JCB's alleged injury would have been primarily and predominantly caused not by the excavator imports from China but rather by a combination of well-acknowledged "other factors" that occurred in the latter part of the period of injury investigation. Based on the evidence available, the primary cause of JCB's problems clearly appears to be the specified combination/cumulation of critical "other" economic factors that



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occurred during the fairly extraordinary years covered by these investigations' injury period - Covid pandemic and consequent supply chain constraints/impact on production in 2020/2021, Russian weaponisation of its energy supplies to Europe starting in 2021 and outbreak in 2022 and still continuing Russia/Ukraine war and economic consequences including major utility price increases, spiralling general inflation and rising raw material prices, and finally the major downturn in the UK excavator market overall in 2023.

\* \* \*

The CCCME stands ready to reply to any TRA questions in follow-up to these Comments and looks forward to receiving, and commenting on, the requested non-confidential additional data from the Applicant.

Submitted on behalf of the CCCME: