



Reconsideration of an original decision in the  
dumping investigation into certain excavators  
from the People's Republic of China (AD0047)

**22 December 2025**



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## 1 Introduction / Executive Summary

1. On 13 May 2025, the Secretary of State for Business and Trade (the Secretary of State) made the decision to accept the TRA's Determination for measures on certain excavators originating from the People's Republic of China (PRC) and gave effect to that decision in the public notice dated 13 May 2025. The measures took effect from 14 May 2025.
2. An application from Caterpillar Group was received on 13 June 2025, requesting a reconsideration of the following:
  - the injury margin calculation;
  - the dumping margin calculation;
  - the injury and causal link determination; and
  - the form of the anti-dumping measures.
3. An application from LiuGong Group was received on 13 June 2025, requesting a reconsideration of the following:
  - the decision to include battery electric machinery within the definition of the Goods and the tariff imposed.
4. A reconsideration was initiated on 11 July 2025.

### 1.1 Purpose of reconsideration

5. The purpose of this reconsideration is to establish whether the decisions made during the original investigation, when assessed against the grounds in the application for reconsideration, were reasonable.
6. The reconsideration of these grounds is to test the TRA's processes and conclusions. The purpose is not to establish that a different determination could have been made, but to determine if the original decision was reasonable in the circumstances as they applied at the time.



## 1.2 Reconsidered decision

7. Having completed the reconsideration, the TRA concludes the original decision should be maintained.
8. In respect of the ground raised by LiuGong Group, the TRA disagrees that the original investigation should have included battery electric machinery within the definition of the goods and the tariff imposed.
9. In respect of the grounds raised by Caterpillar Group in relation to the calculation of the injury margin (grounds 1 to 4), the TRA disagrees that it should recalculate the injury margin.
10. In respect of the grounds raised by Caterpillar Group in relation to the calculation of the dumping margin (grounds 5 to 14), the TRA disagrees that it should recalculate the dumping margin.
11. In respect of the grounds raised by Caterpillar Group in relation to the determination of injury and causation (grounds 15 to 18), the TRA disagrees that it should vary its determination of injury and causation.
12. In respect of the grounds raised by Caterpillar Group in relation to the form of the measure (ground 19), the TRA disagrees that it should vary the form of the measure.
13. The details of the reconsidered decision are provided in this report.



## 2 Background

15. On 21 September 2023, the TRA received an application from JCB Heavy Products Ltd (JCB) for a trade remedies investigation. The application alleged that certain excavators imported into the UK from the PRC were being dumped and were causing injury to the UK Industry.
16. The original application contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the anti-dumping investigation. The case was initiated by the TRA on 15 November 2023, and the Notice of Initiation was published on the same date.
17. On 13 May 2025, in accordance with paragraphs 11(5) and (6) of Schedule 4 to the Taxation (Cross-border Trade) Act 2018 (the Act), the TRA made its Final Determination. Pursuant to paragraph 17(3) of the Act, the TRA made its recommendation to the Secretary of State for an ad valorem anti-dumping duty for a period of five years for the goods concerned which are subject to the final affirmative determination.
18. In [Trade Remedies Notice 2025/10](#), published on 13 May 2025, the Secretary of State gave effect to the TRA's recommendation.
19. Further to the TRA's conclusion in the anti-dumping investigation into certain excavators, and the subsequent decision of the Secretary of State, the TRA received two separate applications from Caterpillar Group and LiuGong Group which requested a reconsideration relating to the TRA's recommendation to the Secretary of State. Both applications were received on 13 June 2025.
20. Caterpillar Group's grounds for requesting a reconsideration in relation to the recommendation to apply an anti-dumping measure relate to the following –
- the injury margin calculation (grounds 1 to 4);
  - the dumping margin calculation (grounds 5 to 14);



- the injury and causal link determination (ground 15-18); and
- the form of the anti-dumping measures (ground 19).

21. LiuGong Group's ground for requesting a reconsideration in relation to the Final Determination to apply an anti-dumping measure (which the TRA has taken as also being an application for reconsideration of the TRA's recommendation as set out in the Final Determination) relates to the decision to include battery electric machinery within the definition of the goods concerned and the tariff imposed.

## 2.1 Timings of reconsideration application

22. The Secretary of State's public notice, [Trade Remedies Notice 2025/10](#) gave effect to the TRA's recommendation for an anti-dumping measure on 13 May 2025, with the measures coming into effect on 14 May 2025.

23. In accordance with regulation 10(2) of the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (the R&A Regulations)<sup>1</sup>, the TRA must reject an application for a reconsideration of an original decision that was published in a public notice unless it was received within one month beginning on the day after the notice was published, or (if later) within one month beginning on the day after the notice came into effect.

24. Thereby the deadline for an application for a reconsideration in respect of the TRA's recommendation to the Secretary of State ended on 14 June 2025.

25. The application for reconsideration by Caterpillar Group was received on 13 June 2025.

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<sup>1</sup> [The Trade Remedies \(Reconsideration and Appeals\) \(EU Exit\) Regulations 2019 \(legislation.gov.uk\)](#)



26. The application for reconsideration by LiuGong Group was received on 13 June 2025.

27. In accordance with regulation 12 of the R&A Regulations<sup>2</sup>, the TRA initiated a reconsideration on 11 July 2025.

28. Under regulation 13(9) of the R&A Regulations<sup>3</sup>, the TRA has wide discretion to reconsider an original decision in whatever way it considers appropriate in the circumstances, subject to any contrary provisions in the R&A Regulations. In the absence of provisions dictating a contrary approach, the TRA considers that the appropriate approach to a reconsideration in the circumstances is to review whether the original decision made by the TRA was correct and reasonable at the time it was made.

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<sup>2</sup> [The Trade Remedies \(Reconsideration and Appeals\) \(EU Exit\) Regulations 2019 \(legislation.gov.uk\)](#)

<sup>3</sup> [The Trade Remedies \(Reconsideration and Appeals\) \(EU Exit\) Regulations 2019 \(legislation.gov.uk\)](#)



### **3 Analysis of Caterpillar Group's grounds: TRA's Determination for anti-dumping amount**

30. In support of its application for reconsideration, Caterpillar Group has submitted 19 grounds.

31. This report will consider each of the grounds in turn. In consideration of each ground, the Applicant's claim is set out in full, followed by a summary of the original investigation's conduct in relation to that ground. Where appropriate, the relevant legislation and policy relating to the issue is also included. The TRA's finding as the result of the reconsideration for the ground is then set out.

#### **Injury Margin Calculation (Grounds 1 to 4)**

##### **3.1 Ground 1 – Customs value in the denominator of the injury margin calculation must be based on *actual customs value* as declared during the investigation period**

###### **3.1.1 Applicant's Ground**

32. In its application for reconsideration, Caterpillar Group states:

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



4. *The TRA failed to adopt this methodology. Instead, the TRA calculated an ad valorem antidumping duty for the Caterpillar Group by dividing the amount of underselling by a customs value that has already been reduced by the amount of [CONFIDENTIAL: sensitive information removed – commercially sensitive information]. The TRA adopted this approach notwithstanding customs declarations – as verified by the TRA and accepted by the HMRC - showing that the customs value declared to the HMRC was not reduced by the amount of [CONFIDENTIAL: sensitive information removed – commercially sensitive information].*
5. *Therefore the customs value for the purpose of the injury margin calculation should be based on actual customs value. This customs value equates to the value of an invoice that Caterpillar [CONFIDENTIAL: sensitive information removed – commercially sensitive information] issues to the unrelated importer. This information was before the TRA in its investigation: the Caterpillar Group reported and documented such customs values in its questionnaire response, as verified by the TRA.*
6. *The TRA's reasoning underpinning its decision to adjust the customs value for [CONFIDENTIAL: sensitive information removed – commercially sensitive information ] should be re-considered.*
7. *First, since the Caterpillar Group is not affiliated with the UK importer, contrary to the Final Determination, there is no basis to "construct" Caterpillar Group's CIF value, i.e. its customs value.*
8. *Second, it is incorrect to claim that the calculations underpinning the injury margin are not required to be based on the reported CIF import price of the relevant goods. As outlined above, an anti-dumping duty should be calculated by expressing the actual amount of underselling by the actual customs value. This is because that customs value is the basis for applying the antidumping duty.*



9. *Third, there is no good reason not to use the actual customs value in the denominator of the injury margin calculation. (Indeed, TRA acknowledges that the Caterpillar Group and its unrelated UK importer did not act "inappropriately" when declaring to the HMRC invoice values that have not been adjusted for [CONFIDENTIAL: sensitive information removed – commercially sensitive information].)*
10. *Fourth, since as follows from the customs declarations verified by the TRA, an unrelated importer of the Caterpillar Group's excavators declared at importation the full value of excavators that was not decreased for the amount of [CONFIDENTIAL: sensitive information removed – commercially sensitive information], the TRA's anti-dumping duty of 18.81% is based on an artificially deflated denominator and thus overstates the actual injury margin as existed during the investigation period. It follows that contrary to paragraph 14(3)(b) of the Act, the TRA recommended to the Secretary of State an amount of anti-dumping duty that exceeds the amount which would be adequate to remove the injury to a UK industry in the goods.*
11. *Fifth, the Final Determination appears to suggest that even if an unrelated importer of the Caterpillar Group's excavators pays a 18.81% anti-dumping duty as a percentage of the full customs value, it can claim an overpayment from the HRMC at a later stage (when [CONFIDENTIAL: sensitive information removed – commercially sensitive information] and adjusts the customs value downwards). This suggestion seems to underscore precisely the point that the Caterpillar Group is making, namely, that at the point of importation applying an anti-dumping duty at the level of 18.81% will result in an overpayment of the anti-dumping duty, which is contrary to paragraph 14(3)(b) of the Act.*
12. *As to whether an importer can in fact subsequently request a 'refund' of an overpaid antidumping duty as the TRA suggests, this is unclear. As the TRA will be aware, anti-dumping duty is governed by a separate "re-payment"*



*procedure that does not provide for refunds where there is a decrease in the injury margin. Furthermore, we are not aware of any HMRC Guidance (or other UK statutory rules) that suggest a refund claim is permitted for the difference in the injury margin resulting from the deflated denominator in a situation where an importer does not [CONFIDENTIAL: sensitive information removed – commercially sensitive information] at all.*

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

### **3.1.2 Original Investigation**

33. In the original investigation the injury margin was calculated by the comparing the UK target price with the imported price (landed price) of the goods concerned. This was done on a PCN by PCN basis using verifiable data supplied by the interested parties.

34. The target price was calculated by using the UK industry cost of production for the like goods, adding its AS&G costs, and applying a normal rate of profit.

35. The landed price (import price) is the price of the relevant goods when they arrive at the UK border. This typically equates to the CIF import price plus any relevant import duties and other costs associated with import.

36. Having found that the CIF import prices did not properly reflect the final value of the relevant goods at the UK border, due to a direct association between the PRC exporters and the associated importers, the landed price was constructed by recalculating the CIF import price and then applying relevant adjustments for post-importation costs. In the case of Caterpillar



Group, the TRA identified that there was a compensatory arrangement with Finning (UK) Limited.

37. Further detail was provided in the SEF at Section G4.2 and Section G1.2.1 (Price undercutting) and the basis for making the adjustments is explained in Section F3 of the SEF.
38. In Sections B2 and B3 of the Addendum to SEF<sup>4</sup> the TRA outlined in more detail the approach to calculating the export price for Caterpillar Group. It confirmed that the same methodology as set out in Section F3 of the SEF applied to Caterpillar Group and set out what adjustments were required to ensure fair comparison of prices.
39. Following the publication of the Addendum to the SEF, Caterpillar (Xuzhou) Ltd (CXL) submitted that the landed price used by the TRA in the injury margin calculation should be the same as the actual CIF imported price of relevant goods.
40. The TRA considered the information in the submission and responded to them in the Final Determination. Paragraphs 536-7 of the Final Determination confirm the TRA's decision not to use the reported CIF import prices:

*536. The TRA has determined that it would not be appropriate to calculate the landed price simply by using the reported CIF import prices for the relevant goods provided by the sampled PRC exporters. In the case of the initial sample of PRC exporters, as previously reported in the SEF, this is because there is a direct association between the PRC exporters and their associated importers of the relevant goods in the UK. As noted in Section G3, the TRA also considers that the Caterpillar Group's reported CIF import prices do not properly reflect the final value of the relevant goods at the UK border. Therefore, in each instance, the landed price was constructed by*

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<sup>4</sup> <https://www.trade-remedies.service.gov.uk/public/case/AD0047/submission/77c30976-d9d6-4ed1-9fc4-204ab9b70f75/>



*recalculating the CIF import price and then applying the relevant adjustments for post-importation costs.*

*537. The recalculation of the CIF import prices was done in accordance with regulations 15(2) and 15(4)(a) of the Regulations. The initial calculation to obtain a CIF import price was completed using the same methodology used as part of the construction of the export price in the dumping margin calculation. Further detail of this calculation is set out in Section G3 and Section G4.*

### **3.1.3 Relevant Legislation and Policy**

41. Regulation 15 of The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (the D&S Regulations) sets out the definition of and, where applicable, the methodology for constructing, the export price.

#### ***Export price***

**15.—***(1) Subject to paragraph (3), the export price is the price the goods concerned are sold for, or the agreed price at which they are to be sold, to either—*

*(a) an importer in the United Kingdom; or*

*(b) a third party outside of the United Kingdom for export to the United Kingdom (“third party”).*

*(2) This paragraph applies where there is no export price or the TRA determines that the price is unreliable because of an association or a compensatory arrangement between the overseas exporter and the importer of the goods concerned in the United Kingdom or the overseas exporter and a third party.*

*(3) Where paragraph (2) applies, the TRA may construct the export price in accordance with paragraph (4).*

*(4) The TRA may construct the export price on the basis of—*



*(a) the price at which the goods concerned are first sold to an independent buyer in the United Kingdom; or*

*(b) where the goods concerned are not resold to an independent buyer in the United Kingdom, or are not resold in the condition as imported, on such other reasonable basis as the TRA determines.*

*(5) Where the export price of the goods concerned is constructed in accordance with paragraph (4), the TRA may make adjustments—*

*(a) for actual costs incurred by the importer or exporter of the goods concerned in the United Kingdom; and*

*(b) for profits that would usually be accrued by an importer of the goods concerned in the United Kingdom that is not an associate of or does not have a compensatory arrangement with the overseas exporter.*

*(6) The adjustments that the TRA may make in accordance with paragraph (5) include adjustments in relation to—*

*(a) transport costs;*

*(b) insurance;*

*(c) handling, loading and ancillary costs;*

*(d) import duties;*

*(e) any taxes payable in the United Kingdom by reason of the importation or resale of the goods in the United Kingdom;*

*(f) a reasonable margin for profit as determined by the TRA;*

*(g) selling, general and administrative costs;*

*(h) any other costs incurred in the importation and resale of the goods.*

*(7) For the purpose of this regulation—*



*(a) there is an “association” where the parties meet the definition of “related persons” in the Customs (Import Duty) (EU Exit) Regulations 2018;*

*(b) a person is an “independent buyer” in relation to an overseas exporter if there is no association between the buyer and the overseas exporter.*

42. Regulation 36 of the D&S Regulations sets out how to determine an adequate amount to remove injury:

***Determination of an adequate amount to remove the injury***

**36.—***(1) Pursuant to paragraphs 14(4) and 18(7) of Schedule 4 to the Act, the TRA is to determine the anti-dumping amount or countervailing amount (or in the case of a provisional remedy, estimated anti-dumping amount or estimated countervailing amount) that is adequate to remove the injury caused to a UK industry by dumped goods or subsidised imports in accordance with this regulation (“relevant amount”).*

*(2) The TRA must determine the relevant amount which it is satisfied is necessary to prevent injury to UK industry based on an assessment of the minimum increase in import prices of the dumped goods or subsidised imports that would remove injury.*

*(3) Subject to paragraph (4), the TRA must take into account any information it considers relevant in order to calculate the relevant amount.*

*(4) The TRA must disregard factors other than the importation of the dumped goods or subsidised imports that caused or are causing injury to UK industry when making its determination.*

*(5) Where the amount determined in accordance with this regulation is less than 2 per cent. of the price of the imports then the TRA must disregard that amount and the amount adequate to remove the injury is zero.*

43. The public guidance on determining the export price states:



### ***Determining the export price using an alternative basis***

*In some cases, we will construct the export price. This includes where:*

- *there is no export price*
- *we determine that the actual price of the goods concerned is unreliable due to an association or compensatory arrangement between the exporter and UK importer or third party*

*In general, we will construct the export price based on the price at which the goods concerned were first sold to a UK independent buyer. We will use any other reasonable basis where there are no sales to UK independent buyers or where they are not resold in the condition in which they were imported.*

*Where we construct the export price, we may make adjustments to account for actual costs incurred by the importer or exporter and for profits that would usually be accrued by an importer of the goods in the UK that is not an associate of or does not have a compensatory arrangement with the overseas exporter. These adjustments may include:*

- *transport costs*
- *insurance*
- *handling, loading and ancillary costs*
- *import duties*
- *any taxes payable in the UK due to importing or reselling the goods in the UK*
- *a reasonable margin for profit as determined by the TRA*
- *selling, general and administrative costs*



- *any other costs incurred in the importation and resale of the goods*<sup>5</sup>

### 3.1.4 Reconsideration Finding

44. Having found in the original investigation that Caterpillar Group's export price was unreliable due to the compensatory arrangement, the TRA determined that it was appropriate to construct the export price. In doing so, it removed [CONFIDENTIAL] from the CIF value to ensure the constructed export price accurately reflected the actual price of the goods concerned.

45. To ensure the injury margin and the dumping margin were comparable the TRA used the same export price (landed price) for both set of calculations.

46. As noted in the Statutory Guidance on injury margin principles:

*The import price will usually be the landed import price, which equates to the Cost, Insurance, Freight (CIF) import price plus any relevant import duties and costs associated with importing. The difference between the two should then be expressed as a percentage of the CIF import price.*<sup>6</sup>

47. The D&S Regulations do not require the TRA to use the reported CIF price in calculations and refer only to an export price or an import price. Having found that the price was unreliable due to a compensatory arrangement between Caterpillar Group and its UK importer, Regulation 15(2) of the D&S Regulations applies, and the TRA may construct the export price in accordance with Regulation 15(4).

48. In constructing the export price, the TRA acted in accordance with Regulation 15 of the D&S Regulations. The approach is supported by the guidance, noted in Section 3.1.3.

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<sup>5</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/how-we-carry-out-a-dumping-investigation#determining-export-price>

<sup>6</sup> <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/injury-margins>



49. Therefore the TRA disagrees with the claim that it is required to use the actual customs value in the denominator of the injury margin calculation. The TRA finds that the approach taken in the original investigation to construct the export price rather than use the *actual customs value* was a reasonable decision to ensure that the figures demonstrated a representative value for the landed price.
50. In addition to the claims in the ground that the TRA must use actual customs values in its calculation, Caterpillar Group makes reference to HMRC's repayment procedures in relation to overpayments of anti-dumping duties and alleges that reference to this procedure in the TRA's Final Determination suggested that the recommended measure would result in an overpayment.
51. This interpretation is misguided. The Final Determination does not suggest that the recommended measure would result in an overpayment. It is merely responding to a submission made by Caterpillar Group that the TRA follow the customs regulations when determining the use of the CIF import values in its calculations.
52. The provision to enable parties to claim overpayments from HMRC in certain limited circumstances does not affect the methodology or outcome of the TRA's methodology of its calculations.
53. Caterpillar Group also raised the point that the TRA's repayment procedure does not provide for refunds where there is a decrease in the injury margin. This appears to be a comment, rather than an issue that requires a specific response, but nothing in the TRA's Final Determination affects its repayment procedures, which are set out in the public guidance.<sup>7</sup>
54. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The approach followed the legal

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<sup>7</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/repayment-investigation>



requirements and relevant guidance, as explained in the Final Determination and SEF. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.

### **3.2 Ground 2 – Landed price in the numerator must reflect *actual customs value* as declared during the investigation period**

#### **3.2.1 Applicant's Ground**

55. In its application for reconsideration, Caterpillar Group states:

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

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



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

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

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



*removed – commercially sensitive information] when establishing the landed price for the purpose of the injury margin calculation or for the purpose of establishing EXW export price for the purpose of the dumping margin calculation.*

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

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

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

### **3.2.2 Original Investigation**

56. As explained in the preceding ground, in the original investigation the TRA determined that Caterpillar Group's submitted landed prices were unreliable as a result of the compensatory arrangement with its importer. As a consequence, the TRA made adjustments to the landed price. The CIF import price was re-calculated with the relevant adjustments made.



57. The TRA explained the reasoning for this approach in its response to a submission (17 April 2025)<sup>8</sup> made by Caterpillar (Xuzhou) Ltd (CXL). In the submission it noted the TRA had understated the landed price in the injury margin calculations and incorrectly inflated the injury margin. It claimed that the CIF component of the landed price that the TRA uses in the injury margin calculation should be the same as the actual CIF import price of relevant goods when they arrived at the UK port during the investigation period.

58. At paragraph 536 of the Final Determination, the TRA explained that Caterpillar Group's reported CIF import prices did not properly reflect the final value of the relevant goods at the UK border. The landed price was therefore constructed by recalculating the CIF import price and then applying the relevant adjustments for post-importation costs.

59. Paragraph 537 of the Final Determination explains that the recalculation of the CIF import prices was done in accordance with regulations 15(2) and 15(4)(a) of the D&S Regulations, and that the calculation to obtain a CIF import price was completed using the same methodology as part of the construction of the export price in the dumping margin calculation.

### 3.2.3 Relevant Legislation and Policy

60. The relevant legislation and policy is the same as those set out in the previous Ground 1 at Section 3.1.3.

### 3.2.4 Reconsideration Finding

61. The numerator for the injury margin calculation is the underselling amount. The underselling amount is calculated in the following way:

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<sup>8</sup> <https://www.trade-remedies.service.gov.uk/public/case/AD0047/submission/332f2429-29bd-4efd-b1fb-30132ebbfcc/>



*Underselling amount = (Target price per unit – Landed price per unit) × Import quantity*

62. As noted in the previous ground, the TRA determined that the landed prices submitted by Caterpillar Group were unreliable as a result of the compensatory arrangement with its unrelated importer.
63. In its application for reconsideration, Caterpillar Group claims that the landed price should be the actual customs value and challenges the TRA's approach in calculating the landed price. Caterpillar Group claims that the TRA should consider the data which showed that Caterpillar Group's unrelated importer declared the customs value without deduction of [confidential]. Caterpillar Group also claims that the TRA erred in applying Regulations 15(2) and 15(4) to support the deduction of [confidential], and that the Final Determination does not explain the rationale for applying Regulation 15(2).
64. The TRA's rationale for applying Regulation 15(2) is covered in the response to the previous Ground at section 3.1.4. This is based on the TRA's determination that the reported CIF import prices do not properly reflect the final value of the relevant goods at the UK border due to the compensatory arrangements between Caterpillar Group and the UK importer. Regulation 15(2) and 15(4) provide that the TRA may construct the export price when it determines the price is unreliable because of a compensatory arrangement between the overseas exporter and the UK importer.
65. The TRA disagrees with Caterpillar Group's claim that the TRA is required to use the actual customs value in calculating the numerator of the injury margin calculation. The TRA finds that its approach to use a constructed export price rather than use the *actual customs value* was a reasonable decision to take to ensure the figures demonstrated a representative value for export price.
66. Similar to the additional point raised in ground 1, Caterpillar Group claims that there is no provision under UK legislation to refund dumping duties following



retrospective adjustments to customs values. As a consequence, Caterpillar Group claims that the TRA's calculation overstates the amount of customs debts arising out of the calculated dumping duty.

67. CXL raised this point in response to the disclosure by the TRA of the dumping and injury margin calculations to CXL. CXL claimed that the TRA had understated the landed price and inflated the injury margin. It noted that because "the CIF UK port transaction value is used for the purpose of customs valuation and is a basis for VAT and customs duty charges (including dumping amounts), UK legislation prohibits any adjustment to the customs values set using the valuation method 1 ("transaction value") for the amount of discounts that are not legally valid at the point of importation."<sup>9</sup> It claimed that the TRA's decision to deduct [Confidential] from the landed price for the purpose of the injury margin calculation meant that CXL would effectively be paying a dumping duty twice.<sup>10</sup>

68. In response, at paragraphs 422-423 of the Final Determination, the TRA explained its methodology for calculating the landed price and acknowledged the issue that CXL raised, and which Caterpillar Group now raises, regarding the amount of customs debt arising from the calculation being overstated. In the original investigation, the TRA considered this point and came to a conclusion that adopting this methodology would not inflate the injury margin by calculating the landed price in this way. As part of this reconsideration, the TRA has reviewed the internal working documents from the original investigation which consider the calculation of the export price. The methodology set out in the internal working documents explains the steps that were taken to ensure an accurate calculation of the export price. This included using the net invoice value as the starting point for determining the weighted average ex-works export price and ensuring that there was no double counting of individual cost elements. The TRA is satisfied that, in following this methodology, the injury margin was not

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<sup>9</sup> Caterpillar Group, Comments on the Dumping and Injury Margin Disclosure, paragraph 7

<sup>10</sup> Caterpillar Group, Comments on the Dumping and Injury Margin Disclosure, paragraph 11



therefore inflated in the original investigation and that the approach taken in the original investigation was reasonable.

69. At paragraph 21 of its application for reconsideration, Caterpillar Group also claimed that “*HMRC Guidance does not suggest any possibility of claiming back anti-dumping duties following revision of customs values.*”

70. To reiterate the point already made in response to the previous ground, the provision which enables parties to claim overpayments from HMRC in certain limited circumstances does not affect the methodology or outcome of the TRA’s methodology of its calculations. Caterpillar Group is correct in its understanding that a repayment may be made only where the dumping margin (or subsidy margin) has either been eliminated or fallen below the level of the existing anti-dumping duty. As a result of the lesser duty rule, the measure on Caterpillar Group is 18.81% (the equivalent of the injury margin rather than the dumping margin). There is no provision in the UK legislation that, where a measure is set at the level of the injury margin, changes to factors affecting that should enable a repayment of anti-dumping duty. The TRA must abide by the regulatory procedures as laid before it.

71. For the reasons set out above, the TRA finds that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The approach taken in the original investigation followed the legal requirements and the relevant guidance. This has been set out in internal working documents, the outcomes of which have been explained in the Final Determination. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.



### **3.3 Ground 3 – Prices of XXL excavators of Caterpillar Group should be considered for the purpose of the injury margin calculation**

#### **3.3.1 Applicant's Ground**

72. In its application for reconsideration, Caterpillar Group states:

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

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

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



### 3.3.2 Original Investigation

73. To enable a comparison of the target price and the landed price, the TRA considered those PCNs which could be matched. That is to say, those goods which were produced in the UK and imported from the sampled exporters.

74. The PCN analysis identified that those goods which were classed as XXL excavators, and imported to the UK, were not matched with a corresponding PCN of a UK manufactured product.

75. The Final Determination provides the explanation as to which PCNs had been included in the calculations of the dumping and injury margins.

*129. For injury margin calculations, PCN-by-PCN calculations were possible for PCNs that were both sold in the UK as domestically produced like goods and exports originating from PRC to the UK as the relevant goods. This included sales across four PCNs (S, M, L and XL). It was determined that the PCNs included in the calculations were sufficiently representative to proceed with this methodology.*

### 3.3.3 Relevant Policy

76. The Statutory Guidance explains how comparisons are made between products when calculating the injury margin:

**Product Control Numbers (PCNs) and the choice of PCNs for comparison**

*In most dumping and subsidisation investigations, and where applicable in safeguards investigations, the range of products produced and sold by UK industry will not be identical to the range of products exported by exporters subject to the investigation.*

*Therefore, both the UK-produced like product and the imported product under consideration will be subdivided into a number of sub-products,*



*according to PCNs or models. This ensures that, as far as possible, injury calculations are based on comparisons between identical or similar products.*

*To ensure that comparisons are made between similar products, injury margin analysis will typically take place at the PCN level, and the comparison may be limited to matching PCNs (i.e. PCNs where there are both export sales and sales by UK industry).*

*Where there are a large number of PCNs, it may be appropriate to limit the comparison to representative PCNs. The PCNs chosen to be compared should be based on the share of import volumes and UK sales accounted for by the chosen PCNs.<sup>11</sup>*

### **3.3.4 Reconsideration Finding**

77. In the original investigation, the TRA undertook a like goods assessment to identify what goods produced in the UK were “like” those dumped imports. The analysis identified goods that were not like goods, for instance XXXL excavators, but it did conclude that XXL excavators were sufficiently similar to include as part of the injury assessment.

78. The D&S Regulations do not state the methodology the TRA is to undertake an injury margin calculation.

79. The Statutory Guidance in relation to injury and calculating injury margins guides the TRA to “ensure that comparisons are made between similar products, injury margin analysis will typically take place at the PCN level, and the comparison may be limited to matching PCNs (i.e. PCNs where there are both export sales and sales by UK industry).”<sup>12</sup>

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<sup>11</sup> <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/injury-margins#pcn>

<sup>12</sup> <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/injury-margins#pcn>



80. This allows for those PCNs of the like goods of the exporting countries that are not manufactured by the UK producers to be disregarded from the calculation of the injury margin. This is the standard approach taken by the TRA and has been applied in this specific case.

81. XXL excavators are included within the scope of the measure as the TRA had determined those goods were causing harm to the UK industry.

82. The injury margin methodology is to match like for like – PCN matching – to calculate the injury margin. The number of PCN matches of UK produced like goods with overseas exporters goods was of a sufficient quantum to perform the injury margin calculation. This provided a representative injury margin without the necessity for the TRA to construct an XXL PCN equivalent on the domestic (UK) side to perform the calculation.

83. For the reasons set out above, the reconsideration finding is that the approach taken by the original investigation to not include the pricing data of XXL excavators is reasonable. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.

### **3.4 Ground 4 – Normal rate of profit used to calculate target price should be reconsidered**

#### **3.4.1 Applicant's Ground**

84. In its application for reconsideration, Caterpillar Group states:

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



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

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

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

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

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

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

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

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



### 3.4.2 Original Investigation

85. As set out in Section F1 of the Final Determination, the applicant of the original investigation was determined to be representative of UK industry. It was the only UK producer that registered and participated in the original investigation. Komatsu UK Limited was identified as a UK producer, however, they did not register or participate in the original investigation.
86. The TRA considered the information provided by the original applicant to the investigation as to what they considered was a normal rate of profit. This included information on profit levels for similar markets to the UK market, profit levels of unrelated importers of excavators into the UK, and the average profit margin of a Japanese producer of excavators in Japan. The sources of this information were provided in the application.
87. The TRA assessed whether it would have been practical to expand its considerations to incorporate open-source information about Komatsu UK Limited's production and potential injury from the relevant goods, but concluded that such an approach would mean that the TRA was reliant on information which could not be fully substantiated.
88. The TRA considered the applicant's submission with reference to what similar businesses achieved globally during the injury period, and the average profit margin of an excavator producer in Japan, where market conditions were similar to those in the UK, but were unaffected by dumped and subsidised imports. The TRA also noted that 11% was consistent with the profit margin for unrelated UK importers of excavators.
89. At paragraph 504 of the SEF, the TRA stated that it intended to set the normal rate of profit at 11%. Following publication of the SEF, no evidence was submitted which challenged this determination.
90. For these reasons, the normal rate of profit of 11% was used as part of the calculation of the target price in the injury margin calculation.



### 3.4.3 Relevant Legislation

91. The UK regulations do not set out a methodology for calculating an injury margin or how to set the normal rate of profit.

92. Statutory Guidance provides parameters for determining injury margin.<sup>13</sup>

### 3.4.4 Reconsideration Finding

93. The Statutory Guidance provides a list of factors which may be used to assess the appropriate normal rate of profit. This provides a non-exhaustive list, which includes assessing the profit rates achieved by producers in other markets with similar characteristics to the UK.

94. At paragraph 27 of its application for reconsideration, Caterpillar Group claims that JCB relied too heavily on factors that were not representative for the UK excavator industry, such as profit margins of a Japanese producer, profits in the machinery industry in Europe, Japan, and the US, and the profit margin for in the global industrial machinery and components industry. The TRA has considered these elements that were raised in JCB's original application and, in line with the Statutory Guidance, has considered these factors when determining an appropriate normal rate of profit. This is consistent with the Statutory Guidance, which states that the TRA may consider profit rates achieved by producers in other markets with similar characteristics.

95. In its application for reconsideration, Caterpillar Group also claims that the TRA's reference to the profit margin for unrelated UK importers of excavators is unsuitable because they do not form part of industry. However, in determining the normal rate of profit, the TRA may have

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<sup>13</sup> [Trade Remedies Authority \(TRA\) dumping, subsidisation and safeguarding investigations guidance - Injury margins - Guidance - GOV.UK](#)



regard to factors beyond UK industry, as set out above. The profit margins for unrelated UK importers was one of a number of factors that were provided in order to establish would a normal rate of profit would be. This was also reasonable and in line with the Statutory Guidance on determining the normal rate of profit.

96. At paragraph 27(c) of its application for reconsideration, Caterpillar Group claims that the reference to profit margins for sampled PRC exporters is inadequate, given the TRA's finding of PMS in the PRC. In determining the normal rate of profit, the TRA considered a range of factors, as set out in the preceding paragraphs. In the original investigation, the calculated margins for PRC exporters were significantly higher than the profit margins found in other markets which were considered when determining the normal rate of profit. In conjunction with the other factors that were considered, the TRA therefore found that a normal rate of profit of 11% was reasonable and in line with the identified profit margin for unrelated UK importers.

97. Caterpillar Group has requested that the TRA should re-assess the normal rate of profit and use the profit margin of Komatsu UK Limited to set the normal rate of profit.

98. While Komatsu UK Limited manufactures excavators in the UK it does so on behalf of its parent company, Komatsu Europe International NV. As stated in Komatsu UK Ltd's annual reports –

*“The company operates as a “limited risk contract manufacturer” and manufactures excavators for, and sells them exclusively to KEISA at a pricing set to generate a return on costs”.*<sup>14</sup>

99. Komatsu UK Limited was invited to register to the investigation but did not participate. The TRA considered whether it could incorporate open-source

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<sup>14</sup> [KOMATSU UK LIMITED filing history - Find and update company information - GOV.UK](#)



information about Komatsu UK Limited's production and potential injury from the relevant goods, but at paragraph 135 of the Final Determination concluded that "such an approach would mean the TRA would be reliant on information that could not be fully substantiated or limited to in-scope, UK produced like goods."

100. The TRA has reviewed internal working documents from the original investigation which set out the TRA's consideration of the normal rate of profit. The TRA confirms the finding in the original investigation that it would not be possible to fully substantiate the open source information about Komatsu UK Limited's production and as a consequence, it would not be appropriate to set the normal rate of profit on that basis. This scenario would make for an unreliable and unrepresentative consideration in determining the normal rate of profit for UK industry.
101. In determining the normal rate of profit for UK industry, and in accordance with the Statutory Guidance, the TRA took into consideration a number of factors, including profit levels in other markets and profit levels of importers of excavators. Following consideration of these factors, the TRA accepted JCB's submission that 11% would be a reasonable finding of its normal rate of profit, having considered all relevant factors in the submission.
102. For the reasons set out above, the reconsideration finding is that the approach taken by the TRA in the original investigation was reasonable. It considered the evidence submitted by the original applicant, which under the Statutory Guidance, included relevant factors to consider when assessing a normal rate of profit. In the original investigation, the TRA also considered the possibility of including open source data on the UK producer, Komatsu UK Limited, but found that the data would not be representative. In the original investigation, the TRA calculated the normal rate of profit in line with the Statutory Guidance. The TRA concludes that



the claims made by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.

## Dumping Margin Calculation (Grounds 5 to 14)

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

#### 3.5.1 Applicant's Ground

103. In its application for reconsideration, Caterpillar Group states:

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

*34. It is also noted that for the purposes of a denominator of the injury and dumping margin calculations, the European Commission takes actual customs value as declared at CIF EU border level, regardless of the*



*adjustments it implements under Articles 2.3 and 2.4 of the WTO Anti-dumping Agreement.*

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

### **3.5.2 Original Investigation**

104. As explained in Section 3.1.2, the TRA had determined in the original investigation that the export price (actual customs value) was unreliable due to the compensatory arrangement between Caterpillar Group and its association with the importer. On this basis the TRA constructed the export price for Caterpillar Group.

105. In response to the claim in ground 1, Section 3.1.2 sets out the methodology taken by the TRA supporting the construction of the export price, and the decision not to use Caterpillar Group's actual customs value.

### **3.5.3 Relevant Legislation and Policy**

106. The response to Caterpillar Group's claims in Ground 1 applies here has already set out the relevant legislation and policy with regard to the construction of the export price. In addition to that, the following legislation is relevant to this ground:

#### ***Methodologies for comparing the normal value and the export price***

*17.—(1) The TRA must make the comparison for the purpose of regulation*

*6(2)(c) by comparing—*

*(a) the weighted average normal value with the weighted average of prices of all comparable export transactions;*



*(b) the normal value and export prices on a transaction by transaction basis; or*

*(c) where paragraph (2) applies, a weighted average normal value to individual export transactions.*

*(2) This paragraph applies where—*

*(a) the TRA finds a pattern of export prices which differ significantly among different importers or purchasers in the United Kingdom, parts of the United Kingdom or time periods; and*

*(b) the TRA is satisfied that these differences cannot be taken into account appropriately by using either of the methodologies in paragraph (1)(a) or (1)(b).*

107. Our public guidance states:

### **Methods for calculating dumping margins**

*There are two main methods we may use to calculate dumping margins:*

- 1. Comparing a weighted average normal value with a weighted average of all comparable export transactions.*
- 2. Comparing normal value and export prices on a transaction-by-transaction basis.*

*We will generally use the weighted average to weighted average method.*

*In rare cases, we may compare the export price on an individual transaction basis, with the weighted average normal value. We may do this where a pattern of export prices which differ significantly among different importers or purchasers in the United Kingdom, parts of the United Kingdom or time periods exists, and it is not possible to appropriately account for such differences using the other two methods set out above.<sup>15</sup>*

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<sup>15</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/how-we-carry-out-a-dumping-investigation>



### **3.5.4 Reconsideration Finding**

108. The rationale for the TRA adjusting the export price is set out in Section 3.1.2 and it applies here. In the original investigation, the TRA assessed the information provided in submissions of interested parties. In its assessment the TRA determined that the conditions existed under regulation 15(2) to allow for the TRA to construct an export price because of the compensatory arrangement between the exporter and the importer.

109. The TRA acted reasonably when identifying the compensatory arrangement between Caterpillar Group and the importer of the goods concerned in the UK. Reasonable steps were taken to make the adjustments necessary to provide a representative export price rather than use the reported actual customs value.

110. The TRA finds that the approach in the original investigation was a reasonable one to take. The approach was in line with the domestic legislation and Statutory Guidance.

111. It is concluded that the claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration findings is that this ground should not be upheld.

## **3.6 Ground 6 – No PMS applies to the Caterpillar Group**

### **3.6.1 Applicant's Ground**

112. In its application for reconsideration, Caterpillar Group claims:



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

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

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

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

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



- (a) CXL is [CONFIDENTIAL: sensitive information removed – commercially sensitive information] on the same terms, regardless of the destination;*
- (b) CXL and CCI (its affiliated trading company in China), are not subject to any constraints, directive, or mandatory prices imposed by the Government of the PRC;*
- (c) CXL and CCI follow the same global pricing policy of Caterpillar that applies regardless of the country or region of sales;*
- (d) CXL and CCI financial statements do not contain any reservations or notes relating to the government interference into the company's prices or costs; and*
- (e) CXL does not benefit from any subsidies by the Government of the PRC above de minimis level.*

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

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

*43. The TRA's finding in the Final Determination as to PRC state influence of the economy is an essential underpinning of its PMS determination. However although claiming that state influence over the economy affects all sampled producers, no evidence of such alleged influence over the Caterpillar Group is provided whether at Section G2.1.1 of the Final Determination or at all.*

*44. Moreover, it is incorrect to suggest the Caterpillar Group did not provide new evidence to disprove the PMS finding. As set out above in paragraphs 39*



and 40, the Caterpillar Group's questionnaire response clearly demonstrates the lack of the State influence over the Caterpillar Group.

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

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

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

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



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

48. *Finally, the TRA's claim that 50% steel content in inputs allows for a pass-through of the non-commercial factors to excavator pricing does not meet the legal standard set by the Statutory Guidance as it is not supported by any evidence and analysis. The TRA failed to establish a nexus between the alleged government interventions in steel market and their alleged reflection in the excavator prices of the Caterpillar Group.*

### **3.6.2 Original Investigation**

113. Following the allegation by JCB of a PMS, the TRA undertook an assessment of whether there was a PMS in the excavator market in the PRC.

114. The assessment considered the following areas:

- State influence over the economy
- Cost of raw materials – Steel (Section G2.1.2)
- Cost of raw materials – Other key inputs (Section G2.1.3)
- Energy (Section G2.1.4)
- Labour (Section G2.1.5)
- Shipping and Logistics (Section G2.1.6)
- Research and development (Section G2.1.7)
- Land (Section G2.1.8)
- Finance (Section G2.1.10)
- Tax (Section G2.1.11)



The conclusions for these areas are found in Section G2.1.1 to G2.1.11 of the Final Determination.

115. The TRA has reviewed internal working documents from the original investigation which set out the TRA's consideration of each of these factors and whether or not these factors indicated that there was a PMS in the excavator market in the PRC.
116. In considering these factors, the information analysed by the TRA in the original investigation included responses to questionnaires, submissions following the SEF, independent research and findings of PMS in the PRC in previous investigations. These were evaluated for the specific excavator market and the period of investigation.
117. Following its assessment of the initial claims regarding the existence of a PMS in the excavator market, the TRA concluded that prices reflected non-commercial factors as a result of government influence and control in steel and key excavator component costs. Having concluded that prices reflected non-commercial factors, the TRA then considered the impact of those factors on the costs of production. The TRA used comparator values from S&P Global and the selected benchmarking country, Brazil, to determine whether input costs were artificially low. The analysis showed that the Brazilian benchmark prices were significantly higher than average PRC costs and, as such, the TRA determined that the cost of raw materials in the PRC were artificially low.
118. To assess the impact of the Government of China's influence on costs of production and determine if adjustments were necessary, the TRA then considered the effects of those factors on the sampled exporters on an exporter-by-exporter basis.



### 3.6.3 Relevant Legislation

119. The D&S Regulations set out the circumstances in which the TRA may construct the normal value of the goods concerned (regulation 7(2)), and examples of situations that may constitute a particular market situation (regulation 7(4)):

#### **Normal value**

*7.—(1) The TRA must use the comparable price to determine the normal value unless it is not appropriate to use that price.*

*(2) For the purpose of paragraph 1(2) of Schedule 4 to the Act, it is not appropriate to use the comparable price to determine the normal value of the goods concerned where—*

*(a) there are no sales of the like goods in the ordinary course of trade in the domestic market of the exporting country or territory;*

*(b) because, of a particular market situation or the low volume of sales in the domestic market of the exporting country or territory, 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; or*

*(c) the overseas exporter in the exporting country or territory does not sell the like goods on the domestic market of the exporting country or territory.*

*(3) For the purpose of paragraph (2)(b), the volume of sales of the like goods destined for consumption in the domestic market of the exporting country or territory is sufficient to permit a proper comparison where—*

*(a) the sales constitute 5 per cent. or more of the volume of sales of the goods concerned exported to the United Kingdom; or*

*(b) the sales constitute less than 5 per cent. of the volume of sales of the goods concerned exported to the United Kingdom but the TRA considers they are sufficient.*



*(4) For the purpose of paragraph (2)(b), a “particular market situation” includes situations where—*

*(a) prices are artificially low;*

*(b) there is significant barter trade;*

*(c) prices reflect non-commercial factors.*

#### **3.6.4 Reconsideration Finding**

120. The TRA is guided by its legislation and the Statutory Guidance to assess any claims of a particular market situation on a case-by-case basis.<sup>16</sup> The TRA considered the information submitted for this case, as well as information provided in other investigations, as to whether a PMS existed in the excavator market in the PRC.

121. The TRA determined that, based on the factors set out in Section G2.1 of the Final Determination, a PMS exists in the PRC for the industry of the like goods in the exporting market on the basis that the market reflects non-commercial factors. The TRA found that the price of excavators reflected non-commercial factors as a result of government influence and control on steel and key excavator component costs and that the cost of a number of steel and excavator components were artificially low.

122. The TRA also considered whether there was a material impact on domestic prices so as to not permit a proper comparison with export prices, and whether any adjustments were justified on an exporter-by-exporter basis. The TRA conducted its assessment of adjustments at the individual exporter level. The TRA has reviewed internal working documents which set out the analysis in the original investigation of what PMS adjustments should be made. For example, as set out in the Final Determination, the

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<sup>16</sup> <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/particular-market-situation-and-costs-adjustments>



TRA determined that there was a PMS with regard to the cost of raw materials. It looked at the individual inputs that were included in the manufacturing of the exporters' excavators, and compared the information received from exporters in their questionnaire response with:

- the Brazilian steel benchmark price for the steel content of those inputs; and
- the Brazilian benchmark price for the non-steel content of those inputs.

123. The specific claims made by Caterpillar Group within ground 6 are addressed below. The question of whether the impact of the PMS on domestic sales prices would be such as to not permit a proper comparison with export prices is dealt with in respect of ground 7 below.

### **State Influence**

124. In its application for reconsideration, Caterpillar Group challenges the TRA's finding that the PMS applied to Caterpillar Group because there were no findings of direct state influence on Caterpillar Group.

125. This claim, set out at paragraphs 37-40 of its application for reconsideration, echoes its [comments](#) made in response to the SEF and the Addendum to the SEF. These points were addressed by the TRA in its Final Determination at paragraphs 310-311.

126. Caterpillar Group claims that the TRA made no finding of state influence over Caterpillar Group and provided no evidence of this in the Final Determination. However, at Section G2.1.1 of the Final Determination, the TRA determined that there was evidence that government influence causes the price of excavators to reflect non-commercial factors. The TRA has not determined, and is not required to



determine, that there is direct state influence over the Caterpillar Group. The TRA has determined that government influence is present within both SOEs and private organisations (including the sampled exporters) and that this has caused the price of excavators to reflect non-commercial factors. That is to say, the influence by the government has distorted the market for excavators in the PRC. Operating as it does within that market, the general findings on state influence in the excavator market affect Caterpillar Group.

### **Company by company assessment**

127. At paragraph 41 of its reconsideration application, Caterpillar Group claims that the TRA is required to conduct a PMS assessment on a “company specific basis” and cites the Statutory Guidance to support this. The TRA disagrees with Caterpillar Group’s interpretation. The TRA is guided to make an assessment of PMS on a case-by-case basis. It is the assessment of whether in constructing Normal Value, cost adjustments are required to the relevant inputs which is considered on an exporter-by-exporter basis. The Statutory Guidance states that:

***“Determining a Particular Market Situation***

*The TRA should assess claims that a particular market situation exists on a case-by-case basis.”*

***“Adjustments when constructing a normal value***

*The assessment of whether adjustments are justified should be made on an exporter-by-exporter basis.”<sup>17</sup>*

128. As part of its analysis for Caterpillar Group in the original investigation, the TRA considered a number of adjustments, including adjustments for known PRC steel, and known PRC non-steel excavator parts. Section G2.2.2 of the Final Determination sets out which adjustments have been

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<sup>17</sup> <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/particular-market-situation-and-costs-adjustments>



made at an exporter-by-exporter level and ties the analysis to the specific circumstances of Caterpillar Group, LiuGong Group, and Sany Group respectively. This is consistent with the Statutory Guidance to assess whether in constructing Normal Value where the TRA has established PMS, cost adjustments should be made on an exporter-by-exporter basis. The TRA is satisfied that the methodology followed was in line with the regulatory framework and the Statutory Guidance.

### **Steel content threshold**

129. At paragraph 45 of its reconsideration application, Caterpillar Group claims that the TRA has use of a threshold of 50% steel content in inputs to allege that input prices reflect non-commercial factors. Caterpillar Group claims that this was not representative for the goods produced by Caterpillar Group.
130. At paragraph 229 of the Final Determination, the TRA noted that “[i]nformation provided by a sampled exporter showed that for the six major components of excavators, all but the counterweight contained more than 50% steel, with some components being 100% steel.”
131. The TRA did not set a threshold of 50% steel content within a component for that component to reflect non-commercial factors. Rather, it has used the information from a sampled exporter to illustrate that there is a significant steel content in five of the six major components of an excavator.
132. In making adjustments for the steel content of inputs to its excavators, the TRA relied on the questionnaire response from Caterpillar Group, which set out the steel content of individual inputs, and the overall steel content of each PCN. The approach to making adjustments for steel inputs for Caterpillar Group is discussed in more detail in Grounds 11 and 13, but for the purposes of this ground, the key point is that the TRA did not set a threshold of 50%



steel content in inputs for the purposes of assessing whether or not the price of that input reflected non-commercial factors.

### Effect of market distortions on prices

133. At paragraph 46 of its reconsideration application, Caterpillar Group claims that the TRA has failed to analyse whether prices of excavators were artificially low and, if so, whether that resulted from distortions in the market of an indirect input (steel). Caterpillar claims that the TRA are “required” to “establish that such government intervention ‘results’ in artificially low prices in the domestic market of the like goods.”

The Statutory Guidance states –

*“There are several possible circumstances which could give rise to a particular market situation. Regulation 7(4) of the dumping and subsidisation regulations sets out a non-exhaustive list of circumstances which might constitute a particular market situation:*

- *where prices are artificially low*
- *where there is significant barter trade*
- *where prices reflect non-commercial factors”<sup>18</sup>*

134. It goes on to say –

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

- *the domestic market for the like goods*
- *an upstream market that inputs into the like goods*

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<sup>18</sup> <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/particular-market-situation-and-costs-adjustments>



- *a market indirectly providing inputs into the like goods, which results in artificially low sales prices in the domestic market of the like good*<sup>19</sup>

135. The lists are not exhaustive and a determination of PMS does not require each element of those listed to be present.

136. The Statutory Guidance referred to in the reconsideration application states –

*“Where claims are made that government intervention results in a particular market situation by causing domestic sales prices to be artificially low, the TRA should consider whether there is sufficient evidence that substantial government intervention exists, which has had a material impact on domestic sales prices such that they would not permit a proper comparison with export prices.”<sup>20</sup>*

137. However, under the heading “Government Interventions”, a more relevant paragraph of the guidance that should be read in the context of the findings of PMS by the TRA states –

*“Where the allegation is that a particular market situation results from government intervention that affects upstream inputs into the like goods, for example where the investigation concerns steel, but the interventions directly affect the market for iron ore, the TRA will need to be satisfied that the artificially low price of the inputs has fed through to prices of the like goods in the domestic market of the exporter. This implies that the relevant input is sufficiently important to have a material impact on domestic sales prices of the downstream product.”<sup>21</sup>*

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<sup>19</sup> <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/particular-market-situation-and-costs-adjustments>

<sup>20</sup> <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/particular-market-situation-and-costs-adjustments>

<sup>21</sup> <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/particular-market-situation-and-costs-adjustments>



138. The analysis in the original investigation, as described in Section G of the Final Determination demonstrates that the government intervention which influenced key input markets such as steel market did have an effect on the raw materials. The TRA made adjustments for inputs where the TRA determined that the PMS was having a material impact on costs.
139. Section G2.1 of the Final Determination provides the reasons for the TRA's conclusion. In the subsequent sections, it analyses the input markets which forms part of the PMS assessment. This includes as stated previously the cost of raw materials (steel and other key inputs), energy, labour, shipping and logistics, research and development, land, finance, and tax.
140. Throughout this Section G2.1, the TRA refers to evidence provided by interested parties, publicly available information, and findings from previous investigations. It uses this evidence to demonstrate that a PMS exists as a result of non-commercial factors. The TRA met the regulatory standard set out in Regulation 7(4).
141. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was a reasonable one. It was based on the evidence available at the time of the decision. The approach followed the legal requirements and relevant guidance. The TRA has set out its approach and analysis and findings in the Final Determination. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.



### **3.7 Ground 7 – Regardless of its existence, a PMS does not affect comparability of the Caterpillar Group prices in PRC to the UK**

#### **3.7.1 Applicant's Ground**

142. In its application for reconsideration, Caterpillar Group claims:

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

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



*follow the same global pricing policy of Caterpillar that applies regardless of the sales market".*

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

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

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

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

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

*55. It follows from the above that:*

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

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



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

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

58. According to WTO jurisprudence, to disregard domestic sales prices for the purpose of the normal value determination, an investigating authority has to demonstrate not only the existence of a PMS, but also prove that a PMS does not permit a proper comparison between the normal value and export prices: "Turning to the assessment of whether "a proper comparison" is not permitted because of the particular market situation, we note that the focus of the analysis is on whether the effect of the particular market situation is such that a proper comparison between domestic sales prices and export prices under examination is not permitted. In other words, the investigating authority must examine the domestic sales in order to determine whether a proper comparison between the two prices is permitted in spite of the effect of the particular market situation. The point is to determine if there is a comparable domestic price (i.e. if there is "the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country" in the sense of GATT 1994 Article VI:1(b) and Article 2.1 of the AntiDumping Agreement). That determination is fact-specific and should be made on a case-by case basis by the investigating authority assessing the effect of particular market situation on the domestic price in relation to the effect on the export price, if any."

59. Furthermore, and again according to WTO jurisprudence, such relative assessment is necessary because a PMS may have the same effect on both



*domestic and export prices. Specifically, in a situation where the PMS consists in the cost distortions, an investigating authority needs to demonstrate exactly how a cost distortion – that in principle affects sales to all markets – can affect price comparability.*

*60. The Caterpillar Group respectfully draws the TRA's attention to the WTO Panel findings in Australia – Anti-Dumping Measures on Paper. In that case Australia determined that a PMS consisted in the distortion of raw material prices for the production of paper. However, because the distortion affected the production of all paper, Australia failed to demonstrate that price comparability was affected "because of the particular market situation":*

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

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



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

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

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

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

*“Exporters of excavators from the PRC can use their artificially reduced costs to price their exports to gain UK market share from competitors who do not benefit from an artificially low-cost base. This is demonstrated in Section H1.1.1 which shows that imports of all excavators into the UK originating from the PRC during the injury period increased by 252%, whilst total imports into*



*the UK from all third countries (excluding the PRC) during the same period only increased by 53%, indicating that the PRC has been able to increase its market share by a significantly greater degree than competing exporting countries.”*

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

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

*65. In particular, as follows from the publicly available Financial Statements of JCB, it has been purchasing parts from its affiliates in China, namely from JCB Construction Equipment (Sanghai) Limited and JCB Hong Kong Limited, likely for use in its production processes. During 2017-2021, the share of the parts from PRC in the cost of sales of JCB ranged from 18% to 27%.*

*Following group's restructuring of the holdings in the PRC affiliates, as of 2022 JCB stopped disclosing information on purchases of the parts from PRC. However, data in the Financial Statements reflecting trading balances with group undertakings suggests that transactions with related parties, including purchases of parts from related parties in the PRC, continued in 2022 and 2023, and thus affected costs and prices of JCB, the UK industry and the UK excavator market. The TRA failed to consider this factor while accessing market conditions within the UK.*



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

### **3.7.2 Original Investigation**

143. The Final Determination sets out the TRA's approach in the original investigation to assessing whether the PMS prevented a proper comparison between the like goods in the PRC and the relevant goods. At paragraph 163 of the Final Determination, the TRA noted that it had considered whether the PMS identified in the domestic excavator market in the PRC prevented a proper comparison between the like goods in the PRC and the relevant goods.

144. In the Final Determination, at paragraph 174, the TRA sets out its conclusion that "the price at which exporters of excavators originating from the PRC sell the goods concerned into the UK (export price) is influenced by different considerations to those which influence the price at which they sell their like goods domestically (comparable price), which means it is not possible to conduct a proper comparison."

145. The TRA has reviewed internal working documents from the original investigation which set out the TRA's consideration of whether or not the PMS prevented a proper comparison of prices. In doing so, the TRA considered whether the effect of the PMS affected the export price and



domestic price to the same degree. The TRA looked at relevant factors, including the market conditions in the PRC and the UK respectively. The TRA found that the conditions of competition were distorted in the PRC due to the presence of non-commercial factors. This distortion did not apply in the UK.

146. The TRA also considered other relevant factors, including market share in the UK and import levels of excavators to the PRC, to conclude that the export price and domestic price were driven by different considerations which meant it was not possible to conduct a proper comparison between the two.

147. The analysis followed the regulatory framework and considers evidence from a range of sources, including submissions from interested parties, official government documents from the PRC, and other relevant data. The outcome of this assessment is summarised in Section G2.1 of the Final Determination.

### **3.7.3 Relevant Legislation**

148. The relevant legislation is the same as that which has been set out in the previous Ground, at Section 3.6.3.

### **3.7.4 Reconsideration Finding**

149. Having determined that non-commercial factors were affecting the prices of excavators and that a PMS existed, the TRA was required to undertake an assessment to determine if the PMS prevented the proper comparison between the domestic price and the export price of the goods concerned.

150. The published TRA guidance states –

***“Particular market situation***



*We will not use the comparable price to calculate the normal value of the goods where, because of a particular market situation in the exporting country, such sales do not allow a proper comparison between the like goods and the goods concerned.”<sup>22</sup>*

151. As noted in Section 3.7.2, the TRA undertook analysis to determine whether or not the existence of a PMS prevented the proper comparison between the domestic price and the export price of the goods concerned. In making this assessment, the TRA compared the effect of the PMS on the export price and the domestic price respectively. It examined a range of factors, including conditions of competition in each market. Following this analysis, the TRA concluded that the export price and domestic price were driven by different considerations which meant it was not possible to conduct a proper comparison between the two.

152. In the original investigation the TRA undertook a proper comparison assessment in line with the regulations and public guidance.

153. As part of its ground that a finding of PMS did not affect a proper comparison of its goods, Caterpillar Group claims that the TRA failed to consider a number of points in its Final Determination. These include:

- Evidence that CXL and CCL follow the same global pricing policy of Caterpillar that applies regardless of the sales market;
- The List Price submitted by the Caterpillar Group in reply to the deficiency letter of 6 March 2025, which contains pricing data for the UK and the PRC;
- Information on the pricing mechanism submitted by Caterpillar Group during verification.

154. Caterpillar Group “emphasizes that neither its List Price nor applicable discounts could be considered to ‘reflect non-commercial factors’ in the PRC.”<sup>23</sup>

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<sup>22</sup> [Determining dumping and anti-dumping duties - GOV.UK](#)

<sup>23</sup> Caterpillar Group, Application for Reconsideration, paragraph 53



155. Caterpillar Group raised these points in response to the Addendum to SEF. The original investigation found that a PMS existed in the domestic excavator market in the PRC as a result of government influence and control in steel and key excavator component costs. At paragraphs 310 and 311 of the Final Determination, the TRA noted the points raised by Caterpillar Group in relation to its global pricing structure and determined that they did not affect the applicability of its findings of PMS in relation to Caterpillar Group.
156. As set out in paragraph 166 of the Final Determination, the TRA determined that the prevailing conditions of competition differed between the UK excavator market and the PRC domestic excavator market due to the PMS in the PRC domestic excavator market. This prevented a proper comparison due to domestic prices not being reflective of market conditions, particularly in relation to the price of steel and non-steel components.
157. As a consequence of the finding that the PMS did not permit a proper comparison, it was reasonable for the TRA not to consider the list price or information on the pricing mechanism submitted by Caterpillar Group as these related to the prices of domestic sales in the PRC.
158. Caterpillar Group also claims that the TRA failed to assess the effect of the PMS on the UK excavator market and on the UK industry which uses excavator components produced in the PRC, noting that UK industry is likely to be purchasing certain key excavator components allegedly affected by the distortion which would therefore equally affect UK pricing.<sup>24</sup>
159. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The approach followed the legal requirements and relevant guidance. This has been set out in internal

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<sup>24</sup> Caterpillar Group, Application for Reconsideration, paragraphs 63-64



working documents, the outcomes of which have been explained in the Final Determination. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration findings is that this ground should not be upheld.

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

#### **3.8.1 Applicant's Ground**

160. In its application for reconsideration, Caterpillar Group claims:

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

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

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

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



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

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

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

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

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

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

*"However, the TRA has determined that the price of steel and key excavator components reflect non-commercial factors, which is reflected in a PMS in the excavator market. As these are not considered normal circumstances, the exporters' costs of production*



*have been adjusted in accordance with regulation 13 of the Regulations."*

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

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

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

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

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

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

*(c) any other factors it considers relevant.*

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

*75. The Caterpillar Group also notes that the U.S. Department of Commerce routinely uses sales to third countries to determine the normal value in the*



*absence of viable domestic sales. In fact, using export price to third countries is a preferred methodology as compared to the construction of the normal value.*

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

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

### **3.8.2 Original Investigation**

161. Having determined it was not appropriate to use the comparable price of the like goods in the PRC to calculate the normal value, the TRA was required to find an alternative method to determine the normal value.

162. The TRA considered the alternative approaches as described in regulation 8(1) of the D&S Regulations.

163. They discounted the approach of regulation 8(1)(c) which allows the TRA to determine the normal value using Regulation 14 in certain circumstances. The TRA determined that those circumstances were not



present in this case. On that basis the TRA could either use the approach set out in regulation 8(1)(a) (determining the costs of production plus a reasonable amount for administrative, selling and general costs and for profits), or the approach set out in regulation 8(1)(b) (determining the price of the like goods when exported to an appropriate third country or territory provided the price is representative).

164. The TRA decided to use the approach set out in regulation 8(1)(a) and determine costs of production plus a reasonable amount for administrative, selling and general costs and for profits.
165. To determine the costs of production the TRA determined through its verification activities that the exporters' records were in accordance with the Generally Accepted Accounting Principles (GAAP) of the PRC, and that those records reasonably reflected costs associated with production and sale of the like goods in the PRC.
166. For the purposes of Regulation 8(1)(a), Regulation 11(1) requires the TRA to determine the costs of production of the like goods in the exporting country or territory in accordance with Regulation 11. Where Regulation 11(3) applies, costs of production of the like goods in the exporting country or territory must normally be calculated by the TRA on the basis of records kept by the overseas exporter of the goods concerned.
167. Whilst the criteria of regulation 11(3) of the D&S regulations were met, and the TRA was therefore able to calculate the costs of production of the like goods on the basis of records kept by the overseas exporter, the TRA determined that, pursuant to regulation 11(6) and regulation 13, it was appropriate to adjust the costs for key excavator components. This was because costs in the PRC reflected non-commercial factors, and so did not reasonably reflect the costs in a market if those costs were substantially determined by free market forces.



168. In determining the AS&G costs pursuant to Regulation 8(1)(a), Regulation 12(2) requires the TRA as a default to use the actual data pertaining to the production and sales by the overseas exporter of the like goods, in the ordinary course of trade, in the domestic market of the exporting country or territory. The application of this methodology is addressed in further detail in Grounds 9 and 10.

### 3.8.3 Relevant Legislation and Policy

169. The D&S Regulations set out alternative methodologies to determining normal value:

#### ***Alternative methodologies to determine the normal value***

*8.—(1) Where there is no comparable price, or it is not appropriate to use the comparable price in accordance with regulation 7(2), the TRA must determine the normal value of the goods—*

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

*(b) by determining the price of the like goods when exported to an appropriate third country or territory provided that price is representative (see regulation 10);*  
*or*

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

*(2) Where regulation 7(2)(c) applies, the TRA may also calculate the normal value on the basis of the data from other overseas exporters of the goods concerned in the exporting country or territory.*

#### ***Appropriate third country or territory and representative price***

*10. For the purpose of making a determination under regulation 8(1)(b), the TRA may take the following into account—*



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

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

*(c) any other factors it considers relevant.*

### **Costs of production**

*11.—(1) The TRA must determine the costs of production of the like goods in the exporting country or territory for the purpose of regulation 8(1)(a) in accordance with this regulation.*

*(2) Where paragraph (3) applies, costs of production of the like goods in the exporting country or territory must normally be calculated by the TRA on the basis of records kept by the overseas exporter of the goods concerned.*

*(3) This paragraph applies where the records of the overseas exporter of the goods concerned—*

*(a) are in accordance with generally accepted accounting principles of the exporting country or territory; and*

*(b) reasonably reflect the costs associated with the production and sale of the like goods in the exporting country or territory.*

*(4) In making a determination under this regulation the TRA must—*

*(a) consider any evidence on the proper allocation of costs provided that such allocations have been historically utilised by the overseas exporter, in particular in relation to establishing appropriate amortisation and depreciation periods and allowances for capital expenditures and other development costs;*



*(b) adjust costs where appropriate for non-recurring items of cost which benefit future or current production;*

*(c) adjust costs where they are affected by start-up operations; and*

*(d) take into account any other factors it considers relevant.*

*(5) Where the records of the overseas exporter do not meet the criteria in paragraph (3) the costs of production may be calculated by the TRA using any other reasonable basis.*

*(6) This regulation is subject to the TRA's power to make adjustments in accordance with regulation 13 (adjustments).*

***The amounts for administrative, selling and general costs and for profits***

*12.—(1) The TRA must determine a reasonable amount for administrative, selling and general costs and for profits for the purpose of regulation 8(1)(a) in accordance with this regulation.*

*(2) Subject to paragraph (3), the TRA must determine reasonable amounts for the administrative, selling and general costs and for profits on the basis of the actual data pertaining to the production and sales by the overseas exporter of the like goods, in the ordinary course of trade, in the domestic market of the exporting country or territory.*

*(3) Where the TRA cannot determine reasonable amounts in accordance with paragraph (2), it may determine them on the basis of—*

*(a) the actual amounts incurred and realised by the overseas exporter in question in respect of production and sales in the domestic market of the exporting country or territory of the same general category of goods;*

*(b) the weighted average of the amounts incurred and realised by other overseas exporters subject to investigation in respect of production and sales*



*of the like goods in the domestic market of the exporting country or territory;  
or*

*(c) any other reasonable method provided that the amount for profit so established does not exceed the profit normally realised by other overseas exporters on sales of goods of the same general category in the domestic market of the exporting country or territory.*

*(4) This regulation is subject to the TRA's power to make adjustments in accordance with regulation 13 (adjustments).*

### **Adjustments**

*13.—(1) Where paragraph (3) applies, the TRA may for the purpose of paragraph (2), make adjustments to the amounts determined in accordance with regulation 11 (costs of production) or regulation 12 (the amounts for administrative, selling and general costs and for profits).*

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

*(3) This paragraph applies where the TRA considers that the amounts calculated in accordance with regulation 11 (costs of production) or regulation 12 (the amounts for administrative, selling and general costs and for profits) are unrepresentative because they do not reasonably reflect the overseas exporter's production, administrative, selling or general costs or profits in a market if those costs and profits were substantially determined by market forces.*

*(4) In making adjustments the TRA may have regard to the following—*

*(a) corresponding costs of production, administrative, selling, general costs and profits in an appropriate representative third country or territory;*

*(b) international prices, costs or benchmarks; or*



*(c) any other factors it considers relevant.*

*(5) For the purpose of paragraph (4)(a), the TRA may determine whether a third country or territory is an appropriate representative third country or territory taking into account—*

*(a) whether and to what extent reliable information is made available to the TRA by overseas exporters in that country or territory at the time of selection of that country or territory;*

*(b) whether the country or territory has a similar level of economic development to the exporting country or territory; and*

*(c) any other factors it considers relevant.*

*(6) For the purpose of this regulation, domestic costs, prices and profits are “substantially determined by market forces” where they are substantially determined by free market forces and the costs or prices in the domestic market are not artificially low as a result of factors including substantial government intervention.*

170. The public guidance states:

***Alternative methods to determine the normal value***

*When it is not appropriate to use the comparable price, we will use alternative methods to determine the normal value of the goods concerned.*

*In general, we will either construct the normal value or use representative export sales prices to an appropriate third country.*

*We may also determine the normal value based on other exporters’ domestic sales if the exporter does not sell like goods domestically. This is sometimes known as the ‘exporter next door’ method.*



*Finally, further alternative methods for determining normal value are available for imports from particular foreign countries.<sup>25</sup>*

#### **3.8.4 Reconsideration Finding**

171. In the original investigation the TRA made a judgement based on the facts of the case and determined a suitable alternative methodology for constructing the normal value. This approach is found to be in line with the domestic legislation and the Statutory Guidance.

172. Whilst Caterpillar Group has argued for another methodology to be used, there are no grounds to consider that the approach taken was unreasonable or inappropriate in the circumstances.

173. Having determined that it was not appropriate to use the comparable price of the like goods in the PRC to calculate the normal value, the TRA considered which methodology it should use to construct normal value. The TRA determined that the circumstances which would allow the TRA to take the approach set out in regulation 8(1)(c) of the D&S Regulations did not exist. It decided to use the approach set out in Regulation 8(1)(a) and determined costs of production, plus a reasonable amount for administrative, selling and general costs and for profits.

174. Pursuant to Regulation 11(3) of the D&S Regulations, costs of production of the like goods in the exporting country or territory must normally be calculated by the TRA on the basis of records kept by the overseas exporter of the goods concerned. However, having determined that costs in the PRC reflected non-commercial factors, the TRA adjusted these costs for key excavator components pursuant to the power in regulation 13 (as provided in regulation 11(6) .

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<sup>25</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/how-we-carry-out-a-dumping-investigation>



175. The reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The approach followed the legal requirements and relevant guidance referenced above. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.

### **3.9 Ground 9 – The TRA failed to adapt out-of-country input price information to ensure that it represented the cost of production in the PRC**

#### **3.9.1 Applicant's Ground**

176. In its application for reconsideration, Caterpillar claims:

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

*79. The TRA further asserted that costs in the PRC, namely "price of steel and key excavator components", "reflect non-commercial factors, which is reflected in a PMS in the excavator market", and "so do not reasonably reflect the costs in a market if those costs were substantially determined by free market forces", and made PMS adjustments to the to the costs of production of the Caterpillar Group based on Regulation 13 of the Regulations.*



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

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

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



83. *In case of the Caterpillar Group, however, any comparison should have been made using steel prices that are paid by the Caterpillar Group in Brazil and in PRC for steel that is used in excavator manufacturing.*

*[CONFIDENTIAL: sensitive information removed – commercially sensitive information]. In Annex 1 [CONFIDENTIAL] hereto the Caterpillar Group provides comparison of the prices reported by Platts for the datasets examined by the TRA and prices paid by the Caterpillar Group for steel, [CONFIDENTIAL: sensitive information removed – commercially sensitive information]. As shown in Annex 1 [CONFIDENTIAL], delta between prices paid for Caterpillar Group for a similar steel grade ranges from [CONFIDENTIAL: sensitive information removed – commercially sensitive information]. Moreover, as shown in Annex 1 [CONFIDENTIAL] hereto, both the PRC and Brazil prices for steel decreased significantly after POI, thus lowering the cost of production in both the PRC and Brazil, and therefore, the dumping margin.*

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

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



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

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

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

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

*"This, however, does not mean that an investigating authority may simply substitute the costs from outside the country of origin for the 'cost of production in the country of origin'. Indeed, Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 make*



*clear that the determination is of the 'cost of production [...] in the country of origin'. Thus, whatever the information that it uses, an investigating authority has to ensure that such information is used to arrive at the 'cost of production in the country of origin'. Compliance with this obligation may require the investigating authority to adapt the information that it collects".*

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

*"...Hence, where an investigating authority uses information other than that contained in the records kept by the exporter or producer to construct the cost of production, it has to ensure that the information is suitable to determine a 'cost of production' 'in the country of origin'. An investigating authority is not allowed to simply substitute the costs from outside the country of origin for the 'cost of production in the country of origin'. In Ukraine – Ammonium Nitrate, the Appellate Body confirmed that the phrase 'cost of production in the country of origin' indicates that whatever information or evidence is used to determine the 'cost of production', it must be apt to yield or capable of yielding a cost of production 'in the country of origin' and that compliance with this obligation may require the investigating authority to adapt that information. We agree with the Appellate Body's interpretation of the obligation in Article 2.2 to determine 'the cost of production in the country of origin'."*

*87. The Panel further concluded that " ...the Cost Adjustment Methodology, by providing for the use of out-of-country input price information, without establishing whether, or explaining how, such information is adequate to reflect or represent the cost of production in the country of origin, contravened Article 2.2 of the Anti-Dumping Agreement." The WTO jurisprudence*



*interprets Article 2.2 of the Anti-Dumping Agreement as meaning that whatever the information that an investigating authority uses, it has to ensure that such information is used to arrive at the "cost of production in the country of origin". As confirmed by the Statutory Guidance, "to achieve this, the TRA should adjust data from third countries or international benchmarks where necessary to reflect the specific circumstances in the exporting country or territory".*

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

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

*90. On that basis, the Caterpillar Group requests the TRA to re-consider cost adjustment coefficients and ensure that whatever the information that the TRA uses, that such information should allow it to arrive at the "cost of production in the country of origin". At the very least, the TRA should ensure that in line with the Statutory Guidance, costs of transportation of steel between China and Brazil, any customs and anti-dumping duties, as well as transshipment costs and costs of delivery of steel to JCB Brazil within Brazil are deducted*



*from the Platts steel prices for Brazil as used by the TRA. Thus, Annex 2 highlights the level of customs duties in Brazil and China applicable to imports of hot-rolled and cold-rolled coils referred to in Platts price quotations. Since in the period of investigation Brazil applied on average a 8% customs duty to imports of hot-rolled coils and a 9.6% customs duty to imports of cold-rolled coils, while China applied respectively 3% and 4.9%, TRA is kindly requested to adjust Brazil prices per Platts on the account of difference in customs duties by at least, respectively, 5% and 4.7%. Similar adjustments should be implemented for other selling costs affecting comparability such as transportation and other costs referred to above. Finally, TRA should also re-consider factors of production for the Caterpillar Group by using data provided by Caterpillar Brazil.*

### **3.9.2 Original Investigation**

177. A review of the working documents showed extensive analysis had been completed to assess the determination of a representative third country. This included the analysis of multiple countries assessed against various economic indices which identified Brazil as an appropriate representative third country. The methodology and reasons for selecting Brazil as the benchmark country are also explained in Section G2.2.2 of the Final Determination.

178. On 20 February 2024, the TRA published a [note](#) to the public file regarding the proposed benchmark country. In this notice, the TRA explained that it had provisionally chosen Brazil as an appropriate representative third country. In this notice, the TRA gave parties an opportunity to comment on this provisional choice of appropriate representative third country. It also invited producers in Brazil to participate in the investigation to provide certain sales and cost data to assist with the investigation.



179. A deadline of 1 March 2024 was set for comments to be received from interested parties. The note stated that “[w]e may consider submissions after this date, but we are not obliged to do so.” One submission was received from Sany Group which suggested a determination of PMS should be made before selecting a benchmark country. Sany Group also requested that the TRA not limit itself to using Brazil and instead consider using price or cost data from alternative third countries with a similar economic development status to the PRC.

180. No further submissions were received in response to the TRA’s notice of its provisional choice of benchmark country.

181. To reflect conditions of the exporting market and exporters, the TRA considered what, if any, adjustments should be made to ensure the benchmark was representative. It was found that an adjustment was required for one of the exporters steel prices to make it representative (para 358 of final determination). The TRA considered if any other adjustments were required. As the purchase data used was at ex-works level, no adjustment was needed to make it the same level of trade. The TRA also considered whether it would be appropriate to adjust for inflation and currency devaluation, however, concluded that the effects of these would act against one another, making the overall impact of any adjustment less substantial.

182. In Section G2.2.2 of the Final Determination, the TRA explained the framework which allowed it to make adjustments to costs of production or AS&G costs, noting that the TRA has had regard to corresponding costs in an appropriate representative country, in accordance with Regulation 13(4)(a) of the D&S Regulations.

### **3.9.3 Relevant Legislation and Policy**



183. Regulation 11 of the D&S Regulations provides for how the TRA must determine the costs of production of the like goods in the exporting country. Regulation 13 of the D&S Regulations provides for how the TRA may make adjustments to these costs.

184. The D&S Regulations also set out when the TRA must have regard to information provided to it by, amongst others, interested parties, and when information may be rejected.

***The use of information and facts available to the TRA from secondary sources***

***47.—(1) This regulation applies in respect of the exercise by the TRA of functions under the Act or these Regulations.***

*(2) The TRA must have regard to information supplied to it by an applicant UK industry, an interested party, a contributor or any other person from whom it has requested information, provided that the information—*

*(a) is verifiable;*

*(b) has been appropriately submitted such that the TRA may use the information without undue difficulty;*

*(c) has been supplied to it within any applicable time limit; and*

*(d) where relevant, has been supplied to it in a form that it has requested.*

***(3) The TRA must not have regard to oral statements referred to in regulation 61(4) unless—***

*(a) those statements are reproduced in writing; and*

*(b) it has made the written reproductions available to interested parties and contributors.*

***(4) The TRA may disregard information which it treats as confidential (which it would otherwise have had regard to) where the person supplying that***



*information has not supplied a non-confidential summary or a statement of reasons in accordance with regulation 45 (confidential information), unless it is satisfied from appropriate sources that such information is correct.*

*(5) The TRA may make a determination on the basis of information obtained from secondary sources, including information supplied in an application, provided that it—*

*(a) does so with special circumspection; and*

*(b) where practicable, verifies such information from independent sources, including but not limited to published price lists, official import statistics or customs returns and data pertaining to the relevant markets.*

### **Acceptance or rejection of information**

**48.—***(1) Where a person has supplied information to the TRA outside any applicable time limit, the TRA may accept such information where it considers that—*

*(a) doing so would not significantly impede the progress of an investigation; or*

*(b) it is appropriate to accept that information, having regard to the potential significance of the information on any determination it may make and any explanation provided by that person as to why it should accept that information.*

*(2) Where the TRA rejects information for any reason, it must publish its reasons for rejection in the statement of essential facts (see regulation 62) or, where such information is rejected after the statement of essential facts has been published, in the final affirmative or final negative determination.*



185. The Statutory Guidance states the following on adjustments when constructing normal value:

*In utilising information from alternative sources, the objective is to derive the cost of production and/or profits that would prevail in the exporting country or territory for the relevant exporter, were they substantially determined by market forces.*

*To achieve this, the TRA should adjust data from third countries or international benchmarks where necessary to reflect the specific circumstances in the exporting country or territory. For example, the TRA should take account of any differences in international and internal transport costs between the benchmark country and the exporting country or territory in order to replicate representative costs in the exporter's home market.<sup>26</sup>*

#### 3.9.4 Reconsideration Finding

186. When determining a representative third country in the original investigation, the TRA undertook extensive analysis of more than 15 countries, with reference to a range of economic indices, in order to identify a representative third country.

187. As noted in paragraph 332 of the Final Determination, Brazil was identified as suitable owing to:

- The availability of reliable information;
- A similar level of economic development to the PRC; and
- A significant volume of exports of excavators from Brazil.

188. The TRA consulted on a provisional representative third country by publishing a [note](#) to the public file regarding the proposed benchmark

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<sup>26</sup> <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/particular-market-situation-and-costs-adjustments>



country. The TRA provided a clear opportunity for interested parties to comment. A comment window was in place between 20 February and 1 March 2024. It was clear that any that submissions after this date may also be considered, but the TRA would not be obliged to consider them.

189. The original investigation's approach to the determination of a representative third country was in line with the domestic legislation and provided an opportunity to interested parties to comment on this proposal.

190. Once a decision had been made that Brazil was an appropriate, representative third country, the TRA considered the benchmark costs and whether any adjustments were required to reflect the conditions in the PRC. This took into account the conditions in the exporting market as well as conditions of the specific exporters. This is evidenced by the adjustment made to one of the sampled exporters to account for potential variations in steel types in the datasets, as well as differences in level of trade (see paragraph 365 of the Final Determination). The TRA considered whether further adjustments were required. It noted at paragraph 366 of the Final Determination that because the purchase data utilised was at ex-works level, excluded delivery and VAT, the TRA did not consider it possible to isolate and quantify any further adjustments. It also considered that it would not be appropriate to adjust for inflation and currency devaluation on the basis that the costs being compared were within the same period, and that the effects of inflation and currency devaluation would act against one another, making the overall impact of any adjustment less substantial.

191. Caterpillar Group claims that, in accordance with the Statutory Guidance, the TRA should have made adjustments for the costs of transportation of steel between China and Brazil, any customs and anti-dumping duties, as well as transshipment costs and costs of delivery of steel to JCB Brazil within Brazil are deducted from the Platts steel prices for Brazil as used by the TRA.



192. The TRA notes that the reference in the Statutory Guidance to “take account of any differences in international and internal transport costs between the benchmark country and the exporting country or territory” is illustrative of the general guidance to make adjustments where necessary to reflect the specific circumstances in the exporting country or territory. As noted in the preceding paragraphs, the TRA considered the benchmark costs and whether any adjustments were to reflect the conditions in the PRC. In this respect, it followed the Statutory Guidance to adjust data where necessary to reflect the specific circumstances in the exporting country or territory.

193. In this regard the original investigation had acted reasonably in the conduct of their analysis to inform a determination.

194. With regards to Caterpillar Group’s claim

*84. ....That being the case, and since a re-consideration procedure provides for additional time to consider facts that could not have been considered in the course of the investigation, the TRA is respectfully invited to re-consider factors of production for the Caterpillar Group by using data provided by Caterpillar Brazil.*

The purpose of this reconsideration is to consider whether the processes, approaches and conclusions made in the original investigation were done so reasonably. A reconsideration is not a means by which the investigation itself can be prolonged or extended, as this could undermine the limitations on the length of an investigation set within the WTO framework.

195. On 17 April 2025, Caterpillar Group made a [submission](#) in response to the TRA’s disclosed dumping and injury margin calculations for CXL. In that submission it suggested that the only reason for a difference in costs of excavators between China and Brazil is (a) a much smaller economy of



scale in Brazil's manufacturing facilities, and (b) inflated costs of inputs in Brazil due to tariffs and protectionist measures. In its application for reconsideration, Caterpillar Group claims that the TRA failed to assess this information and claims that any comparison should have been made using steel prices that are paid by the Caterpillar Group in Brazil and in PRC for steel that is used in excavator manufacturing.

196. At paragraph 341 of the Final Determination, the TRA acknowledged this submission by Caterpillar Group and explained why it would not reopen the third country benchmarking exercise. It noted that the impacts of including another third country producer were wider reaching than just for the treatment of Caterpillar Group and that in calculating an individual rate for the Caterpillar Group, the TRA had determined to maintain consistency in its approach across the sampled exporters. The TRA has reviewed the internal working documents of the original investigation and notes that this decision, and the reasons for it, were communicated to Caterpillar Group in April 2025.
197. Following the TRA's consultation on the proposed benchmark country in February 2024, Caterpillar Group had an opportunity to provide comments on the proposed benchmark country, and Caterpillar Brasil had the opportunity to participate in the investigation to provide certain sales and cost data to assist with the investigation.
198. Caterpillar Group's application for reconsideration refers to information that was submitted on 17 April 2025, more than one year after the deadline for submitting comments on the choice of benchmark country.
199. With regard to information that has been supplied outside any applicable time limit, pursuant to Regulation 48(1), the TRA has discretion to accept information where it considers that doing so would not significantly impede the progress of an investigation.



200. At paragraph 341 of the Final Determination, the TRA explains that it did not decide to reopen the third country benchmarking exercise, noting that the impact of doing so would be wider than simply the treatment of Caterpillar Group, and that it would have impeded the progress of the case.
201. The decision by the TRA not to reopen the PMS assessment was within the regulatory framework and the reasons for not reopening it were communicated directly to Caterpillar Group and summarised in the Final Determination.
202. Referencing the TRA's decision not to reopen the PMS assessment, given the time constraints on the case, Caterpillar Group suggests that a reconsideration procedure "provides for additional time to consider facts that could not have been considered in the course of the investigation."
203. Caterpillar Group also claims that instead of adapting out-of-country price information to ensure it represents the cost of production in the PRC and reflects conditions prevailing in the PRC, the TRA has adjusted costs to reflect the costs in the PRC if those costs were substantially determined by market forces (see paragraph 366 of the Final Determination).
204. The Final Determination (paragraph 358 et seq) sets out the methodology and explanation for how it treated the Brazilian benchmark data to ensure a representative comparison with the PRC. The TRA considered whether or not adjustments were required and sets out its reasoning in this section.
205. Following the SEF, the Government of China and LiuGong Group submitted that the TRA failed to reasonably demonstrate why the out-of-country benchmark costs represent the costs of production in the country of origin. Sany Group also submitted that the TRA did not establish that Brazilian steel and PRC steel production and costs are comparable in terms of technologies, scale, and inputs, and submitted that steel



production costs in Brazil would be significantly affected by inflation and currency devaluation during the POI.

206. These echo the claims that Caterpillar Group makes here in its application for reconsideration and is addressed by the TRA in the Final Determination. The TRA stated:

*363. The TRA disagrees with these statements. A benchmarking analysis was undertaken by the TRA prior to selecting Brazil for the purpose of selecting the most appropriate representative third country. This analysis demonstrated that Brazil is comparable to the PRC in terms of the level of economic development. Furthermore, the TRA identified that the costs, prices and profits in Brazil are determined by free market forces.*

*364. The TRA notes that the steel sector in the PRC is larger than that in Brazil, and any other country, and therefore undoubtedly benefits from economies of scale. However, the scale of steel production in the PRC, bolstered by subsidisation, has resulted in oversupply which has led to market disruption and lower PRC steel prices. As noted in Section G2.1.2, the TRA considers steel market in the PRC to be distorted and reflective of non-commercial factors.*

207. The TRA, having undertaken a benchmarking exercise to establish an appropriate third country, determined that Brazil was comparable to the PRC in terms of the level of economic development. It also explains how the data was treated to ensure it was representative of costs in the exporting country/country of origin.

208. The TRA has reviewed internal working documents from the original investigation that demonstrate that the TRA assessed, and where appropriate, adapted out-of-country input price information to ensure that it represented the cost of production in the PRC. It did this in accordance with the regulatory framework and has provided an explanation of this in the Final Determination.



209. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The approach followed the legal requirements and relevant guidance. This has been set out in internal working documents, the outcomes of which have been explained in the Final Determination. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.

### **3.10 Ground 10 – The Final Determination overstates the amount of profit used in the construction of normal value**

#### **3.10.1 Applicant's Ground**

210. In its application for reconsideration, Caterpillar Group claims:

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

*92. The Caterpillar Group considers that the TRA should interpret a reference in Regulation 12 (2) of the Regulations to the "actual data pertaining to the*



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

*93. Furthermore, the current construction of the statute by the TRA is unreasonable and thus is inaccurate since, on the one hand, the TRA finds that the PMS precludes it from relying upon actual domestic sales prices and costs of Chinese producers while on the other hand, in the context of the ordinary course of trade test, it takes at face value costs and domestic sales prices of Chinese producers as being in the ordinary course of trade. The Caterpillar Group notes in this regard that the issue has been litigated at length in the U.S., where the courts have found that in the context of the ordinary course of trade test, an investigating authority is precluded from implementing a cost adjustment only where the normal value is based on the*



*domestic sales prices, i.e. in a situation where the cost-based PMS does not result in the sales-based PMS:*

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

*94. However, when the cost-based PMS results in the price-based PMS or price-based PMS exists regardless, the U.S. Department of Commerce runs the ordinary course of trade test using the cost of production adjusted based on the cost-based PMS findings. In the absence of viable domestic sales in the OCOT, the U.S. Department of Commerce concludes that it cannot establish a reasonable profit margin on the basis of the actual data pertaining to the production and sales by the overseas exporter of the like goods, in the ordinary course of trade, and establishes it, among others, based on sales to third countries that are not affected by the cost-based or sales-based PMS.*

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

### **Cost adjustment issues**

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



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

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

### 3.10.2 Original Investigation

211. As stated at paragraph 319 of the Final Determination the TRA was satisfied that the records of the overseas exporters of the goods concerned were in accordance with the generally accepted accounting principles and reasonably reflected the costs associated with the production and sale of the like goods in the PRC. However, having determined that the price of steel and key excavator components reflected non-commercial factors and that prices were artificially low, adjustments were made to the exporters' costs of production.

212. To construct a normal value, the TRA had regard to the provisions of regulation 12 of the D&S Regulations, which states that the TRA "must determine reasonable amounts for both AS&G costs and for profit on the basis of the actual data pertaining to the production and sales by the overseas exporter of the like goods, in the ordinary course of trade, in the domestic market of the exporting country or territory."

213. In making this determination, the TRA considered the following:

- Whether there are domestic sales;



- If the exporters' records accurately reflect the costs incurred;  
and
- were sales made in the ordinary course of trade.

Information was provided by sampled exporters at the questionnaire stage which indicated that there were domestic sales, including costs. As set out in the verification reports for each sampled exporter, the TRA had a reasonable level of assurance that the information contained in the questionnaire responses was complete, relevant, and accurate for the purposes of this investigation.

214. The TRA used the actual data from the sampled exporters under the default methodology in Article 12(2). In considering which of these sales data was in the ordinary course of trade, an assessment was made in accordance with regulation 9 of the D&S Regulations. In respect of the prices for the purpose of determining which goods were sold at prices below the per unit costs of production plus AS&G costs (Regulation 9(1)), this was assessed on the basis of the unadjusted costs of production. No other adjustments were made.

215. The TRA has reviewed internal working documents from the original investigation which set out the process whereby the TRA conducted the ordinary course of trade tests on the sampled exporters. In considering whether the sales were made in the ordinary course of trade, total domestic sales were considered over the POI. As explained at paragraph 413 of the Final Determination, in accordance with Regulation 9 of the D&S Regulations, for those PCNs with fewer than 20% unprofitable sales, the profit margin was based on all domestic sales to non-associated parties in the ordinary course of trade during the POI. For those PCNs with equal to or greater than 20% unprofitable sales, the profit margin was based on profitable domestic sales to non-associated parties in the ordinary course of trade. A separate profit margin was calculated for each sampled exporter.



### 3.10.3 Relevant Legislation and Policy

216. The D&S Regulations set out how to determine costs of production, the amount for AS&G and profits, and adjustments. Regulation 11 (costs of production) and Regulation 13 (adjustments) have been referred to already in Section 3.9.3 of this report. Regulation 12 provides for the amounts for AS&G and profits:

***The amounts for administrative, selling and general costs and for profits***

**12.—(1)** *The TRA must determine a reasonable amount for administrative, selling and general costs and for profits for the purpose of regulation 8(1)(a) in accordance with this regulation.*

*(2) Subject to paragraph (3), the TRA must determine reasonable amounts for the administrative, selling and general costs and for profits on the basis of the actual data pertaining to the production and sales by the overseas exporter of the like goods, in the ordinary course of trade, in the domestic market of the exporting country or territory.*

*(3) Where the TRA cannot determine reasonable amounts in accordance with paragraph (2), it may determine them on the basis of—*

*(a) the actual amounts incurred and realised by the overseas exporter in question in respect of production and sales in the domestic market of the exporting country or territory of the same general category of goods;*

*(b) the weighted average of the amounts incurred and realised by other overseas exporters subject to investigation in respect of production and sales of the like goods in the domestic market of the exporting country or territory;*  
*or*

*(c) any other reasonable method provided that the amount for profit so established does not exceed the profit normally realised by other overseas*



*exporters on sales of goods of the same general category in the domestic market of the exporting country or territory.*

*(4) This regulation is subject to the TRA's power to make adjustments in accordance with regulation 13 (adjustments).*

217. The Statutory Guidance expands on how the TRA should determine costs of production, and AS&G and profit. It states:

*Regulation 11 sets out how the TRA should determine costs of production of the like goods in the exporting country or territory when constructing the normal value.*

*Costs of production must normally be calculated on the basis of records kept by the overseas exporter of the goods concerned as long as these records:*

- are in accordance with generally accepted accounting principles of the exporting country or territory, and*
- reasonably reflect the costs associated with the production and sale of the like goods in the exporting country or territory*

*Where these conditions are not met, the TRA may calculate costs of production on any reasonable basis.*

*Regulation 12 sets out the conditions for determining SG&A costs and profits. The default approach should be to determine reasonable amounts for SG&A costs and for profits on the basis of the actual data pertaining to the production and sales by the overseas exporter of the like goods, in the ordinary course of trade, in the domestic market of the exporting country or territory. Where this is not possible, the dumping and subsidisation regulations set out alternative methods by which the TRA may calculate SG&A costs and profits.*

*Costs calculated in accordance with regulations 11 and 12 may be subject to adjustment under regulation 13 in cases where the TRA considers that the*



*amounts calculated are unrepresentative because they do not reasonably reflect what the exporter's costs or profits would be if those costs or profits were incurred or made in a market where they are substantially determined by market forces. As set out in regulation 13(6), this includes situations where prices or costs are artificially low due to substantial government intervention.*

*The purpose of the adjustments made in accordance with regulation 13 is to determine what the costs and profits would be in the market of the exporting country or territory if costs, prices and profits in that market were substantially determined by market forces.*

*In order to calculate what an exporter's costs and profits would be in the market of the exporting country or territory if they were substantially determined by free market forces, regulation 13(4) allows the TRA to use:*

- corresponding costs of production, administrative, selling, general costs and profits in an appropriate representative third country or territory*
- international prices, costs or benchmarks*
- any other factors it considers relevant<sup>27</sup>*

#### **3.10.4 Reconsideration Finding**

218. In its application for reconsideration, Caterpillar Group claims that, based on the existence of abnormal circumstances that necessitate an adjustment to the actual cost of production, a “reasonable” profit margin should be determined based on the cost of production as adjusted to remove the abnormalities established by the TRA. Caterpillar Group draws this conclusion by inviting the TRA to interpret the reference in Regulation 12(2) to the “actual data pertaining to the production” consistently with Regulation 11(2) of the D&S Regulations, which provides that the “costs of

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<sup>27</sup> <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/particular-market-situation-and-costs-adjustments>



production of the like goods in the exporting country or territory must normally be calculated by the TRA on the basis of records kept by the overseas exporter of the goods concerned.” Caterpillar Group claims that, having considered the price of steel and key excavator parts reflected non-commercial factors which precluded the TRA from calculating costs of production based on exporters’ records, a reference to the actual data pertaining to the production in Regulation 12(2) of the D&S Regulations should be interpreted as referring to the actual data pertaining to the production as adjusted by the TRA.

219. The parallel between Regulation 11(2) and Regulation 12(2) is stated by Caterpillar Group without the appropriate context of the rest of the regulation. The starting point in determining the costs of production in Regulation 11(2) is that the costs of production must *normally* be calculated on the basis of records kept by the overseas exporter of the goods concerned. The starting point in determining the amounts for AS&G and profits in Regulation 12(2) is that the TRA *must* use the actual data pertaining to the production and sales by the overseas exporter of the like goods, in the ordinary course of trade, in the domestic market of the exporting country or territory.

220. However, the conditions whereby the TRA may depart from that initial position varies between Regulation 11 and Regulation 12. With regard to costs of production, Regulation 11(2) states that this must *normally* be calculated by the TRA on the basis of records kept by the overseas exporter of the goods concerned. As explained in paragraph 320 of the Final Determination, the TRA determined that the non-commercial factors affecting the price of steel and key excavator components were not normal circumstances, and as a consequence, it was appropriate to adjust the exporters’ costs of production in accordance with Regulation 13.



221. As such, the TRA acted within the legal framework of Regulation 11 to determine costs of production by making adjustments in accordance with regulation 13.

222. With regard to the determination of amounts for AS&G, and profits, determination of these on the basis of actual data pertaining to the production and sales by overseas exporters of the like goods, in the ordinary course of trade, in the domestic market of the exporting country or territory is subject to the provisions in Regulation 12(3):

*(3) Where the TRA cannot determine reasonable amounts in accordance with paragraph (2), it may determine them on the basis of—*

*(a) the actual amounts incurred and realised by the overseas exporter in question in respect of production and sales in the domestic market of the exporting country or territory of the same general category of goods;*

*(b) the weighted average of the amounts incurred and realised by other overseas exporters subject to investigation in respect of production and sales of the like goods in the domestic market of the exporting country or territory; or*

*(c) any other reasonable method provided that the amount for profit so established does not exceed the profit normally realised by other overseas exporters on sales of goods of the same general category in the domestic market of the exporting country or territory.*

223. The Statutory Guidance explains that:

*Regulation 12 sets out the conditions for determining SG&A costs and profits. The default approach should be to determine reasonable amounts for SG&A costs and for profits on the basis of the actual data pertaining to the production and sales by the overseas exporter of the like goods, in the ordinary course of trade, in the domestic market of the exporting country or*



*territory. Where this is not possible, the dumping and subsidisation regulations set out alternative methods by which the TRA may calculate SG&A costs and profits.*

224. In the Final Determination, the TRA explained that it had been able to determine reasonable amounts for the AS&G costs and profits on the basis of actual data. Having made a determination that it was able to determine reasonable amounts in accordance with regulation 12(2), there was a mandatory requirement for the TRA to determine those amounts on the basis of the actual data pertaining to the production and sales by the overseas exporter of the like goods, in the ordinary course of trade, in the domestic market of the exporting country or territory.

225. As such, the TRA acted within the legal framework of Regulation 12 to determine the amounts for administrative, selling and general costs and for profits.

226. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The approach followed the legal requirements and relevant guidance. This has been set out in internal working documents, the outcomes of which have been explained in the Final Determination. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration findings is that this ground should not be upheld.



### **3.11 Ground 11 – No adjustments should be applied to the inputs of the Caterpillar Group that do not have a significant share in the costs**

#### **3.11.1 Applicant's Ground**

227. In its application for reconsideration, Caterpillar Group claims:

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

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

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

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



*sufficiently important to have a material impact on domestic sales prices of the downstream product.*

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

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

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

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



### 3.11.2 Original Investigation

228. In paragraph 327 of the Final Determination, the TRA explained that it had determined that costs in the PRC reflected non-commercial factors, and did not therefore reasonably reflect the costs in a market in which costs were substantially determined by free market forces.
229. To determine whether or not exporters' input costs were artificially low, the TRA used comparator values from Platts Connect and the selected benchmarking country, Brazil.
230. At paragraph 343 of the Final Determination, the TRA noted that whilst a PMS had been found in all areas identified in the application, it had also considered which elements were significant cost or profit elements. Having regard to the Statutory Guidance, the TRA determined that tax, energy and land costs were not significant costs of production. As a consequence, the TRA did not assess these costs against benchmark data to assess if they were artificially low.
231. At paragraph 346 of the Final Determination, the TRA referred to the Statutory Guidance on making adjustments. The Statutory Guidance states that: "The TRA should use its judgement on what constitutes a significant cost or profit element in light of the circumstances of the case."
232. As explained in the Final Determination at paragraphs 372 to 374, by using the steel content information provided by the sampled PRC exporters, the TRA separated the PRC steel element from the total direct costs and made a comparison with the Brazilian steel benchmark price. It then determined the percentage difference between the costs for each PCN and an overall average was taken. This analysis showed that the Brazilian benchmark steel prices were significantly higher than the average PRC costs paid by the sampled exporters. In the case of Caterpillar Group, the Brazilian steel benchmark price was found to be 55-75% higher.



233. To determine if the remainder of the excavator cost was artificially low the TRA compared the remainder of each exporter's component cost on a per kilogram basis. Although a per component comparison was considered, it was ultimately determined that there was too much variation in size and weight between components to make such a comparison meaningful.

234. The following steps taken to ensure that this comparison was fair:

- To exclude the steel element of these inputs, so that the benchmark comparison was more representative of the exporting country (i.e. by making a proportional adjustment for steel and only to that proportion of the steel produced in the PRC);
- To calculate the per kilogram cost of the remaining inputs to allow for differences of design and weight between the like goods produced by the benchmarking producer and the like goods produced by the exporters. This was particularly important as JCB Brasil produces a smaller number of PCNs compared to the PRC exporters;
- To exclude all material inputs that were not excavator components as outlined in Section G2.1.3 of the final Determination when applying the adjustments, as the allegation of the relevant PMS factor pertained only to this industry.

235. The Statutory Guidance states that "The TRA should use its judgement on what constitutes a significant cost or profit element in light of the circumstances of the case."<sup>28</sup> The TRA considered the cumulative effect of the individual costs of all raw materials for each exporter was significant and that an adjustment, in accordance with Regulation 13 of the D&S Regulations was therefore appropriate.

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<sup>28</sup> <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/particular-market-situation-and-costs-adjustments>



### 3.11.3 Relevant Legislation

236. Regulation 13 has already been set out in Section 3.9.3 and applies here.

### 3.11.4 Reconsideration Finding

237. Having concluded that a PMS existed in the excavator market in the PRC, the TRA considered the material impact of the PMS on the cost of steel and prefabricated excavator components. This included consideration of whether these inputs represented a significant cost element.

238. Having determined that the price of these inputs in the PRC were affected by non-commercial factors, the TRA identified Brazil as an appropriate, representative third country. In the case of Caterpillar Group it was found that the Brazilian steel benchmark price was higher. The TRA used the data of steel prices in Brazil to determine the adjustments required for the steel component of the raw materials for each exporter. This is explained in paragraph 372 of the Final Determination and demonstrates that the TRA had considered adjustments on an exporter-by-exporter basis.

239. For the non-steel component of raw materials, the TRA compared the information provided by the sampled PRC exporters and the third country producer to compare the cost of non-steel elements of the excavator components. In the case of Caterpillar Group, the benchmark price was found to be higher.

240. The TRA used the information on cost of production, as provided in the exporters' original questionnaires. The questionnaire response from Caterpillar Group provided information on (a) the percentage of steel content in each individual input; (b) the overall percentage cost of steel content in each PCN, and (c) the percentage of that cost which was for PRC steel.



241. When determining if adjustments should be made, inputs were looked at collectively to determine if the cumulative effect of these inputs was a significant cost element. The TRA was able to do this based on the information provided in the exporters' questionnaires, which set out the overall percentage cost of steel content in each PCN.

242. In its application for reconsideration, Caterpillar Group challenges the TRA's decision to consider the cumulative effect of the individual costs and submits that these should be assessed individually. It claims the inputs should have been individually assessed by the TRA to determine whether or not any of them is significant enough for an adjustment to be justified.

243. The Statutory Guidance states:

*The TRA should only make adjustments in relation to significant cost or profit elements. The TRA should use its judgement on what constitutes a significant cost or profit element in light of the circumstances of the case.<sup>29</sup>*

244. The guidance states that "the TRA should use its judgement [emphasis added] on what constitutes a significant cost or profit element in light of the circumstances of the case." The TRA demonstrated that it considered what represented a significant cost or profit element as seen by not making adjustments for tax, energy and land costs because they were not significant costs of production.

245. The TRA used its judgement when weighing up if the cumulative effect of the individual costs of all raw materials was significant. The analysis undertaken at an exporter level, and on each component part demonstrated that the approach taken was reasonable in the light of the circumstances of the case and as provided for by the Statutory Guidance.

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<sup>29</sup> <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/particular-market-situation-and-costs-adjustments>



246. In its application for reconsideration, Caterpillar Group submits that no adjustments should have been applied to insignificant cost elements, including those with the share in cost of less than 17%. Caterpillar Group's claim that anything less than 17% should not be deemed significant relates to a provision in the EU's basic anti-dumping regulation (Article 7(2a)). However, even if this interpretation of a threshold in the EU's regulatory framework is correct, this threshold does not apply to the UK's trade remedies framework. There is no mention in the domestic UK legislation, WTO Agreements nor any guidance that the TRA is to have regard to that stipulates a certain threshold in relation to significance in the determination as to what inputs are adjusted for constructing a normal value.

247. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The approach followed the legal requirements and relevant guidance. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. The reconsideration finding is that this ground should not be upheld.

### **3.12 Ground 12 – The TRA should have performed pass-through analysis to determine cost of steel inputs prior to applying steel adjustment**

#### **3.12.1 Applicant's Ground**

248. In its application for reconsideration, Caterpillar Group claims:

*104. As mentioned above, paragraph 350 of the Final Determination provides "the TRA was able to determine the cost of steel within each PCN (~20%) and*



*how much of the steel was manufactured in the PRC" based on the information on "steel content (by mass) of an average excavator in each PCN category". In case of the Caterpillar Group, the TRA determined steel share in cost of PCN to be equivalent to its steel content (by mass) and, for the PRC steel content, applied steel adjustment of [CONFIDENTIAL: sensitive information removed – commercially sensitive information]%. This resulted in an overstated adjustment because: (a) each PCN includes complex inputs, such as engines, whereas steel does not represent major cost, and (b) no allowance was made for value added by excavator component producers (suppliers of the Caterpillar Group).*

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

### **3.12.2 Original Investigation**

249. In the Final Determination, the TRA explains how it was able to determine the cost of steel within each PCN:

*350. The TRA requested further information from the sampled PRC exporters, JCB and the third country producer to establish the steel content (by mass) of an average excavator in each PCN category. This information was provided by all parties. Using the data provided, the TRA was able to determine the cost of steel within each PCN (~20%) and how much of the steel was manufactured in the PRC. This provided the basis for assessing comparator values with the PRC steel within the direct costs for the PRC sampled exporters.*

### **3.12.3 Relevant Legislation and Policy**

250. There is no applicable legislation or policy on conducting a pass-through analysis in anti-dumping investigations.



#### 3.12.4 Reconsideration Finding

251. In its application for reconsideration, Caterpillar Group has asked the TRA to undertake a pass-through assessment to determine allowance for value added by excavator component producers and sound steel cost share in complex excavator components.
252. There is no provision or requirement in anti-dumping investigations to carry out a pass-through analysis. The TRA has explained in paragraphs 347 to 392 how it determined costs of raw materials (steel and prefabricated excavator components). The TRA has explained its methodology, summarised the evidence which was used in making its findings, and responded to submissions from parties on this approach. The TRA has also reviewed internal working documents from the original investigation which set out the assessment and evaluation of this approach. The approach is reasonable based on the evidence available, the regulatory framework, and the relevant guidance on determining the cost of inputs. These have been summarised and explained in the Final Determination.
253. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The approach followed the legal requirements and relevant guidance. This has been set out in internal working documents, the outcomes of which have been explained in the Final Determination. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.



### **3.13 Ground 13 – No steel adjustment should be applied to inputs that do not contain steel and to inputs that do not have a significant share of steel in the cost**

#### **3.13.1 Applicant's Ground**

254. In its application for reconsideration, Caterpillar Group claims:

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

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

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

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

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



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

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

*109. In its Questionnaire Response verified by the TRA, the Caterpillar Group submitted that [CONFIDENTIAL: sensitive information removed – commercially sensitive information]. Importantly, [CONFIDENTIAL: sensitive information removed – commercially sensitive information] components have steel content within [CONFIDENTIAL: sensitive information removed – commercially sensitive information]. Moreover, the PRC steel content in costs of most components used by the Caterpillar Group is much smaller and for [CONFIDENTIAL: sensitive information removed – commercially sensitive information] of the excavator components it ranges from [CONFIDENTIAL: sensitive information removed – commercially sensitive information].*



*Correspondingly, based on the 50% threshold adopted by the TRA, the steel content of at least [CONFIDENTIAL: sensitive information removed – commercially sensitive information] used by the Caterpillar Group is not significant.*

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

### **3.13.2 Original Investigation**

255. In the Final Determination, the TRA explains its approach to making adjustments.

This has been summarised in the preceding sections of this report, particularly in Sections 3.10 and 3.11. Section 3.11 in particular explains the TRA's approach to determining what constituted a significant element of cost or profits. This included looking at the cumulative effect of cost or profit elements.

256. With regard to Caterpillar Group, the TRA made PCN by PCN adjustments to material inputs, specifically all known PRC steel and known PRC non-steel excavator parts.

257. The TRA used the information on cost of production, as provided in the original questionnaire response from Caterpillar Group. For raw material inputs, the TRA relied on the questionnaire responses from Caterpillar Group which provided (a) information on the percentage steel content in each individual input, (b) the overall percentage cost of steel content in each PCN, and (c) the percentage of that cost which was for PRC steel.

258. As noted in the Addendum to the SEF, Caterpillar Group did not provide data regarding steel purchase transactions, so the TRA used data from Platts Connect to obtain PRC steel plate prices to act as a benchmark. This was then compared with Brazilian steel plate prices obtained from Platts Connect.



259. When determining the adjustment to apply, inputs which had a steel component were looked at collectively. The percentage steel component in each input varied, but as noted in Section 3.11, the TRA determined that it was appropriate to look at the cumulative effect of inputs with steel content and determine if these represented significant cost elements. At paragraph 347 of the Final Determination, the TRA explains this decision:

*347. The main raw material inputs for excavators identified above were steel and prefabricated excavator components. Steel was also identified as the major input in many of the prefabricated excavator components. In order to assess the material impact of the PMS on the cost of raw materials in a way that was representative of the country of origin, the TRA therefore elected to make an adjustment for the total value of PRC steel present in each PCN (including that present in the individual components themselves), before then making an overall adjustment for the remainder of the value of non-steel inputs of these components.*

260. Based on the information provided by Caterpillar Group in its questionnaire response about the percentage of steel content in each PCN, and the percentage of that steel which came from the PRC, a steel adjustment was made based on the percentage difference between Caterpillar Group's costs and the Brazilian steel benchmark price.

261. This steel adjustment was applied on the basis of the overall steel content in each PCN. That is to say, the steel adjustment percentage was applied only to that portion of steel content in the PCN. The steel adjustment was not applied to the portion of the PCN that did not have a steel component as reported in the questionnaire response from Caterpillar Group.



### 3.13.3 Relevant Legislation and Policy

262. The relevant legislation and policy with respect to making adjustments has been set out in Section 3.11.3 and applies here.

### 3.13.4 Reconsideration Finding

263. Caterpillar Group submits that no steel adjustments should be applied by the TRA to excavator components that have no steel content, or to components with less than 20% steel content. In its application for reconsideration, Caterpillar Group submits that the TRA failed to satisfy the requirements in the Statutory Guidance on making adjustments, specifically with regard to its consideration of what constituted a significant cost or profit element.

264. This point has been addressed in Section 3.11 and applies here. The TRA made a reasonable decision that, when assessing if individual costs were significant, it was reasonable and appropriate to consider if the cumulative effect of individual costs was significant. Noting the complexity of the product under investigation, this was a reasonable approach to making adjustments, and was consistent with the Statutory Guidance which states that “the TRA should use its judgement on what constitutes a significant cost or profit element in light of the circumstances of the case.”

265. Using the information provided by Caterpillar Group and the benchmarking data from Platts Connect, the TRA was able to calculate the percentage difference and make adjustments based on this analysis.

266. The TRA applied the steel adjustment at PCN level on the basis of the overall steel component in that PCN. It did not make a steel adjustment to the portion of that PCN which did not have a steel component.

267. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The TRA explained its



decision to consider the cumulative effect of individual inputs with a steel component and that the cumulative effect of those individual inputs represented a significant cost element. This is consistent with the Statutory Guidance on how the TRA may determine what is a significant cost element.

268. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.

### **3.14 Ground 14 – Non-steel adjustment should not be applied because it is not substantiated by the TRA**

#### **3.14.1 Applicant's Ground**

269. In its application for reconsideration, Caterpillar Group makes the following claim:

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

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

- Steel adjustment of [CONFIDENTIAL: sensitive information removed – commercially sensitive information]%,*
- Non-steel adjustment of [CONFIDENTIAL: sensitive information removed – commercially sensitive information]%, and*



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

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

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

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

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

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

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



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

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

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

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

*117. The TRA provided no other plausible substantiation for its conclusion on the "government influence and control" in the key excavator component cost that would be applicable to the market as a whole and to the Caterpillar Group*



*in particular, other than allegedly "high proportion of steel in many excavator components":*

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

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

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

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

*iii. the TRA claims that a "multitude" of SOEs manufacture excavator parts and then cites three examples: (1) Shanghai Jintai, a manufacturer of diesel engines for excavators, (2) Shantui Construction Machinery which is engaged in track assembly; and (3) Yongsheng Heavy Industry also engaged in track assembly. However it does not explain why these*



*examples would be capable of affecting the market (for example, no information is provided on the overall number of producers of excavator parts in the PRC is available in the Final Determination) Most importantly, as the TRA fails to assess the fact that none of these SOEs are supplying to the Caterpillar Group, it acted contrary to the Statutory Guidance issued by the Secretary of State requiring the TRA to assess whether adjustments are justified on an exporter-by-exporter basis.*

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

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

*"241. ... the TRA has conducted a holistic assessment of the information available before concluding that prices of key excavator parts reflect non-commercial factors. As explained in paragraph 167 of the SEF, the TRA considers that the high proportion of steel in most excavator parts means that the prices of those parts reflect non-commercial factors in the steel market.*



*Information provided by a sampled exporter showed that for the six major components of excavators, all but the counterweight contained more than 50% steel, with some components being 100% steel. Furthermore, paragraphs 172 and 173 of the SEF indicate that the hydraulics industry receives direct state support."*

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

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

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

### **3.14.2 Original Investigation**

270. In the Final Determination, the TRA explained in detail its approach to determining the costs of raw materials and making relevant adjustments between paragraphs 347-392. This has also been summarised in the



preceding sections of this report, particularly in Sections 3.10, 3.11 and 3.13.

271. As noted at paragraph 380 of the Final Determination, the TRA originally requested cost data for “all purchases of materials where the material type accounts for over 5% of total costs to make and sell during the POI (1% for energy)”. However, this request led to limited information being received due to the complexity of excavators, and so the TRA determined that by grouping together cost components, the TRA would be able to obtain a better understanding of the costs making up an excavator and, ultimately, make adjustments where necessary.

272. The TRA explained the process by which it made a determination that the cost of non-steel elements of excavators was artificially low. Using the information provided by sampled PRC exporters, including Caterpillar Group, and the benchmarking producer, the TRA was able to calculate the percentage difference and make adjustments based on this analysis. This approach is summarised in the Final Determination:

*382. Using the information provided by the sampled PRC exporters and the benchmarking producer, the TRA then compared the cost of the non-steel elements of the excavator components. The percentage differences were then calculated for each sampled exporter (Table 5):*

Table 5: Direct costs comparison (percentage difference)

<b>Exporter</b>	<b>Percentage difference</b>
Caterpillar Group	Brazilian benchmark price found to be 30-220% higher*
Liugong Group	Brazilian benchmark price found to be 95-120% higher



Sany Group	Adjusted Brazilian benchmark price <sup>30</sup> found to be 70-85% higher
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*\* The upper part of this range is attributable to one part. Were this part removed, the range would extend from 30-55%*

*383. This analysis showed that the Brazilian benchmark costs are significantly higher than the average PRC costs paid by the sampled exporters. As such, the TRA has determined that the non-steel elements of excavator components in the PRC are artificially low. For each sampled exporter, the cost of the non-steel elements of the excavator components was increased based on the associated percentage difference.*

273. At paragraphs 387 and 388 of the Final Determination, the TRA also explained that it had concluded that the high proportion of steel in many excavator parts meant that many of the non-commercial factors that are reflected in the price of PRC steel flow through into the price of these components. The TRA stated that, given the complexity of the product, it was reasonable to group together key excavator parts to make a suitable adjustment.

274. The TRA has also reviewed internal working documents from the original investigation which set out the methodology and approach to making adjustments with respect to non-steel elements of excavators. This includes specific calculations with respect to Caterpillar Group, which is based on data received from Caterpillar Group in its questionnaire response.

275. The approach that the TRA took in the original investigation in making non-steel adjustments is explained and reasonable within the regulatory

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<sup>30</sup> The version of this table in the SEF (Table 5) incorrectly referred to a 'Brazilian steel benchmark price'. This should have read 'Brazilian benchmark price' and has been corrected in this document.



framework and the Statutory Guidance. The rationale and approach have been summarised in the Final Determination.

### 3.14.3 Relevant Legislation and Policy

276. The relevant legislation has already been set out in sections 11, 12, and 13.

### 3.14.4 Reconsideration Finding

277. In its application for reconsideration, Caterpillar Group claims that the TRA provided no other plausible substantiation for its conclusion on the “government influence and control” in the key excavator component cost that would be applicable to the market as a whole and to Caterpillar Group, other than the allegedly “high proportion of steel in many excavator components.” It concludes that:

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

278. Caterpillar Group’s submission under this ground turns on its claim that the TRA made a conclusion that there was no state intervention in the excavator market, other than that caused by distortion in the steel industry. Caterpillar Group claims that the TRA made such a determination in paragraph 229 of the Final Determination.

279. This is a misreading of paragraph 229. The Final Determination says:



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

280. This paragraph does not say that the only evidence of state intervention was distortion in the steel industry; it observes that “even if there was no other evidence of state intervention” the prices of these inputs would reflect non-commercial factors due to the high proportion of steel in the inputs. Immediately following paragraph 229, the Final Determination refers to other evidence of direct state interference in the excavator parts market:

*231. There is further evidence of direct state interference in the excavator parts market. For instance, the Catalogue of Industrial Base Innovation and Development (2021) lists excavator parts in its list of products needed for “upgrading the industrial base and modernizing the industrial chain, and to implement the task requirements of the Party Central Committee and the State Council.” The 14th Five-Year Development Plan for the Construction Machinery Industry cited earlier also refers to the need to develop “high-end [construction machinery] parts” and of the requirement to implement the “construction machinery industry chain strong foundation development project”. It also lists over 119 kinds of products, parts, and technologies from the construction machinery industry which should be encouraged.*



281. Paragraphs 382 and 383 of the Final Determination confirm that the TRA used information provided by the sampled PRC exporters and the benchmarking producer to compare the cost of non-steel element of the excavator components. This has been explained at Section 3.14.2.

282. It was the comparison and analysis of the costs of non-steel components which enabled the TRA to determine that non-steel elements of excavator components in the PRC were artificially low. This goes beyond what is claimed in Caterpillar Group's application for reconsideration and demonstrates that the TRA's finding of non-steel elements of excavators components was not tied exclusively to the distortions in the steel market as Caterpillar Group claims.

283. The TRA explained in the Final Determination (paragraphs 347 to 392) its reasons for finding that non-steel elements of excavator components were artificially low and the basis on which non-steel adjustments were made. It substantiated these findings with evidence that had been gathered from interested parties and its own analysis, and made these findings within the regulatory framework.

284. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The approach followed the legal requirements and relevant guidance. The outcomes of which have been explained in the Final Determination. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration findings is that this ground should not be upheld.

## **Injury and causal link determination (Grounds 15 to 18)**



### **3.15 Ground 15 – Material injury determination is not based on an objective examination of positive evidence on the record**

#### **3.15.1 Applicant's Ground**

285. In its application for reconsideration, Caterpillar Group states:

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

- (a) the volume of the dumped goods during the injury period;*
- (b) the effect of the dumped goods on prices of the like goods in the United Kingdom during the injury period;*
- (c) the consequent impact of the dumped goods on a UK industry during the injury period; and*
- (d) any other factors it considers relevant.*

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

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

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



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

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

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

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

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

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

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

**25 November**

**3 March 2025**

**14 May 2025**

**2024**



Volume of imports from China, Statement of Essential Facts, tons	Volume of exports from China to the UK, Questionnaire response by the Caterpillar Group, tons	Volume of imports from China, Final Determination, tons
15,958	[CONFIDENTIAL: sensitive information removed – commercially sensitive information]	15,958

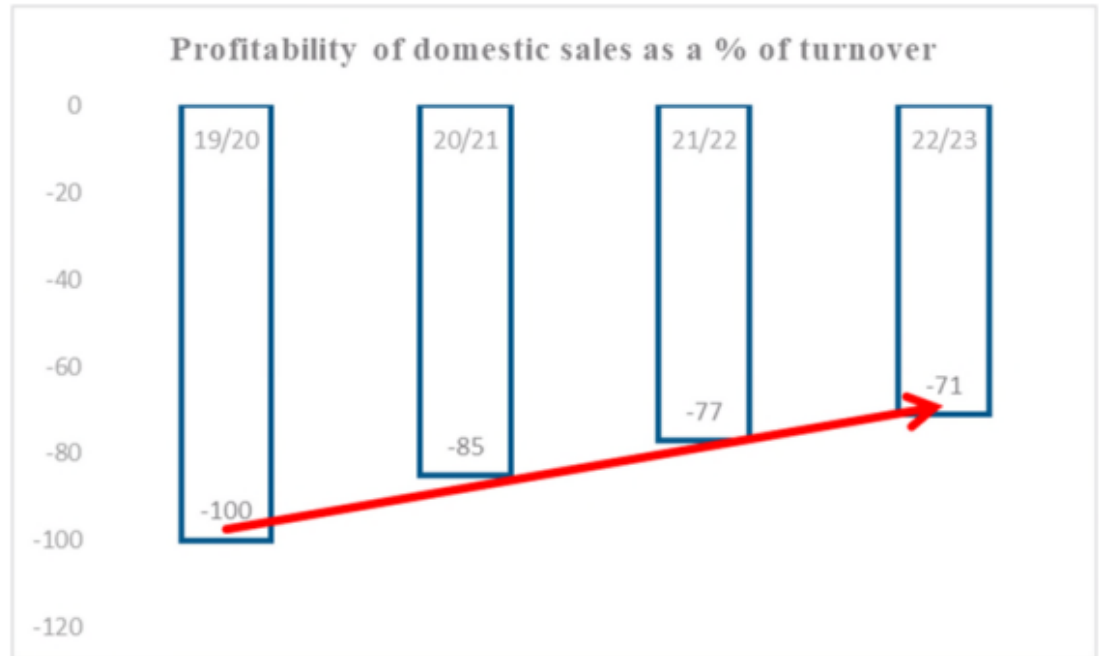
127. The Caterpillar Group understands that the TRA's refusal to account for the volume of imports of excavators manufactured by the Caterpillar Group in China as part of imports from the PRC has to do with the principled decision by the TRA to rely for the purposes of injury determination on the volume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



*imports based on the country of origin. And if TRA lacks fact to establish the volume of imports based on the country of origin, it lacks the factual basis to recommend an imposition of definitive anti-dumping measures based on the country of origin. Since conditions for the imposition of anti-dumping measures are not met in such case, TRA should thus recommend a termination of the anti-dumping investigation altogether.*

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

*(a) The Caterpillar Group disagrees that JCB's profitability is an indicator which points to the existence of a material injury. Since JCB was in a loss-making position in the beginning of injury investigating period where Chinese imports were at a low and non-injurious level and since JCB was in the same loss-making position during and in the end of the investigation period, profitability of domestic sales of JCB is a neutral factor that does not positively support a finding of material injury. Furthermore and contrary to the Final Determination, UK Industry's losses decreased in a stable fashion over the four years of the injury investigation period and not increased, despite alleged increase in imports from China:*



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



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

*(c) Since profitability of the UK industry does not point to the existence of material injury caused by imports; since there was no significant decline in the market share of the UK industry due to imports from China; and since over the injury investigation period the UK industry significantly increased production and sales by 43% in 19/20 – 22/23 and by 25% in 21/22-22/23, the TRA should conclude that the UK industry did not suffer a material injury.*

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

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

*ii. An alleged decrease of employment in domestic sales is simply a function of an incorrect allocation of labour by sales turnover. As follows from the Final Determination, the total number of JCB employees involved with the relevant goods remained largely stable showing a decrease of just 3% over the four-year investigation period using end-to-end point comparison. At the same time in the most recent period of 21/22 - POI employment at JCB went up by 14%. Against that*



*background an alleged 23% decrease in the total number of employees involved with the domestic sales is likely a result of an allocation that splits employees by market depending on the volume of sales, without actually determining whether the employment for domestic sales increased or decreased. As follows from Tables 15, 20 and 21 employment for domestic sales decreased because export sales increased by more (+112%) than domestic sales (+43%). This however does not mean that in real terms there was any decrease in the employment in the UK industry's excavator business which remained stable. To put it differently an alleged decreased in the domestic sales employment is another side of exports growing faster than domestic sales. That however is not an indicator of injury but only a result of allocations.*

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

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

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



*consumption, market shares and the volume of sales by the UK industry using absolute figures rather than indexes.*

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

### **3.15.2 Original Investigation**

#### **Establishing volume of imports**

286. At paragraphs 458 to 460 of the Final Determination, the TRA explained what information it had used in injury analysis. This included information from UK industry, official import statistics from HMRC and data pertaining to relevant markets.

287. At paragraphs 468-489 of the Final Determination, the TRA also explained why it had used the Overseas Trade in Goods Statistics (OTS) dataset in its injury analysis. The TRA acknowledged that that this data was based on country of dispatch and not necessarily the country of origin or manufacture of the goods. The TRA also outlined what other datasets had been considered and explained why they were not selected for the analysis. Having acknowledged limitations with the OTS dataset, the TRA also set out what it had done to test the reliability of the OTS dataset. For example, it used the HMRC raw customs data declarations to test its findings where possible, in particular where the country-of-origin information has been referenced. It also noted that the confidential market data provided by certain parties supported the TRA's conclusions that the potential inclusion of XXXL excavators in the OTS dataset was unlikely to have a significant impact on the trends that the TRA identified from this information.



288. The TRA concluded that the OTS country of dispatch data provided a full and complete dataset for the injury period and reliably records imports from third countries (imports from countries other than the PRC). This allowed for a level of consistency when analysing import trends and market shares from different countries.

## **Evaluation of performance of UK industry**

### Profitability

289. The TRA's findings on profitability are set out in section H1.3.2 of the Final Determination. It concluded that profitability of sales of the domestically sold like goods had decreased over the injury period. In reaching this conclusion, the TRA had examined NOPAT information that was provided by UK industry so that it could assess data relating to the production of the like goods in the UK which are not exported. This data showed that UK industry had made losses on its sales of domestically sold like goods in every year of the injury period.

290. The data which the TRA reviewed indicated that UK industry was selling its like goods on the UK market below its costs of production. The TRA concluded that this would represent a challenge to the financial and operational health of the UK industry.

### Market share

291. At Section H1.3.3 of the Final Determination, the TRA also explained its findings with regard to market share and showed how the UK industry's and the PRC's market share had developed throughout the injury period. The TRA calculated market share by calculating UK consumption of the relevant goods on the basis of import volumes from all countries and domestic sales volumes of the UK industry. The findings on market share



are summarised in the following table and are based on questionnaire responses and HMRC OTS data:

*Table 18: Evolution of UK industry's market share (based on HMRC OTS data for 8429 5210), July 2019 to June 2023*

<b>Market share</b>	<b>2019/2020</b>	<b>2020/2021</b>	<b>2021/2022</b>	<b>POI</b>
UK industry domestic market share (kg) (indexed)	100	91	90	89
PRC imports market share in UK (indexed)	100	52	129	220

*Source: Questionnaire responses and HMRC OTS data (extracted from uktradeinfo.com in October 2023)*

As noted in paragraph 517 of the Final Determination, this data indicated that UK industry's market share had decreased by 11% over the injury period, while PRC import volumes had increased by 252%. At paragraph 601 of the Final Determination, the TRA highlighted that the market share analysis should be considered with a level of caution, given that HMRC OTS data may have included data that was not restricted to the relevant goods. However, the TRA remained satisfied that this data represented the best facts available.

#### Employment and cashflow factors

292. The TRA has set out its findings on employment and cashflow in sections H1.3.6 and H1.3.8 respectively of the Final Determination. Data on UK industry employment and cashflow were obtained from questionnaire responses.

293. Employment trends were assessed by analysing how the number of employees in the production for the domestically sold like goods had changed over the injury period, both in absolute terms and relative to the UK industry's total number of employees. Productivity was measured by establishing the number of like goods produced per employee.



294. At paragraph 623, the TRA noted that Regulation 30(3) of the D&S Regulations required the TRA to conduct its examination only by reference to data that relates to the production of the like goods in the UK which are not exported.
295. At paragraph 625, the TRA concluded that average productivity of the UK industry had increased over the injury period, however, there was a noticeable change in the number of employees when considering the production of the domestically sold like goods (27% when looking at domestically sold like goods, as against 3% when considering all like goods).
296. With regard to cashflow, at paragraphs 637-638 of the Final Determination, the TRA concluded that net cash flow was negative throughout the injury period and continued to grow in the POI. This was based on information provided by UK industry and was based on the same dataset for injury that had been previously verified.
297. The Final Determination also addresses other factors in making its injury determination. These are set out throughout Section H of the Final Determination. The conclusions on each of these are summarised in paragraphs 719-721 of the Final Determination:

***Impact on UK industry***

*719. The TRA assessed the trends of the economic factors throughout the injury period and determined that the following factors indicate that UK industry has suffered injury:*

- Profits: UK industry reported negative profit margins and increased losses on sales of its domestically sold like goods over the injury period.*
- Market share: UK industry's market share decreased by 11% over the injury period (based on the best available information*



*covering the full injury period).*

- Growth: UK industry did not grow its market share despite increased domestic sales, UK production and UK consumption.*
- Employment and productivity: Both total employment and number of employees involved in the production of the domestically sold like goods decreased during the injury period. Productivity increased over the entirety of the injury period. However, this is to be expected based on the increase in sales volumes.*
- Investments and cash flow: The level of investments increased during the injury period. However, UK industry continued to experience a negative cash flow for the domestically sold like goods.*

*720. The following factors showed improving developments in absolute terms while in relative terms indicate that UK industry has suffered injury:*

- Sales: Domestic and export sales increased in both volume and value during the injury period. However, UK industry still failed to gain market share in the period when both UK consumption and UK production was increasing.*
- Output and production capacity utilisation: Output and production capacity utilisation increased over the injury period in line with increasing demand and sales. However, UK industry still failed to gain market share in the period when UK consumption was increasing and did not utilise its full production capacity.*

*721. The TRA assessed that the following factors did not suggest that UK industry has suffered injury:*



- *Wages: Wages increased over the injury period.*
- *Stocks: UK industry does not hold stocks of the like goods and the TRA are therefore unable to attain either a positive or a negative determination regarding whether the UK industry has suffered injury using this factor.*

### **Disclosure of Data**

298. The TRA maintains a Public File which is open and includes non-confidential versions of TRA produced documents and submissions made by interested parties.
299. Before publishing submissions onto the Public File the TRA will ensure that any confidential information has been redacted, or sensitive data is indexed in a manner that still enables parties to understand the information provided and how the TRA may have used it.
300. Within the Final Determination the TRA provided an annex, (Annex A) which lists the information (with links) submitted to the TRA by interested parties and contributors which has formed part of the TRA's consideration to reach its determinations.

### **3.15.3 Relevant Legislation and Policy**

301. From the D&S Regulations:

#### ***Determination of injury***

- 30.—***(1) For the purpose of this Part, the TRA must determine whether a UK industry has suffered or is suffering injury during the injury period.*
- (2) In order to determine whether a UK industry is suffering or has suffered injury the TRA must consider—*



*(a) the volume of the dumped goods or subsidised imports during the injury period;*

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

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

*(d) any other factors it considers relevant.*

*(3) The TRA must conduct its examination only by reference to data that relates to the production of the like goods in the United Kingdom which are not exported from the United Kingdom, but where data relating to the like goods cannot be separated from data relating to a wider category of goods, which includes the like goods, the TRA may use the data relating to that wider category of goods.*

*(4) For the purpose of this Part, the “injury period” is the period of investigation taking account of developments in the three twelve month periods preceding the period of that investigation unless the TRA considers that it is appropriate to use an alternative period, in which case the injury period means that alternative period.*

### ***The volume of the dumped goods or subsidised imports***

**31.** *In considering the volume of dumped goods or subsidised imports during the injury period for the purpose of regulation 30(2)(a), the TRA must consider whether there has been a significant increase in the dumped goods or subsidised imports in the United Kingdom either in absolute terms or relative to domestic production or consumption.*

### ***The effect of the dumped goods or subsidised imports on prices***



**32.** *In considering, for the purpose of regulation 30(2)(b), the effect of the dumped goods or subsidised imports on prices of the like goods in the United Kingdom during the injury period the TRA must consider whether—*

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

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

***The impact of the dumped goods or subsidised imports on a UK industry***

**33.** *In considering, for the purpose of regulation 30(2)(c), the consequent impact of the dumped goods or subsidised imports on a UK industry, the TRA must take into account all relevant economic factors and indices having a bearing on the UK industry including—*

*(a) actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilisation of capacity;*

*(b) factors affecting domestic prices of the like goods;*

*(c) in the case of dumping, the magnitude of the margin of dumping;*

*(d) actual and potential negative effects on cash flow, inventories, employment, wages, growth, the ability to raise capital or investments.*

**3.15.4 Reconsideration Finding**

**TRA failed to properly establish volume of imports**



302. As part of its claim that the TRA failed to properly establish the volume of imports, Caterpillar Group alleges that by relying on country of dispatch data, the TRA failed to account for the volume of imports of excavators manufactured by Caterpillar Group in China as part of imports from the PRC. Caterpillar Group therefore requests that the TRA establish the volume of imports based on the country of origin.

303. The use of the OTS dataset in the TRA's assessment of the volume of imports has been set out clearly in the final determination at paragraphs 468 to 489. Recognising the limitations of the OTS dataset, steps were taken by the TRA to test its reliability and qualify where appropriate. The TRA also undertook consideration of other suggestions and submissions made by interested parties following the publication of the SEF.

304. The internal working papers made a critical assessment of the available data sources and what conclusions could be drawn from them. Having considered the use of other datasets, however, the TRA found that these alternative datasets had limitations in their use for assessing volume of imports across the entire injury period consistently.

305. In the original investigation the TRA took reasonable steps to ensure that the volume of imports was established by using most appropriate dataset. Where there were limitations on the dataset, the TRA was transparent in explaining its approach to testing the data and how, despite those limitations, the OTS dataset remained the most appropriate dataset to use in the injury analysis.

306. This was a reasonable approach and do not agree with the claim that the TRA need to revisit its determination of the volume of imports.

**TRA's evaluation of the performance of UK industry is flawed**



307. Material injury is the term used when there is evidence of a UK industry being injured by dumped goods or subsidised imports. To determine whether injury is being caused by the goods concerned the TRA will examine:

- the volume of the dumped goods or subsidised imports during the injury period,
- the effect of the imports on prices in the UK market for like goods during the injury period,
- the consequent impact of the dumped goods or subsidised imports on UK industry during the injury period
- any other factors we consider relevant.

308. The TRA's public guidance states "*We will not decide based on any single factor*"<sup>31</sup>.

309. The public guidance, which is aligned to our domestic legislation also notes that – "*As well as assessing volumes and prices of the goods we are investigating, we must take into account all relevant economic factors that may affect the UK industry along with the indices that will reflect it.*"<sup>32</sup>

310. The TRA is transparent in its approach stating "*When we are assessing material injury, we must consider all these factors in our investigation*".<sup>33</sup>  
The TRA will analyse the factors separately and together in order to gain an understanding of the extent to which these factors are interconnected.

311. At paragraph 128 of its reconsideration application "*Caterpillar Group believes that a {emphasis added} holistic analysis of the injury indicators of the UK industry does not point to the existence of material injury*".

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<sup>31</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/determining-injury-and-causation-in-dumping-and-subsidy-investigations#determining-material-injury>

<sup>32</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/determining-injury-and-causation-in-dumping-and-subsidy-investigations#determining-material-injury>

<sup>33</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/determining-injury-and-causation-in-dumping-and-subsidy-investigations#determining-material-injury>



312. Our public guidance states that:

*“.....when one indicator suggests material injury to a UK industry, we may or may not consider this sufficient evidence alone. Similarly, if one indicator does not show material injury, we will not necessarily conclude that there is no injury being caused to UK industry. **We will assess all the factors together and make an appropriate determination based on all the facts available.** [emphasis added]”<sup>34</sup>*

313. The TRA disagrees with the allegation that a “holistic analysis” does not point to the existence of material injury.

#### Profitability

314. Caterpillar Group makes a particular claim with regard to the TRA’s findings on profitability and market share, and suggests that these do not point towards the existence of material injury.

315. At paragraph 590 of the Final Determination, the TRA has explained that the NOPAT information showed that the operating profit level in the POI is lower than at the beginning of the injury period. The data showed that UK industry had made losses on its sales of domestically sold like goods in every year of the injury period, and that it was selling its like goods on the UK market below its costs of production.

316. These are reasonable conclusions to make on the basis of the evidence that the original investigations team had, and that the methodology used in making these findings was supported by the regulatory framework and the TRA’s public guidance.

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<sup>34</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/determining-injury-and-causation-in-dumping-and-subsidy-investigations#determining-material-injury>



### Market share

317. In its application for reconsideration, Caterpillar Group also claims that the TRA exaggerated the loss of market share by JCB, noting that the 11% loss is based on an index which reflects a trend since the beginning of the investigation period, and not a loss of market share in absolute terms. Caterpillar Group claims that, by their calculations based on the data disclosed in Table 25 of the Final Determination, the loss of market share for UK industry was 1.4% over 4 years which it claims would not constitute a material loss of market share.

318. The TRA sets out its assessment of the change in market share at section H1.3.3 of the Final Determination and showed the UK industry's market share has decreased by 11% over the injury period. This was based on evidence from questionnaire responses and OTS data.

319. However, Caterpillar Group appears to have misinterpreted the TRA's findings in the Final Determination. The TRA did not determine that the UK industry had lost 11% of the market share in absolute terms, but that relative to its market share at the beginning of the injury period, UK industry's market share was 11% lower. This is set out in the indexed figures at table 18. Caterpillar Group uses the absolute figures in Table 25 to show that UK industry's market share is 10.9% at the start of the injury period and 9.5% at the end. From this, they conclude that UK industry's market share declined by only 1.4% rather than 11%.

320. However, if these percentages were to be indexed (with 10.9% being 100), the indexed figure for 9.5% would be just over 87, or a decrease in market share of around 13%. Acknowledging that Caterpillar Group has extrapolated the summary data from Table 25 (rather than the raw data to which the TRA had access), this finding corresponds and is consistent with what the TRA set out in its Final Determination.



321. In the Final Determination, the TRA explained that the market share had been calculated as per the methodology described under Section H1.1.3. The determination that this was an indicator of material injury was consistent with the public guidance, which says: *“If we find that the market share of the exporting country is increasing and the market share of the UK industry is falling, we may consider this an indicator of material injury.”*<sup>35</sup>
322. Having reviewed the information on market share, the TRA finds that a reasonable determination was made in the original investigation based on the evidence available at the time, and in accordance with the regulatory framework and public guidance.

#### Employment and cashflow factors

323. Caterpillar Group claims that the negative trends in employment and cashflow from domestic sales should not affect an overall finding that there is no injury.
324. The TRA has set out its findings on employment and cashflow in sections H1.3.6 and H1.3.8 respectively of the Final Determination. Data on UK industry employment and cashflow were obtained from questionnaire responses.
325. Caterpillar Group claims that negative cashflow is a function of a continuous loss-making position of JCB and thus a neutral injury indicator.
326. Caterpillar Group also claims that “an alleged decrease of employment in domestic sales is simply a function of an incorrect allocation of labour by sales turnover” and that “an alleged 23% decrease in the total number of employees involved with the domestic sales is likely a result of an

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<sup>35</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/determining-injury-and-causation-in-dumping-and-subsidy-investigations#determining-material-injury>



allocation that splits employees by market depending on the volume of sales, without actually determining whether employment for domestic sales increased or decreased.”

327. The TRA finds that this conjecture is not sufficient to challenge the findings in the original investigation, which set out the findings, acknowledge the data on which their conclusions have, as required by Regulation 30(3), limited its “examination only by reference to data that relates to the production of the like goods in the United Kingdom which are not exported from the United Kingdom.” The TRA finds that the findings made in the original investigation on this factor were reasonable, based on the information available at the time of the investigation, and within the regulatory framework.

### Disclosure of data used in Final Determination

328. Our public facing guidance states that:

*When we gather information from interested parties and contributors through questionnaires or other submissions, we need to handle this evidence in a way which respects the confidentiality of this information and is also fair and transparent.*<sup>36</sup>

329. To balance the need to respect the confidentiality of information provided with fairness and transparency, a non-confidential version of this information should be available which is “sufficiently detailed for other parties to have a reasonable understanding of:

- the substance of the information to which it relates
- its potential relevance to the investigation or review.”<sup>37</sup>

<sup>36</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/the-tras-investigation-process#questionnaires-and-information-gathering>

<sup>37</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/the-tras-investigation-process#questionnaires-and-information-gathering>



330. The public guidance provides examples of how to provide non-confidential versions of numerical data, noting that parties should generally provide “either a detailed indexing of the data or use ranged values.”<sup>38</sup>
331. The Final Determination sets out the absolute figures for certain metrics, notably those which have been obtained from open source information (for example, the OTS data). Those metrics which have been obtained from questionnaire responses, and which have been submitted to the TRA on a confidential basis, are indexed to ensure that the information remains confidential, but that other parties are able to have a reasonable understanding of the substance of the information to which it relates, and its potential relevance to the investigation.
332. Caterpillar Group has also requested the TRA to disclose the data on the value of Chinese imports in Table 7 in the same way as it is disclosed for imports from third countries in Table 25.
333. The dataset used for both Table 7 and Table 25 is the HMRC OTS statistics. However, because the TRA determined that the export price for Chinese excavators was unreliable, it made a decision to construct the export price. The reasons have been set out at length in this reconsideration. As a consequence, Table 7 does not include the value of imports because this is not the price that the TRA has used in its investigation.
334. The TRA discharged its disclosure requirements by presenting the information in the format set out in the Final Determination and that this is consistent with the guidance on maintaining a public file which both respects the confidentiality of certain data, and the principles of fairness and transparency.

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<sup>38</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/the-tras-investigation-process#questionnaires-and-information-gathering>



335. Our reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The approach followed the legal requirements and relevant guidance. This has been set out in internal working documents, the outcomes of which have been explained in the Final Determination. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.

### **3.16 Ground 16 – The evidence suggests imports from the PRC did not affect JCB prices**

#### **3.16.1 Applicant's Ground**

336. In its application for reconsideration, Caterpillar Group claims:

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

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

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

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



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

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

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

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

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

*(c) Thirdly, before making any model-specific price comparison, the TRA should compare prices for imports from China, including prices for the Caterpillar Group excavators originating in China, as they appear in*



*the HMRC statistics and prices of the UK industry on average. The TRA provides such average-to-average comparison when discussing a price impact of third country imports. The same methodology should be applied to determine the impact of China's prices.*

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

### **3.16.2 Original Investigation**

#### **3.16.2.1 Undercutting Calculations**

337. In accordance with the Regulation 32 of the D&S Regulations, in order to establish whether the dumped goods have affected UK prices of like goods, the TRA must consider whether:

- there has been significant price undercutting by the dumped goods or subsidised imports as compared with the price of the like goods produced in the United Kingdom; or
- the dumped goods or subsidised imports have depressed or suppressed domestic prices of the like goods produced in the United Kingdom to a significant degree.

338. At paragraph 538 of the Final Determination, the TRA found that:

*538. Based on the initial sample of PRC exporters used in the SEF, and the referenced changes to the elements that make up the CIF import price calculations, the TRA still found significant evidence of price undercutting. It calculated an average undercutting margin of 17.72% in the POI. When the*



*Caterpillar Group's data was subsequently added into the expanded sample, the overall average undercutting margin during the POI decreased to 3.24%.*

339. In Table 11, the TRA set out its undercutting analysis per tonne for UK industry and sampled PRC exporters at a per tonne level. This analysis considers the non-adjusted import values of the goods concerned from the sampled PRC exporters:

*Table 11: Undercutting analysis per tonne for UK industry and sampled PRC exporters, July 2019 to June 2023*

	<b>2019/2020</b>	<b>2020/2021</b>	<b>2021/2022</b>	<b>POI</b>
Undercutting margin (%) – initial sample	17.56%	17.98%	31.49%	26.68%
Undercutting margin (%) (indexed) – initial sample	100	102	179	152
Undercutting margin (%) – expanded sample	7.17%	19.67%	16.79%	11.33%
Undercutting margin (%) (indexed) – expanded sample	100	275	234	158

Source: Questionnaire responses

340. The Final Determination sets out the TRA's conclusion on the level of price undercutting:

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

### 3.16.2.2 Establish volume of imports from China



341. The methodology by which the TRA established the volume of imports has been addressed in Ground 15, specifically 3.15.2 and applies here.

### **3.16.2.3 Price comparison with imports from China**

342. The methodology for price comparison is explained in the Final Determination and has been addressed in section 3.15.2 above. At Paragraph 479 of the Final Determination, the TRA stated that the price analysis had been completed using data obtained from the sampled PRC exporters, because this allowed for a direct comparison between the goods concerned and the like goods produced in the UK.

343. At paragraph 530 of the Final Determination, the TRA further explained its methodology:

*530. As referenced in Section H, the TRA has completed its price analysis using data obtained from the sampled PRC exporters. The initial sample that was used for the SEF was subsequently expanded to include the Caterpillar Group's data. This followed the TRA's verification engagement to assess the completeness, relevance, and accuracy of the information it had received.*

*531. The TRA has referred to both sets of samples in the following sections. Although the Liugong Group has recently commented (following the publication of the SEF/PAD) that the findings in the SEF cannot be relied upon, as the Caterpillar Group data was not included, the TRA does not agree that these calculations were based on incomplete and inaccurate data.*

*532. This takes into consideration that even if the TRA were to now determine the sales prices for the expanded sample were fundamentally different (based on submissions that the Caterpillar Group's imports are actually sold at above the price of JCB products) this would not negate the*



*TRA's previous findings. It remains that sales identified to be at undercutting prices could still have an adverse impact on UK industry (for example, in terms of lost sales) irrespective of whether other sales might be made at prices above those charged by UK industry.*

#### **3.16.2.4 Price suppression analysis**

344. In Section H of the Final Determination, the TRA explained its finding that there was material injury, having considered the relevant factors which, pursuant to regulation 30(2), it must have regard.

345. With regard to the causal link, at paragraphs 722-723, the Final Determination concludes that the volume trends and associated price effects of the imports of the relevant goods show a timely coincidence with corresponding negative changes in economic factors to indicate causation by PRC imports. It notes that that the increase in these lower priced imports directly coincided with the negative developments in the economic factors that indicated UK industry has suffered injury.

#### **3.16.3 Relevant Legislation**

346. Regulation 27 of the D&S Regulations sets out the process by which the TRA makes a determination of injury and causation.

##### ***Determination of injury and causation in accordance with this Part***

**27.—(1)** *This Part applies where the TRA is required to determine whether dumped goods or subsidised imports have caused or are causing injury to UK industry in accordance with paragraph 5 of Schedule 4 to the Act.*

**(2)** *Where the TRA has determined that goods have been or are being dumped (in accordance with Part 2) or goods that have been or are being*



*imported into the United Kingdom benefit from a countervailable subsidy (in accordance with Part 3) it must determine whether—*

*(a) a UK industry has suffered or is suffering injury in accordance with regulation 30 (determination of injury); and*

*(b) the dumped goods or subsidised imports, as the case may be, have caused or are causing that injury to that UK industry.*

347. Regulation 30 sets out the steps which the TRA must consider to determine whether a UK industry has suffered or is suffering injury during the injury period.

#### ***Determination of Injury***

**30.—***(1) For the purpose of this Part, the TRA must determine whether a UK industry has suffered or is suffering injury during the injury period.*

*(2) In order to determine whether a UK industry is suffering or has suffered injury the TRA must consider—*

*(a) the volume of the dumped goods or subsidised imports during the injury period;*

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

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

*(d) any other factors it considers relevant.*

*(3) The TRA must conduct its examination only by reference to data that relates to the production of the like goods in the United Kingdom which are not exported from the United Kingdom, but where data relating to the like goods cannot be separated from data relating to a wider category of goods,*



*which includes the like goods, the TRA may use the data relating to that wider category of goods.*

*(4) For the purpose of this Part, the “injury period” is the period of investigation taking account of developments in the three twelve month periods preceding the period of that investigation unless the TRA considers that it is appropriate to use an alternative period, in which case the injury period means that alternative period.*

348. The D&S Regulations do not define or provide further tests for *causation* (Regulation 35, which deals with causation and non-attribution, is focused on assessing whether *other known factors* are causing injury to a UK industry).

349. With regard to causation, the public guidance states:

*Assessing the four factors detailed above [the economic factors set out in Regulation 33] allows us to understand whether the UK industry has suffered or is suffering injury. We will consider timely coincidence of the imports of the goods concerned to help us determine whether a causal link exists.<sup>39</sup>*

### 3.16.4 Reconsideration Finding

#### Undercutting Calculations

350. Caterpillar Group claims that there is a discrepancy in the undercutting calculations set out in Table 11 of the Final Determination and paragraph 716 of the Final Determination.

351. The reason for the difference in the figures is that they are two separate calculations. The figure in paragraph 716 refers to the calculation set out in Section H1.2.1. This rate was calculated using the transactional

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<sup>39</sup> [public guidance](#), Causation and non-attribution analysis



information received from the exporters for the POI. Table 11 is a separate transaction using non-adjusted data.

352. The figures in paragraph 716 and Table 11 of the Final Determination do not match because they are separate calculations. The TRA explained this at paragraph 540 in the Final Determination. As a consequence, the TRA finds that there is therefore a reasonable explanation as to why the figures are different and there is no basis to change them.

### **Establish volume of imports from China**

353. Caterpillar Group claims that before making any price comparisons, the TRA should properly establish the volume of imports from China and other countries based on their origin. This echoes part of their claim in Ground 15.

354. The establishment of volume of imports by the TRA in the original investigation has been dealt with already when addressing the claims in Ground 15. There is nothing further to add here and the findings in the conclusion at paragraph 3.15.4 apply here. The TRA confirms that reasonable steps were taken in the original investigation to ensure that the volume of imports from China was established by using the most appropriate dataset. The TRA therefore concludes that that the approach in the original investigation was reasonable.

### **Price comparison with imports from China**

355. The D&S Regulations set out the legal framework for establishing price undercutting and calculating export prices. The public guidance provides certain detail around how this may be done, including how to make comparisons between the prices of dumped goods and the prices of like goods produced in the United Kingdom.



356. The TRA has established prices for imports from China by using data from the sampled PRC exporters. The Final Determination explained that this allowed for a direct comparison between the goods concerned and the like good produced in the UK, using an average price. This is consistent with the regulatory framework and Statutory Guidance as set out above. The TRA has explained its reasoning for doing so in the Final Determination.

357. The TRA explained that an average-to-average comparison was made when discussing the price impact of third country imports because the OTS was the best data available to make such an assessment. Again, this is consistent with the regulatory framework and Statutory Guidance as set out above. The reason for using OTS data, as well as the circumspection applied to its use, has been covered in the preceding sections.

### **Price suppression analysis**

358. The original investigation, having determined that goods were being dumped, made a determination with respect to whether a UK industry had suffered or was suffering injury, as required by Regulation 27(2)(a) of the D&S Regulations.

359. Caterpillar Group claims that the TRA failed to establish a causal link between the imports from China and the injury being suffered by a UK industry. The public guidance explains that assessing the relevant factors “allows us to understand whether the UK industry has suffered or is suffering injury. We will consider timely coincidence of the imports of the goods concerned to help us determine whether a causal link exists.”<sup>40</sup>

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<sup>40</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/determining-injury-and-causation-in-dumping-and-subsidy-investigations>



360. Having established that a UK industry was suffering injury, there is significant analysis in the Final Determination which demonstrates a timely coincidence between the volume trends and associated price effects of the imports of the relevant goods, and corresponding negative changes in economic factors to indicate causation. This conclusion is set out in paragraphs 722 and 723 of the Final Determination, where the TRA notes that the dumped goods were priced considerably lower than UK industry's domestic sales price throughout the injury period, and that PRC imports were also generally priced lower than all other imports into the UK in the POI.

361. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The approach followed the legal requirements and relevant guidance. This has been set out in internal working documents, the outcomes of which have been explained in the Final Determination. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.

### **3.17 Ground 17 – Imports from the PRC did not cause material injury to JCB**

#### **3.17.1 Applicant's Ground**

362. In its application for reconsideration, Caterpillar Group claims:

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



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

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

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

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

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

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



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

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

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

### 3.17.2 Original Investigation

#### Market share and attribution to imports from China

363. The relevant analysis from the original investigation on this point has been set out in detail in Section 3.15.2 above. The original investigation used questionnaire responses and OTS data to assess the change in UK industry's market share over the injury period.

364. In the Final Determination, the TRA concluded that the UK industry's market share had decreased over the injury period, despite increasing sales volumes, whereas the increased volume of PRC imports since 2020/2021 have continued to capture market share.



### **Correlation between imports from China and profitability, employment, and cashflow of UK industry**

365. The relevant analysis from the original investigation on this point has been set out in detail in Section 3.15.2 above.

366. In the Final Determination, the TRA concluded that there was a timely coincidence between these trends and the dumped imports from the PRC.

#### **3.17.3 Relevant Legislation and Policy**

367. The legislation and policy regarding causation has been set out in Section 3.16.3.

#### **3.17.4 Reconsideration Finding**

##### **Market share and attribution to imports from China**

368. Caterpillar Group claims that there has been no loss of market share by UK industry, and that there is no correlation between the imports from China and the profitability of the UK industry.

369. The TRA's findings on UK industry's loss of market share has been reviewed already in Section 3.15. In the Final Determination, the TRA explained that the UK industry's market share had decreased over the injury period and that this coincided with the increased volume of imports from PRC.

370. The TRA used the OTS data (which incorporates data for the full injury period) to identify a decrease in market share for UK industry. At paragraph 527 of the Final Determination, the TRA found that this



decrease occurred alongside an increase in both UK consumption and the market share of PRC imports.

371. In relation to the assessment of the economic factors set out in Regulation 33 of the D&S Regulations (which includes market share), the public guidance notes that “*We will consider timely coincidence of the imports of the goods concerned to help us determine whether a causal link exists.*”<sup>41</sup>

372. The TRA established that there was a timely coincidence of the imports of the goods concerned and the loss of the UK industry’s market share. This satisfied the threshold set out in the guidance to show that this factor was indicative of injury being caused by the goods concerned.

### **Correlation between imports from China and profitability, employment, and cashflow of UK industry**

373. The points around factors to be considered when determining injury have been discussed already in Section 3.15. The focus of the response to this claim is with respect to the correlation between Chinese imports and these injury factors.

374. For each of the factors set out by Caterpillar Group, the TRA determined that these demonstrated negative trends throughout the injury period.

#### *Profitability*

375. At paragraphs 590 and 591 of the Final Determination, the TRA explained that the NOPAT information showed that UK industry had made losses on its sales of domestically sold goods in every year of the injury

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<sup>41</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/determining-injury-and-causation-in-dumping-and-subsidy-investigations>



period and that the average NOPAT margin of the like goods also remained negative across the injury period. The TRA has reviewed internal working documents which set out the analysis of this in the original investigation, the findings of which have been summarised in the Final Determination.

376. Noting the timely coincidence between the changes in the profitability of the UK industry and the injury period, the TRA determined that there was a causal link between the dumped imports from PRC and the negative trend with regard to profitability of the UK industry.

#### *Employment*

377. At paragraph 625 of the Final Determination, the TRA explained that over the injury period, there was a reduction of 3% in employee numbers when considering all like goods, but that this was 27% when apportioned to domestically sold goods. This was based on information provided by UK industry.

378. Noting the timely coincidence between the changes in employment and productivity, and the injury period, the TRA determined that there was a causal link between the dumped imports from PRC and the negative trend with regard to employment in the UK industry.

#### *Cashflow*

379. At paragraph 638 of the Final Determination, the TRA explained that it had found net cash flow was negative throughout the whole injury period.

380. Noting the timely coincidence, the TRA determined that there was a causal link between the dumped imports from PRC and the negative trend with regard to cashflow of the UK industry.

381. By demonstrating a timely coincidence between the dumped imports from PRC and the negative injury factors described here, the TRA satisfied the requirements in Regulation 33 to consider these factors, and the



guidance on causation which looks at the timely coincidence of the imports of the goods concerned as an indication that a causal link exists between the dumped goods and injury to UK industry.

382. The TRA is satisfied that in the original investigation it demonstrated a correlation between imports from PRC and the injury factors listed above. This determination was reasonable based on the data available to the TRA, and the methodology that was applied was consistent with the D&S Regulations and the public guidance on causation.

383. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The approach followed the legal requirements and relevant guidance. This has been set out in internal working documents, the outcomes of which have been explained in the Final Determination. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.

### **3.18 Ground 18 – Injury, if any, was caused by other factors, such as imports from Korea and other countries as well as JCB increased costs**

#### **3.18.1 Applicant's Ground**

384. In its application for reconsideration, Caterpillar Group claims:

*138. Regulations 35(1) and 35(2) of the Regulations provide that the TRA must examine whether any known factors other than the dumped goods have caused or are causing injury to a UK industry. The TRA must ensure that*



*injury caused by other known factors must not be attributed to the dumped goods imports.*

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

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

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

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

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

*"It has been identified that the price of imports from the Republic of Korea were lower than that of the significant exporting countries, as*



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

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

<b>Volume of imports, tons</b>	<b>19/20</b>	<b>22/23</b>	<b>Diff</b>	<b>Market share</b>	<b>19/20</b>	<b>22/23</b>	<b>Diff</b>
China	4,537	15,958	11,421	China	4.0%	8.8%	4.8%
Korea	4,554	17,101	12,547	Korea	4.0%	9.4%	5.4%
				UK industry	10.9%	9.5%	-1.3%

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

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



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

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

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

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



149. In that context, based on the import statistics relied upon by the TRA, end-to-end point comparison imports from Korea and the Netherlands show a combined increased of 10.2% in 2019/2020-POI and 8.1% in the most recent period of 2021/2022-2022/2023, by far exceeding China imports' increases of, respectively 4.8% and 3.6%:

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

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

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

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



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

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

154. Fifthly, the Caterpillar Group notes that even if the TRA determines as a result of reconsideration that imports from Korea and the Netherlands, individually or combined, are a cause of material injury but do not break a causal link between imports from the PRC and the material injury to the UK industry, it is respectfully submitted that the TRA should still ensure that their injurious impact is not attributed to imports from China as part of the injury margin calculation. In particular, the Caterpillar Group believes that in accordance with paragraph 18(6)(b) of the Act, the TRA should ensure that the amount of the anti-dumping duty imposed does not exceed that which is necessary to counter the injurious effects of the dumped imports, including by ensuring that the amount of the anti-dumping duty does not take into account injurious effects caused by factors other than those imports. The determination of the injury margin should therefore be adjusted to reflect notably:



- (a) *The impact of imports from Korea;*
- (b) *The impact of imports from the Netherlands as well as of any other underselling imports that the Final Determination does not highlight individually and that have significantly increased; and*
- (c) *The impact of interest payable and foreign currency losses.*

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

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

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

### 3.18.2 Original Investigation



385. As part of the causation assessment, the TRA also considered whether there were any other known factors that might be the cause of injury to the UK industry. In the Final Determination, the TRA explained its consideration of the impact of intra-competition between JCB and Komatsu, the COVID-19 pandemic, demand reduction, inflation of raw material costs, and third country imports and prices.
386. In the Final Determination, the TRA noted that further potential factors were identified by parties in response to the SEF, including macroeconomic challenges, as well as shifts in consumer demand. However, the TRA had not been provided with any evidence to substantiate the commentary regarding the materiality of these other factors.
387. At Section H2.5 of the Final Determination, the TRA looked at third country imports and prices to ascertain whether or not these had caused injury to the UK industry. The TRA used HMRC OTS data to consider both volume and value. It acknowledged the limitations around differentiating between different models of excavators, but a level of circumspection was applied to the data, and the OTS data was compared against HMRC raw customs declaration data.
388. The TRA found that the volume of imports from all third countries (other than PRC) had increased during the injury period. The majority of third country imports were dispatched from Japan, the Netherlands, and Belgium. The TRA found that the volume of imports from Japan had declined by 2% over the injury, whereas import volumes from the Netherlands and Belgium had increased by 35% and 45% respectively.
389. In response to the SEF, the Sany Group claimed it had identified, from an analysis of confidential market data, that during the injury period, imports from third countries other than the PRC consistently accounted for



approximately 75% of the total UK market for the relevant goods. The Sany Group questioned how PRC imports had in fact displaced UK producers.

390. The LiuGong Group also responded to the SEF and submitted that by not reviewing in granular details the effect of imports from the Republic of Korea and the Netherlands, or breaking down the imports from other third countries, no reliable correlation can be drawn between an increase in the PRC imports and UK manufactured prices.

391. At paragraph 693 of the Final Determination, the TRA noted that “when considering the confidential market data that was provided by both the Liugong Group and the Sany Group, neither specified sales of excavators from the Netherlands. This would further suggest that this dataset has not properly accounted for the origin of the specified excavators, which would naturally impact any subsequent consideration of third country imports.”

392. In the original investigation, the TRA acknowledged that third country imports make up a large percentage of the UK market. With regard to the question of whether these had displaced imports from the PRC, the TRA explained that at paragraph 696 that “import volume changes by themselves would not indicate whether there was finding of injury.” For example, with regard to imports from the Netherlands, the TRA explained:

*697. This can be seen with the TRA’s consideration of imports from the Netherlands. Although the Liugong Group has alleged there has been no investigation into Netherlands imports, or other third countries, this is not the case. In this instance the HMRC OTS data suggests import volumes from the Netherlands increased by 116% over the injury period, and market share increased by 35%, as set out in Table 25. However, it was determined that these increases were not material in terms of the TRA’s injury consideration based on the associated changes in the value of the imports. The average price of imports were higher than the average sales price of the UK industry’s like goods during the relevant period. This would*



*therefore not suggest that these imports were the cause of any injury. The same consideration was also given to each other referenced party.*

393. In the Final Determination, the TRA also explained that it had considered excavators originating from the Republic of Korea. At paragraph 701, it acknowledged that imports from the Republic of Korea provide a conflicting picture when considered in isolation. The TRA therefore completed further analysis of these imports, while also making the necessary adjustment to the “all other third countries” data.

394. The TRA explained its findings with respect to the significance of imports from the Republic of Korea in the Final Determination:

*703. Import volumes from the Republic of Korea were not as significant, in absolute terms, as Japan, the Netherlands and Belgium during the entirety of the injury period. As identified in the SEF responses, the actual volumes and the associated increases to these were not dissimilar to that which the TRA can see in the PRC imports. However, it should also be noted that the TRA did not identify in the same level of disparity that was suggested when the PRC import volumes were compared between the two sets of HMRC data. This does mean the HMRC raw customs declaration data suggests the volume of imports actually originating from the PRC was significantly higher than that from the Republic of Korea.*

395. Having assessed the volume, price and other factors associated with imports from third country imports, the TRA determined that the impact of third country imports was not sufficient to break the causal link between the relevant goods and the injury being suffered by the UK industry.



### 3.18.3 Relevant Legislation and Policy

396. Regulation 35 of the D&S Regulations requires the TRA to examine whether there are any other known factors which have caused or are causing injury to UK industry. It states:

#### ***Causation and non-attribution***

**35.—***(1) For the purpose of making a determination under regulation 27(2)(b), the TRA must examine whether any known factors other than the dumped goods or subsidised imports (“other known factors”) have caused or are causing injury to a UK industry.*

*(2) Injury caused by other known factors must not be attributed to the dumped goods or subsidised imports.*

*(3) For the purpose of paragraph (2), other known factors may include—*

*(a) the volume and the prices of imports that are not dumped or subsidised into the United Kingdom;*

*(b) contraction in demand or changes in the pattern of consumption of the like goods in the United Kingdom;*

*(c) trade restrictive practices of and competition between the overseas exporters and the UK industry;*

*(d) developments in technology;*

*(e) the export performance and productivity of the UK industry.*

397. The public guidance on non-attribution says:

#### ***Non-attribution***

*We will conduct a further assessment to establish whether there are other known factors that have caused or are causing the injury suffered by the UK industry and whether they break the causal link between the injury we have identified and the dumped goods or subsidised imports we are investigating.*



*This is known as non-attribution analysis. There are different factors to consider and some of these are outlined below.*

***The volume (and the prices) of imports into the UK that are not dumped or subsidised***

*We may look at whether imports which are not being dumped or subsidised (from the same country or a third country) are injuring the domestic industry.*

***Contraction in demand or changes in the pattern of consumption of the like goods in the UK***

*There may be instances when external factors can result in a significant decline in demand for the like goods. Examples of this type of factor might include a financial crisis or new models of the relevant goods entering the market.*

***Trade restrictive practices of and competition between the overseas exporters and the UK industry***

*We may look at whether the UK industry concerned is carrying out any restrictive practices that could result in an increase in imports, such as focusing sales on a particular part of the market.*

***Developments in technology***

*We may look at whether the costs of production have been affected by the use of technology.*

***The export performance and productivity of the UK industry***

*It is possible that the UK industry's focus on the export market may have resulted in reduced or lost share of the domestic market.*



*We would also look at any other relevant factors that are made known to us or that we become aware of. This might include factors such as natural disasters or seasonal issues.*<sup>42</sup>

### 3.18.4 Reconsideration Finding

#### Imports from Korea

398. Caterpillar Group submits that the TRA did not take a position on whether imports from the Republic of Korea were a factor that caused injury to the UK industry. Caterpillar Group has pointed to the lower prices of Korean imports with respect to those from the PRC, as well as an increase in volume from the Republic of Korea.
399. The original investigation did specifically consider the imports of excavators from the Republic of Korea, analysing both the volume and price trends over the injury period. This is explained in the Final Determination, particularly at paragraphs 701-707. In the original investigation, the TRA reviewed the OTS data and compared this with the HMRC raw customs data. The comparison of these datasets indicated that the volume of imports from the PRC was significantly higher than that from the Republic of Korea.
400. With regard to the price of imports from the Republic of Korea, the TRA explains at paragraph 705 of the Final Determination that these were lower than those of significant exporting countries, as well as PRC imports. However, the TRA also notes that these prices were not subject to the same level of volatility as the price of PRC imports, and the increase over the injury period was at a much lower rate than other exporting countries.

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<sup>42</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/determining-injury-and-causation-in-dumping-and-subsidy-investigations#determining-material-injury>



Furthermore, when using the market data provided by Sany Group and LiuGong Group, the TRA concluded that the price of imports from the Republic of Korea was still higher than what was calculated for the import price of the goods concerned, based on the sampled exporters.

401. In its analysis of Korean imports, the original investigation carried out the non-attribution analysis as required by Regulation 35(1). In the section dealing with imports from third countries, the public guidance frames the analysis with regard to the volume and price of those imports. In the Final Determination, the TRA completed an analysis of the volume and prices of excavators from the Republic of Korea, which followed the parameters set in the public guidance. The TRA explained which data it had used in that analysis, why it was appropriate to rely on that data, and what steps it had taken to test the acknowledged limitations of that data.

402. The TRA concludes that the finding that Korean imports were not causing injury was reasonable, based on the evidence available, and the approach was consistent with the regulatory framework.

### **Imports from the Netherlands**

403. Caterpillar Group submits that the TRA should reconsider its findings on imports from the Netherlands, claiming that the magnitude and pace of increase in imports from the Netherlands exceeded the magnitude and pace of increase in imports from the PRC.

404. In the Final Determination, the TRA determined that although imports from the Netherlands increased over the injury period, the increase was not material in terms of the TRA's injury assessment, because the price of imports was higher than the average sales price of UK industry's like goods.



405. In its analysis of imports from the Netherlands, the original investigation carried out the non-attribution analysis as required by Regulation 35(1). In the section dealing with imports from third countries, the public guidance frames the analysis with regard to the volume and price of those imports. In the Final Determination, the TRA completed an analysis of the volume and prices of excavators from the Netherlands, which followed the parameters set in the public guidance. The TRA explained which data it had used in that analysis, why it was appropriate to rely on that data, and what steps it had taken to test the acknowledged limitations of that data.

406. The TRA concludes that the finding that imports from the Netherlands were not causing injury was reasonable, based on the evidence available, and the approach was consistent with the regulatory framework.

#### **Consider imports from Korea and the Netherlands together**

407. Caterpillar Group submits that there is nothing in the D&S Regulations which precludes the TRA from considering imports from the Republic of Korea and the Netherlands, individually or combined. In that context, it submits that given that imports from both countries seem to undersell JCB prices, and since they increased in absolute and relative terms by significantly more than imports from the PRC, material injury to the UK industry would appear to be caused by imports from the Netherlands and the Republic of Korea.

408. The TRA set out its approach to assessing third country imports and prices in section H2.5 of the Final Determination. In the analysis, at Table 26, the TRA listed the top six countries with the highest import levels of the relevant goods over the injury period, as well as the data for the rest of the world.

409. The public guidance on non-attribution states:



*We may look at whether imports which are not being dumped or subsidised (from the same country or a third country) are injuring the domestic industry.<sup>43</sup>*

410. Such an analysis does not require the TRA to combine all or some countries in its analysis. However, the TRA did consider Korean imports individually, as well as together with Japan, Belgium, and the Netherlands. This analysis is set out in Table 27 at paragraph 710.
411. The TRA has explained its methodology with regard to its analysis of third country imports and this is consistent with the regulatory and policy framework for assessing non-attribution.

### **Foreign currency losses and interest payable costs**

412. Caterpillar Group claims that JCB's financial statements demonstrate the company suffered significant costs relating to interest payable and to foreign currency losses. Since sales in the UK are made in GBP they cannot be affected by foreign currency losses. Similarly, interest payable is not part of operating loss and thus cannot relate to production and sale of excavators. Caterpillar Group submits that the TRA should reconsider the impact of these factors on performance of the UK industry and ensure that the negative impact of interest payable and foreign currency losses is not incorrectly attributed to the impact of prices from the PRC.
413. The Final Determination makes no finding with regard to the impact of foreign currency losses or interest payable. In its assessment of the performance of UK industry, the TRA had regard to several factors, including the profitability of UK industry.

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<sup>43</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/determining-injury-and-causation-in-dumping-and-subsidy-investigations#determining-material-injury>



414. As noted in earlier sections, several factors are considered in making a determination of injury to the UK industry. The TRA's findings of these factors are set out fully in the Final Determination and, where appropriate, have been summarised in the preceding sections.

415. In the Final Determination, the assessment of these factors does not mention costs relating to interest payable and foreign currency losses by JCB and do not affect the outcome of the TRA's assessment of injury as set out in the Final Determination.

### **Injurious impact of other factors**

416. Caterpillar Group submits that even if the factors set out in this ground are found not to break the causal link between imports from the PRC and injury to the UK industry, the TRA should still ensure that their injurious impact is not attributed to imports from the PRC as part of the injury margin calculation.

417. Regulation 35(2) of the D&S Regulations states:

*(2) Injury caused by other known factors must not be attributed to the dumped goods or subsidised imports.*

418. In the Final Determination, the TRA concludes that:

*711. The TRA determined that the impact of third country imports was not sufficient to break the causal link between the relevant goods and the indicative injury suffered by the UK industry.*

419. The TRA did not make a finding that the factors listed by Caterpillar Group in this ground were causing injury to the UK industry. As a consequence, there is no injurious impact from these factors that can be attributed to imports from the PRC.



### **Finding on Ground 18**

420. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The approach followed the legal requirements and relevant guidance. This has been set out in internal working documents, the outcomes of which have been explained in the Final Determination. The claims raised by Caterpillar Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.

## **Form of Measure (Ground 19)**

### **3.19 Ground 19 – Reconsider the form of the anti-dumping measures**

#### **3.19.1 Applicant's Ground**

421. In its application for reconsideration, Caterpillar Group states:

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

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



*158. For that reason, and assuming the TRA does not terminate the anti-dumping investigation with regard to the Caterpillar Group based on the preceding grounds for re-consideration, the Caterpillar Group submits in the alternative that as part of its request for reconsideration, the TRA should re-consider the form of measures applicable to the Caterpillar Group and that, instead of ad valorem duties, a price undertaking could be explored. The Caterpillar Group reserves its right to submit such price undertaking once the TRA reaches its provisional findings on other grounds of this re-consideration request.*

### **3.19.2 Original Investigation**

422. The TRA determined that ad valorem duties should apply to PRC exporters of certain excavators:

*755. Given the circumstances of this case the recommended import duty would therefore equate to an ad valorem duty based the lower of the dumping amounts and the injury margins as shown in Table 28 below.*

423. Following application of the EIT, the TRA determined that there was no evidence that another form of measure would be more appropriate:

*850. In the EIT, the TRA also considers the most appropriate form of measure to recommend, in particular whether any changes to the length, scope or type of measure would minimise the negative impacts of the measure on some parties while retaining the overall benefits.*

*851. The TRA has found no evidence suggesting that a form of measure, other than the type which the TRA recommends imposing, would be more appropriate.*



### 3.19.3 Relevant Legislation

From Schedule 4 to the Taxation (Cross-border Trade) Act 2018:

#### *Acceptance of undertakings*

*23(1) Where the TRA determines to recommend to the Secretary of State under paragraph [17\(3\)](#) or [\(4\)](#) that an anti-dumping amount or a countervailing amount should be applicable to goods, the TRA may also recommend to the Secretary of State the acceptance of an undertaking in respect of the goods.*

*(2) In this Part, an “undertaking” means—*

*(a) in the case of the dumping of goods, an undertaking offered by an overseas exporter of the goods—*

*(i) to revise the overseas exporter’s prices for export to the United Kingdom, or*

*(ii) to cease exports to the United Kingdom at prices which cause the goods to be dumped;*

*(b) in the case of subsidised goods—*

*(i) an undertaking offered by an overseas exporter of the goods to revise the overseas exporter’s prices for export to the United Kingdom, or*

*(ii) an undertaking offered by a relevant foreign government to eliminate or limit the importation into the United Kingdom of the subsidised goods or to take other measures concerning its effects.*

*(3) “A relevant foreign government” means the government of a foreign country or territory—*

*(a) which granted one or more of the countervailable subsidies in question, or*

*(b) within whose territory is located a foreign authority which granted one or more of those subsidies.*



*(4) Regulations may make provision about—*

*(a) Determinations by the TRA under sub-paragraph [\(1\)](#);*

*(b) the acceptance of undertakings by the Secretary of State on such a Determination.*

*(5) The regulations must secure that the TRA may request an undertaking in respect of goods only—*

*(a) at a time after it has made a provisional affirmative determination in relation to the goods, and*

*(b) if such other requirements as the regulations may specify are met.*

*(6) The regulations must secure that the TRA may recommend the acceptance of an undertaking in respect of goods to the Secretary of State only if it is satisfied that—*

*(a) the undertaking is sufficient to eliminate the injurious effect of—*

*(i) the dumping of the goods to a UK industry in those goods, or*

*(ii) the importation of the subsidised goods to a UK industry in those goods,*

*(b) acceptance of the undertaking meets the economic interest test (see paragraph [25](#)), and*

*(c) it is appropriate to accept the undertaking.*

*(7) The regulations may make provision for the purposes of sub-paragraph [\(6\)\(c\)](#) about the circumstances where it is or is not appropriate to accept an undertaking.*

*(8) Those circumstances may include that the terms and conditions of an undertaking include provision for the provision of information to enable the monitoring of compliance with the undertaking.*



*(9)The regulations must require that if the Secretary of State accepts an undertaking, the Secretary of State—*

*(a)publishes a notice to that effect, and*

*(b)notifies interested parties (see paragraph [32\(3\)](#)) accordingly.*

### 3.19.4 Reconsideration Finding

424. At paragraph 157 of its application for reconsideration, Caterpillar Group claims that the TRA should consider the option of a price undertaking, noting that because of the “late entry to the Investigation, the Caterpillar Group did not have an opportunity to propose an undertaking for the TRA's consideration following the provisional affirmative determination not least because no individual dumping and injury margin was assigned to it at the time by the TRA.”

425. The Statutory Guidance sets out the following:

*The TRA's starting assumption for recommending an anti-dumping or countervailing measure should be that any such measure be imposed for 5 years and calculated as an ad valorem duty. The TRA may recommend another type of measure if it considers it appropriate.<sup>44</sup>*

426. In the Final Determination, the TRA found that, following the application of the EIT, there was no measure that would more appropriate than the ad valorem measure being proposed.

427. It is incomplete to say that Caterpillar Group did not have an opportunity to propose an undertaking. Had they participated in the investigation from the time that they had notice, there would have been sufficient time for such a proposal to be made, though having found that

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<sup>44</sup> [Trade Remedies Authority \(TRA\) dumping, subsidisation and safeguarding investigations guidance - Dumping and subsidy investigations and reviews - Guidance - GOV.UK](#)



there was no measure more appropriate than the ad valorem measure, there is no guarantee that this would have been accepted.

428. The TRA's decision to impose an ad valorem measure was consistent with the Statutory Guidance and the information it had received during the course of its investigation. There is no further information provided in the application which provides a basis for reconsidering the form of measure in respect of Caterpillar Group. As a consequence, the reconsideration finding is that this ground should not be upheld.



## 4 Analysis of LiuGong Group's grounds: TRA's

### Determination for anti-dumping amount

429. In support of its application that the TRA should reconsider the decision to include battery electric machinery within the definition of the Goods and the tariff imposed, LiuGong Group has divided this ground into six subgrounds.

430. This report will consider each of the subgrounds in turn. In consideration of each subground, the Applicant's claim is set out in full, followed by a summary of the original investigation's conduct in relation to that ground. Where appropriate, the relevant legislation and policy relating to the issue is also included. The TRA's finding as the result of the reconsideration for the ground is then set out.

#### 4.1 Subground 1 – Erroneous inclusion of battery electric excavators as 'like goods'

##### 4.1.1 Applicant's Subground

431. In its application for reconsideration, LiuGong Group claims:

*10) The TRA's conclusion that battery electric excavators are "like goods" to internal combustion engine (ICE) excavators is flawed due to significant differences in characteristics, production, and end use, as supported by evidence provided by LiuGong Group and external sources.*

##### 4.1.2 Original Investigation

432. The application by UK industry identified "self-propelled track-laying (i.e. tracked) excavators with a 360° revolving superstructure and with an operating weight of 11,000kg (i.e. 11 tonnes) or more ('Excavators')" as the goods causing injury to the UK industry.



433. This description was used by the TRA to define the goods concerned in the investigation. This was published in both the NOI and the pre-sampling questionnaire at the commencement of the investigation on 15 November 2023.
434. Product control numbers (PCNs) were created on the basis of the main characteristics differentiating the sub-categories within the scope of the investigation. In this case, the goods were differentiated with regard to the weight of the excavators.
435. The initial PCN structure was included in the questionnaires which were published on 29 January 2024.
436. As part of the injury assessment, the TRA carried out a like goods assessment to identify whether goods produced by UK industry are like the goods concerned. This assessment was made with reference to the questionnaire responses and is summarised in Section E6 of the Final Determination. The like goods assessment considered the physical likeness (including physical characteristics) and commercial likeness (including competition and distribution channels). This included LiuGong Group's response, which submitted that electric excavators should be excluded from the scope of the investigation on the basis that there will be instances where electric powered excavators will not be an alternative in various settings, based on battery life and the need to recharge.
437. The outcome of the like goods assessment was explained in paragraphs 84 to 88 of the SEF on 25 November 2024. In the SEF, the TRA noted that it had considered whether to exclude or further differentiate electric-powered excavators in the investigation. It accepted that an electric-powered excavator may not always be an alternative to an internal combustion excavator, but the available evidence indicated that internal combustion engine (ICE) excavators had characteristics closely resembling those of an electric-powered excavator from the PRC.



438. In response to the SEF, LiuGong Group and Sany Group highlighted the price differential between electric and ICE powered excavators. However, in the Final Determination, the TRA concluded that sales price would not in itself be sufficient to make a further distinction, noting that functionally identical products may have different price points for a variety of reasons, and that Sany Group’s marketing material suggested that electric excavators could be a direct substitute for ICE excavators.
439. Section E6.2 of the Final Determination confirmed the findings set out in the SEF and deals specifically with electric-powered excavators and determined that “the available evidence would indicate that the UK produced goods with an ICE, will have characteristics closely resembling those of an electric-powered excavator originating from the PRC. These excavators are also alike in all other respects including physical characteristics and end use.”
440. The Final Determination addressed certain challenges or qualifications to this finding. It noted that an electric-powered excavator may not always be an alternative to an ICE powered excavator in various settings, however, that such a scenario was sufficiently rare that it was unlikely to be a deciding factor in purchasing decisions of downstream users.<sup>45</sup> The TRA explained that the information it had obtained regarding electric-powered excavators indicated that they were intended to be a direct substitute for ICE excavators and that recharging considerations were not dissimilar to a customer making an ordinary purchase based on physical size, intended end use, and the level of efficiency required.<sup>46</sup>
441. Having had regard to a series of challenges, raised following the publication of the SEF, in the Final Determination the TRA concluded:

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<sup>45</sup> TRA Final Recommendation, paragraph 109

<sup>46</sup> TRA Final Recommendation, paragraph 110



*126. The TRA has also still determined that electric excavators should not be treated separately. This is on the basis that in the absence of UK produced electric powered excavators, although not alike in all respects, a UK produced ICE powered excavator still has characteristics closely resembling those of an electric powered excavator. It follows the TRA will continue to view these as like goods and differentiate excavators by weight alone, in accordance with the existing PCN structure.*

#### **4.1.3 Relevant Legislation and Policy**

442. The meaning of 'like goods' is set out in paragraph 7 of Schedule 4 to the Taxation (Cross-border Trade) Act 2018:

*Meaning of "like goods"*

*7(1)For the purposes of this Schedule, "like goods", in relation to goods, means—*

*(a)goods which are like those goods in all respects, or*

*(b)if there are no such goods, goods which, although not alike in all respects, have characteristics closely resembling those of the goods in question.*

*(2)Regulations may make provision about—*

*(a)what constitutes or does not constitute "like goods" for the purposes of this Schedule;*

*(b)how "like goods" is to be determined for those purposes.*

443. The public guidance provides the following on like goods:

*Like goods*

*Like goods are goods which are like the goods concerned in all respects, or with characteristics closely resembling them.*



*During our investigations we assess the like goods produced and sold in the domestic market of the country under investigation. We also assess the like goods produced by UK producers as well as those imported into the UK from other countries not subject to the investigation.<sup>47</sup>*

#### 4.1.4 Reconsideration Finding

444. A like goods assessment was undertaken in the original investigation as part of the injury assessment to identify whether goods produced by UK industry are like the goods concerned.

445. At paragraph 77 of the Final Determination, the TRA noted that, pursuant to paragraph 7 of Schedule 4 of the Act, the TRA referred to 'like goods' as those goods which are like the goods concerned in all respects, or if there are no such goods, have characteristics which closely resemble them and are produced by the UK industry.

446. The TRA has reviewed the internal working documents from the original investigation which evidence the TRA's like goods assessment. In making this assessment, the TRA had regard to information provided by parties in the questionnaire responses, as well as responses to the SEF.

447. As part of the like goods assessment, the TRA made a physical likeness assessment and a commercial likeness assessment. The TRA considered a range of factors when comparing the goods concerned and the goods produced in the UK. These factors included size, dimension, weight, and components of an excavator (physical likenesses), and distribution channels, identity of customers, pricing, and interchangeability of the goods (commercial likenesses).

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<sup>47</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/the-tras-investigation-process>



448. As part of the original like goods assessment, the TRA had regard to submissions made by LiuGong Group in its questionnaire response, which highlighted differences in production technology, manufacturing process, and other characteristics which distinguished electric excavators from ICE excavators.
449. The TRA acknowledged that there are certain differences between electric excavators and ICE excavators, but that the information it had assessed indicated that electric excavators were intended to be a direct substitute for excavators with an internal combustion engine. It also considered that there may be production or manufacturing processes which differ between the two engine types, but that the UK produced goods (with an internal combustion engine) were still sufficiently alike to be considered like goods. It did not find that the goods were identical in every respect, but made a finding that the UK produced goods still had characteristics closely resembling those of electric excavators from the PRC and that they should remain within scope of the investigation, and that the PCN structure should not be amended further to distinguish electric powered excavators.
450. Following publication of these findings in the SEF, the TRA received further submissions that electric powered excavators should be excluded from the scope of the investigation. The TRA has reviewed internal working documents from the original investigation which evidence further consideration of these submissions. These have been summarised in Section E6.2 of the Final Determination.
451. In response to the SEF, Sany suggested that the higher sales cost of an electric excavator would be a deciding factor in purchasing decisions. LiuGong Group also noted that battery electric machine customers are buying them for specific reasons which will justify the additional expense. The TRA considered that the points regarding price differential is a factor



to consider when reviewing commercial likeness, but did not consider that the sales price would necessarily be determinative by itself. At paragraph 119 of the Final Determination, the TRA also noted that functionally identical products may have different price points for a variety of reasons, and pointed to Sany's marketing material which suggested that electric excavators can offer cost-savings.

452. The TRA also received submissions noting that electric excavators may not always be an alternative to ICE powered excavators, however the TRA determined that this was unlikely to be a deciding factor in purchasing decisions of downstream users.

453. The TRA's assessment was made in accordance with the legal framework to assess whether or not the electric-powered excavators should remain within the scope of the investigation. To do this, it assessed the physical and commercial likeness of the goods and determined that, although they were not alike in all respects, they had characteristics closely resembling one another.

454. In the original investigation, the TRA acknowledged that electric powered excavators were not alike in all respects to a UK produced ICE powered excavator. It considered submissions relating to the price differential and environmental factors. However, the TRA determined that electric excavators should not be treated separately because they still shared characteristics closely resembling those of an ICE powered excavator. The components (excepting the engine), functionality, and end-use of an electric excavator are fundamentally the same as an ICE powered excavator.

455. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The claims raised by LiuGong Group under this ground have not demonstrated that these



findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.

## 4.2 Subground 2 – Reliance on JCB’s representation

### 4.2.1 Applicant’s Subground

456. In its application for reconsideration, LiuGong Group claims:

*11) JCB themselves have invested heavily in non-fossil fuel combustion engines, machines which they have not included in the application. Whilst JCB are described in the Final Determination as representing that non-fossil fuelled machines have “same basic physical characteristics and end uses” this is entirely inconsistent with their own £100m investment in hydrogen powered machines which follows a three-year development period, considerable R&D and 25,000 hours of testing. JCB also has an R&D facility which, it claims, specifically focusses on electric battery machines. Clearly research and development tax relief is not available for machines which are basically the same as those which precede it. In this regard there is inconsistency in the approach of JCB who have represented (and the TRA accepted) that electric machines are basically the same and compete with internal combustion engine machines yet seek publicity, government support, appeal to customers and presumably R&D tax relief on the basis of having zero emissions and alternative fuel alone. In a promotional video, JCB’s own customers describe the ability to purchase machines with zero emissions as “part of our future”, “the way forward”, helping with “energy security and reduce the risks of global supply chain shocks”, “critical to long term objectives”, necessary to adapt to “what our customers want” and to meet KPIs and carbon reduction targets and “100% the way to go”. One customer confirms that customers are “interested in solutions that are stable, that are available and align with their own decarbonisation policy” and that “hydrogen*



*powered, no fossil fuels is exactly what everyone is looking for". JCB proudly identify their own hydrogen powered engines as having "no real differences in performance at all" when compared to ICE machines yet Lord Bamford describes hydrogen machines as "critical" to the move to zero carbon construction, inviting the governments around the world to "get serious" about decarbonisation and incentivising investment to enable zero carbon construction "we so desperately need". JCB has invested in hydrogen to fuel its zero emissions machines, which it sees as critical and "paving the way for the net-zero worksite of the future". Yet despite the investment and focus on fuel and emissions of their own product offering, JCB has submitted to the TRA that alternative zero emission machines (in the form of battery electric machines) are, to all intents and purposes, the same as diesel fuelled machines.*

*12) . This inconsistency undermines the TRA's reliance on JCB's assertions.*

#### **4.2.2 Original Investigation**

457. The relevant details regarding the original investigation are included above in Section 4.1.2

#### **4.2.3 Relevant Legislation and Policy**

458. The relevant details regarding the relevant legislation and policy are included above in Section 4.1.3

#### **4.2.4 Reconsideration Finding**

459. The TRA's anti-dumping investigation into certain excavators from the PRC determined that the relevant goods originating from the PRC were being dumped into the UK and that the dumped goods originating from the



PRC have caused injury to the UK industry. In doing so, the TRA had due regard to the information and evidence provided by the applicant, as well as other interested parties in the investigation.

460. In its application for reconsideration, LiuGong Group refers to JCB's research and development facility which focuses specifically on electric battery machines. LiuGong notes:

*“Clearly research and development tax relief is not available for machines which are basically the same as those which precede it. In this regard, there is inconsistency in the approach of JCB who have represented (and the TRA accepted) that electric battery machines are basically the same and compete with internal combustion engine machines...”*

461. The TRA's original investigation assessed whether or not the goods concerned from the PRC were (a) being dumped into the UK, and (b) causing injury to UK industry.

462. The research and development of hydrogen powered machines by JCB, to which LiuGong Group refers in its application for reconsideration, lies outside the scope of matters considered in the anti-dumping investigation. However, the points referred to in LiuGong Group's application for reconsideration under this ground demonstrate the substitutability of electric, ICE, and hydrogen powered excavators, which have an identical end use. This supports the TRA's conclusion that electric battery excavators should remain within the scope of the investigation.

463. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The claims raised by LiuGong Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration findings is that this ground should not be upheld.



### 4.3 Subground 3 – TRA’s conclusion: lack of evidence and internal consistency

#### 4.3.1 Applicant’s Subground

464. In its application for reconsideration, LiuGong Group claims:

13) *The TRA concluded that it was: “.... satisfied that, for the purposes of the like goods assessment, the available evidence would indicate that the UK produced goods with an ICE, will have characteristics closely resembling those of an electric-powered excavator originating from the PRC. These excavators are also alike in all other respects including physical characteristics and end use.”*

14) *The TRA has made no effort to share that evidence to enable it to be scrutinised and reached its conclusion despite evidence on the contrary from LiuGong Group and in the public domain (including from JCB). Evidence was provided to the TRA that electric machines are not “...a technical and/or commercial substitute to excavators operating on diesel powered engine since there is substantial difference in production technology, manufacturing process, raw material consumed, operating cost, carbon emission as well as production and retail cost” and further that the largest proportion of manufacturing costs was determined by diesel engine costs. Evidence was also provided that fuel type and tailpipe emissions are a differentiator for governments and for many customers. Evidence was also provided that the fuel used by the machine was for some customers the single characteristic of the machine which was determinative of purchase, for example depending on the project (for example where there is a risk of asphyxiation), depending on whether the project is to take place in an area with restrictions on emissions (see also below) or the company has a commitment to a green energy, environmental or zero carbon policy. Confirmation was provided that similar*



*goods with an internal combustion engine are not competitive with electric fuelled machines in such circumstances, notwithstanding that both excavate the ground. In the same way that when a consumer chooses an electric fuelled car they are differentiated, primarily, based on fuel/emissions alone (including by the government), the car still takes the occupants from A to B but they cannot be said to be the same, fuel type is a key factor in a car, in the manufacturer's production and marketing, taxing, service and maintenance, cost and the customer's choice of car.*

*15) LiuGong group also identified significant evidence prepared and produced by the government, in the shape of the Industrial Non-Road Mobile Machinery Decarbonisation Options: Techno-Economic Feasibility Study for the TRA for consideration on the issue of whether to include battery electric machines as "like goods". The report looked in great detail at evidence and engaged with multiple stakeholders on issues such as the location of sites, the duration of sites, the utilisation of excavators, machine usage, machine lifetime and the size of site. The report began with desk-based research in November 2022, followed by stakeholder workshops and interviews in spring 2023 and before presenting the findings in August 2023. In completing the report the authors reviewed 121 reports and interviewed or workshopped with 75 different stakeholders from across the piece, including JCB . The report engaged with multiple industries, including construction, ports, mining and waste. The report considered the views of manufacturers, operators, lease and hire suppliers and second life purchasers. The report is comprehensive and based upon a wealth of evidence and research. It is the firm conclusion of the report that emissions and fuel type are a defining factor in characteristics, physicality, customer choice and end use. The report highlights that key drivers arise for battery electric machines which are specific to non-ICE machines:*

- Carbon reduction ambition (of the customer and of the government);*
- and*



- *Air and/or noise pollution reduction.*

16) *The report's authors give several examples from stakeholders, factors which influence the customers along with those key drivers (or enablers), which include:*

- *Purchase costs (which are directly related to manufacturing and R&D costs) – particularly identified as an issue for the hire market, which is disproportionately high in the UK market (compared to Europe), where lessors are not able to be persuaded by fuel costs savings as a continuing use customer would be (this is also referenced in the SEF response from LiuGong Group) .*
- *End of life value and use – this is known and predictable for ICE machines but remains different for battery electric. This is identified in the report as a key consideration for a number of customers. Not only is the potential value considerably less than the capex investment (proportionately more of a price reduction compared to ICE as technological advances develop a pace, as is seen in the battery electric vehicle market) but third world countries may have less demand for second hand machines where the infrastructure may not support large battery recharging.*
- *Limited availability of battery electric machines and suitable related infrastructure - although the report looks across non-road machinery (including excavators) where there are some battery electric machines available, in the Goods category there are currently no battery electric machines available in the UK. However, as the report identifies NRMM battery electric machines are reliant upon the existing infrastructure which is a concern (as highlighted in the SEF responses) for end users and is not hypothetical.*



- *Lack of supply chain skills – meaning the cost and availability or maintenance and servicing is different across ICE and battery electric machines, another consideration for users.*

17) *A sub-section of the report is dedicated to reviewing some of the performance differences between the machines. Sub-section 3.2 highlights differences in fuel density, efficiency, lifetime and size. The report goes on to identify (sub section 3.3) differences in capital expenditure, operating costs, infrastructure costs and the cost of efficiency measures required for the machine.*

18) *Table 57 within the report summarises some of the considerations specific to battery electric machines, it recognises run cycle times, a skills gap for EVs in the UK labour market which is particularly significant for NRMM, infrastructure constraints, air and noise reduction, health and safety concerns of manual handling of batteries, high voltage charging infrastructure, concern around the disposal of batteries (and associated costs and liabilities), cost and utilisation.*

19) *The report, prepared for the government, clearly and unambiguously states “Abatement options such as battery electric do not match the incumbent solutions on all technical specifications...”.*

20) *Yet the findings of the report have seemingly been discarded in favour of confirmation only that the TRA has reviewed “evidence” that battery powered and ICE machines are closely alike characteristically, physically and in end use. Such inconsistency, particularly without clear evidential references to scrutinise the conclusions, is unacceptable.*

21) *The TRA further commented that:*

*“Having reviewed the SEF responses, the TRA has identified that the additional commentary predominately references more recent, as well*



*as future, developments within the UK excavator market. This is opposed to what actually occurred during the POI....*

*...It follows the current assessment of the like goods should not be based on developments that have yet to occur.”*

*22) The TRA therefore dismissed concerns about infrastructure and government policy as issues which are future based and therefore hypothetical and subject to change, notwithstanding those issues were identified and explored in the Industrial Non-Road Mobile Machinery Decarbonisation Options: Techno-Economic Feasibility Study produced for the Department of Energy Security and Net Zero, and notwithstanding that the tariff imposed in on electric machines which are not sold in the UK and cannot be causing injury to the market (and therefore themselves purely future based and hypothetical). Such internal inconsistency undermines the credibility of the conclusion. This approach based on accepting one hypothetical scenario (sales of battery electric machines would compete with ICE machines in the future in the UK) and dismissing other hypothetical scenarios (customer choice and functionality would be dictated to by government policy, availability of charging infrastructure, specific project requirements and the cost of the machine) is further undermined by the acceptance that the TRA did not request, research or review any evidence of the actual current costs of production and sales outside the UK or acknowledged factors identified by the Industrial Non-Road Mobile Machinery Decarbonisation Options: Techno-Economic Feasibility Study.*

#### **4.3.2 Original Investigation**

465. The relevant details regarding the original investigation are included above in Section 4.1.2



#### 4.3.3 Relevant Legislation and Policy

466. The relevant details regarding the relevant legislation and policy are included above in Section 4.1.3

#### 4.3.4 Reconsideration Finding

467. In its application for reconsideration, LiuGong Group claims that the TRA has not provided or shared the evidence for its determination that electric excavators are 'like goods'. It claims that the TRA has not enabled scrutiny of this evidence and reached this conclusion despite evidence to the contrary from LiuGong Group. This includes information regarding the substantial difference in production technology, manufacturing process, raw material consumed, operating cost, carbon emission as well as production and retail cost.

468. The TRA did consider these and other factors that were raised in the course of the original investigation. As set out in sections 4.1.2 and 4.1.4 above, the TRA considered a range of physical and commercial characteristics in making its determination that electric excavators should remain within the scope of the investigation. This included factors such as size, dimension, weight, components of an excavator, distribution channels, identify of customers, pricing, and interchangeability of the goods.

469. The TRA also engaged with comments made by interested parties in the questionnaire responses, explaining where appropriate the reasons for agreeing with or dissenting from these submissions.

470. Following the publication of the SEF, parties had a further opportunity to provide comment. The TRA has reviewed internal working documents from the original investigation which set out the TRA's team's analysis of parties' comments to the SEF, and updates the like goods assessment in the light of these comments and submissions. Section E6 of the Final Determination sets out the reasoning on the TRA's like goods assessment



and explains why it has considered electric excavators to be 'like goods' for the purposes of this investigation. This has been summarised above in Section 4.1.2 and 4.1.4.

471. The TRA has maintained a public file throughout the investigation which has contained an appropriate level of transparency with regard to the evidence and information that it has received and considered. The treatment of this information has been explained in both the SEF and the Final Determination.
472. With regard to the broader government policies on the environment and emissions, the TRA has reviewed internal working documents from the original investigation which demonstrate that the TRA considered submissions following the SEF publication which raised these points on the environmental impact of electric powered excavators as against ICE excavators. The TRA considered that these submissions on the environmental advantages of electric powered excavators did not demonstrate a divergence in terms of end use, and that the end use of the electric battery excavators was fundamentally the same as ICE excavators. As a consequence, and for the reasons stated in the preceding sections, it was reasonable to determine that they remain in the scope of the investigation.
473. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The claims raised by LiuGong Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration findings is that this ground should not be upheld.



## 4.4 Subground 4 – Data analysis and calculation: failure to include battery electric excavators

### 4.4.1 Applicant's Subground

474. In its application for reconsideration, LiuGong Group claims:

*23) Despite confirmation that data from electric battery machines were not included in the submissions and that the manufacturing costs were significantly impacted by the engine costs, the TRA when carrying out its investigation and verification did not seek any information regarding the cost of production of battery electric machines or the sales values in the PRC. LiuGong Group did not include the information within its submission on the basis of the requirement for like goods sold in the UK and on the basis of the submission confirming that battery electric machines are not like goods, however, LiuGong Group did confirm that it produced battery electric machines and that it had excluded that data and the data has not been requested. This omission undermines the TRA's determination of a Particular Market Situation (PMS) and the use of a Constructed Normal Value (CNV), as these calculations cannot accurately reflect the higher manufacturing costs of battery electric machines. Clearly in determining there was a PMS it would be inappropriate to use a CNV for Goods which are of a significantly higher manufacturing cost than the goods sold in the domestic market. The TRA should have gathered this information in order to determine whether to treat battery electric machines as within the scope of the investigation. Having failed to request or examine any information regarding the production and sales of battery electric machines (despite maintaining these are like goods) the TRA then seeks to rely on its failure to justify including battery electric machines within scope. The only way in which data on battery electric machines can be reliably incorporated in assessing and calculating dumping margins is to perform such analysis after there are sales into the domestic market. The current state of ignoring data or manufacturing costs and having*



*no data in respect of sales values undermines the requirement for procedural fairness as outlined in Regulation 6 of The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019.*

#### **4.4.2 Original Investigation**

475. The TRA set out its findings with regard to PMS in Section G2.1 of the Final Determination.

476. Having determined that a PMS existed in the excavator market in the PRC, the TRA also explained the steps it took to ensure a fair comparison between the normal value and export price of the goods concerned. It did this at Section G4:

##### **G4. Fair comparison**

*433. To ensure a fair comparison, the normal value and export price need to be compared at the same level of trade; normally on an EXW level and in respect of sales made as near as possible the same time, in accordance with regulation 16(1) of the Regulations.*

*434. In accordance with regulation 16(2) of the Regulations the TRA may make adjustments for any differences which affect price comparability including differences relating to:*

- Conditions and terms of sale;*
- Taxation;*
- Levels of trade;*
- Quantities;*
- Physical adjustments.*

*435. The sampled exporters produce both electric and combustion engine excavators. The Sany Group and Liugong Group have stated that electric excavators should be excluded from the scope of the current investigation.*



*The TRA has decided that electric excavators remain in scope and no adjustments in relation physical characteristic differences have been made.*

*436. In response to the SEF, the Liugong Group submit that “the cost of production of electric excavators will be significantly higher yet their costs have not been included in the calculations of CNV [or] Constructed Export Price”.*

*437. The TRA reject this comment on the basis that neither the Sany or Liugong groups claimed physical characteristic adjustments during the questionnaire stage of the investigation, or during verification.*

*438. The Liugong Group, the Sany Group and the Caterpillar Group reported fair comparison adjustments to their sales data.*

*439. The TRA considered whether the fair comparison adjustments made to the domestic sales would need to be made to the constructed normal value to be able to compare to the export price at the same level.*

*440. For the Sany Group, fair comparison adjustments for credit, as per conditions and terms of sale, were deducted from the constructed normal value in accordance with the data received. For the Liugong group, it was determined no fair comparison adjustments to the constructed normal value were required.*

*441. In the SEF addendum, the TRA had deducted freight and insurance costs from the constructed normal value. In response to a comment made by the Caterpillar Group on the SEF addendum, the TRA is no longer deducting freight and insurance for the Caterpillar Group but, instead, has deducted these costs at the AS&G level, as detailed above (Section G2.2.4).*

#### **4.4.3 Relevant Legislation and Policy**

477. The D&S Regulations set out the provisions for making a comparison between the normal value and the export price:



### **Comparison**

**16.**—(1) *A comparison for the purpose of regulation 6(2)(c) must be made—*

*(a) by reference to the same level of trade, normally the ex-factory level, or where that is not possible (because, for example, that information is not available for both the normal value and the export price at that level) such other level as the TRA considers appropriate; and*

*(b) in respect of sales made at as near as possible the same time.*

(2) *To ensure the comparison is fair, the TRA may make adjustments for any differences which affect price comparability including differences relating to—*

*(a) conditions and terms of sale;*

*(b) taxation;*

*(c) levels of trade;*

*(d) quantities;*

*(e) physical characteristics.*

478. The public guidance sets out the approach to making a fair comparison:

#### ***Making a fair comparison***

*To allow for a fair comparison between the export price and normal value we ensure that these are:*

- at the same level of trade, normally on an ex-factory level*
- based on sales made at as near as possible the same time*

*To achieve this fair comparison, we may need to make adjustments to the normal value and/or the export price to account for any differences which affect price comparability. This includes those relating to:*

- conditions and terms of sale, including after sales costs, commissions, credit, discounts, rebates and transport costs*



- *import charges and indirect taxes*
- *levels of trade*
- *quantities*
- *physical characteristics*
- *packing costs*
- *currency conversions*

*When we make such adjustments, we will ask the relevant parties for data on each factor, including what adjustments they would propose. We will explain what information we need to ensure a fair comparison. When we receive this data, we will assess any differences identified to determine whether the adjustment is justified.*

*We will make adjustments if there is evidence that a particular difference between the normal value and the export price affects our ability to make a fair comparison. Exporters may request that a particular adjustment is needed, but they must provide supporting evidence as promptly as possible. This lets us assess the circumstances and confirm the supporting accounting information.<sup>48</sup>*

#### **4.4.4 Reconsideration Finding**

479. In its application for reconsideration, LiuGong Group claims that the TRA's determination of a PMS and use of a constructed normal value was undermined by the omission of data on battery electric machines. LiuGong Group claims that the calculations cannot therefore accurately reflect the higher manufacturing costs of battery electric machines.

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<sup>48</sup> <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/how-we-carry-out-a-dumping-investigation>



480. As noted in Section 4.1.2, the TRA set out the description of the goods concerned in both the NOI and the pre-sampling questionnaire at the commencement of the investigation on 15 November 2023.

481. In order to support the like goods assessment in the original investigation, the TRA created product control numbers (PCNs) on the basis of the main characteristics distinguishing the relevant goods. The goods were differentiated with regard to weight and did not make a distinction on the basis of engine type. This PCN structure was published in the full questionnaires on 29 January 2024.

482. In the Final Determination, the TRA set out and explained its findings with regard to PMS in the excavator market in the PRC. The TRA also set out its methodology for determining whether or not adjustments were required to ensure a fair comparison between the normal value and the export price.

483. The TRA has explained the regulatory framework for making a fair comparison and has explained how it has taken into consideration the relevant factors which may be considered when making adjustments.

484. In response to the SEF, LiuGong raised a number of points that are also included in its application for reconsideration. The TRA addressed these in the Final Determination:

*435. The sampled exporters produce both electric and combustion engine excavators. The Sany Group and Liugong Group have stated that electric excavators should be excluded from the scope of the current investigation. The TRA has decided that electric excavators remain in scope and no adjustments in relation physical characteristic differences have been made.*

*436. In response to the SEF, the Liugong Group submit that “the cost of production of electric excavators will be significantly higher yet their costs*



*have not been included in the calculations of CNV [or] Constructed Export Price”.*

*437. The TRA reject this comment on the basis that neither the Sany or Liugong groups claimed physical characteristic adjustments during the questionnaire stage of the investigation, or during verification.*

485. By its own admission in its application for reconsideration, LiuGong Group did not include the data from battery electric machines its submission. Whilst LiuGong Group had asked for electric battery excavators to be removed from the scope of the investigation when it registered to the investigation, the TRA never excluded electric battery excavators from the scope of the investigation. LiuGong was aware that they were within scope and, in the absence of the TRA changing that scope, should have provided the relevant information at the time it was requested by the TRA.

486. As a consequence, and as noted at paragraph 437 of the Final Determination, the TRA did not make adjustments to costs for electric excavators, because LiuGong Group (and the other producer of electric excavators) had not claimed physical characteristic adjustments during the questionnaire stage of the investigation, or during verification.

487. In the original investigation, the TRA considered the submission by LiuGong with respect to fair comparison that it has now made in its application for reconsideration. It made a reasonable determination based on the information that it had available at the time and explained this in the Final Determination.

488. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The claims raised by LiuGong Group under this ground have not demonstrated that these



findings should be varied. As a consequence, the reconsideration finding is that this ground should not be upheld.

## **4.5 Subground 5 – Government policy and statute – external inconsistency**

### **4.5.1 Applicant’s Subground**

489. In its application for reconsideration, LiuGong Group claims:

*26) The government accepts zero or low emissions as a differentiator across a number of areas including in relation to tariffs. In the index matter, the TRA appears to conclude that the emissions of the machinery are not significant or not sufficiently significant such as to treat the machines differently. Tariffs based on emissions alone are in place in London (ULEZ and LEZ), Birmingham, Bath, Bradford, Bristol, Portsmouth, Sheffield, Tyneside (Newcastle and Gateshead), Glasgow, Dundee, Aberdeen and Edinburgh. Construction projects or use of excavators in those areas warrant consideration on the fuel of the machine as a defining and central characteristic. The TRA seeks to treat combustion engines and electric battery engines as “essentially the same” because it does not seek to distinguish on fuel consumption alone, yet the state creates significant public policy and associated tariffs across these geographical areas based upon fuel alone. Such inconsistency across government creates a lack of confidence and fairness. Similarly, road tax for roadworthy vehicles is calculated by reference to emissions, it is clear then that the government is prepared to treat emissions as a defining differentiator between vehicles for the purpose of applying tariffs but not to the goods within the category of tracked excavators.*



#### **4.5.2 Reconsideration Finding**

490. The TRA's remit in an anti-dumping investigation is to determine whether the relevant goods are being dumped into the UK and if those dumped goods have caused injury to the UK industry. Where the TRA is satisfied that there is dumping and injury to the UK industry, it will apply the Economic Interest Test to determine if the implementation of a proposed trade remedy is in the economic interest of the UK.

491. LiuGong Group claims that the TRA's decision is inconsistent with the government's treatment of zero or low emissions as a differentiator in other areas.

492. When the TRA makes a recommendation to the Secretary of State, the Secretary of State has the power to reject the TRA's recommendation if the Secretary of State is satisfied that it is not in the public interest to accept the recommendation.

493. In its Final Determination, the TRA has explained how it made its determination in accordance with the existing regulatory and policy framework. The determination made by the TRA was reasonable on the basis of the relevant information it had at the time of the investigation.

494. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The claims raised by LiuGong Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration findings is that this ground should not be upheld.

#### **4.6 Subground 6 – Net carbon zero and Climate Change Act 2008**



#### 4.6.1 Applicant's Subground

495. In its application for reconsideration, LiuGong Group claims:

*27) The UK government is committed to a target to reach net zero by 2050, that commitment sits alongside the commitment on emissions enshrined in the Climate Change Act of 2008. A number of countries have similar and/or collective targets on climate change, such as the signatories to the UN Net Zero Coalition and the Paris Agreement of 2015, these are a global recognition that the climate crisis is a long-term threat to the world and that global warming needs to be reduced by 1.5C. The commitment is long standing and fundamental.*

*28) In order to comply with the Climate Change Act, the Secretary of State must have regard to the target of net zero by 2050 (section 15). The decision by the Secretary of State in this matter is in breach of this section of the Act.*

*29) Government as a result has introduced a number of measures and monitors to ensure its targets remain central to decision making, policy and objectives. The TRA itself is required to report annually on its sustainability in accordance with the HM Treasury guidance for public bodies on sustainability reporting and reports within the Annual Report that it is "...committed to embedding the principle of sustainable development" and that it will continue to "actively promote environmental sustainability through communication and training with staff". Whilst the objective of embedding environmental awareness and sustainability into all public bodies is commendable and consistent with the commitment to Net Zero it is made a mockery of with a decision by the TRA which effectively finds ICE and battery electric machines are fundamentally the same.*

*30) The current Labour Government (like those before) have proposed measures to assist in reducing emissions such as increasing the amount of public electric chargers available, introducing a publicly owned clean power company and investing in gigafactories. One of their main policies is to reduce*



*the number of cars with internal combustion engines and assist people in purchasing electric cars. The government have aimed to phase-out cars with internal combustion engines by 2030. Secretary of State for the Department of Business and Trade, Jonathan Reynolds, has supported the measure and signally the significant role of industry in the goal of net zero.*

*31) In 2022 the industry sector contributed to 14% of carbon emissions, and the construction industry accounted for around 50m tonnes of CO2 emissions. The CCC highlighted industry as one of the key sectors where there are still insufficient plans for emission reductions and a key concern for the government and a priority for policy for 2024.*

*32) The government has particularly focussed on decarbonising construction and reviewed projects, such as HS2, as examples of the necessary measures required to tackle the carbon footprint of large construction projects in enabling the government to meet its ambitions and targets. The Guidance includes the rationalisation of reducing carbon in construction: “For the UK to meet its statutory climate targets, including its carbon budgets, requirements are only likely to increase in their stringency. Thus, being forward thinking and innovative, especially on high-value construction projects, is in the interests of both the government and industry. The most effective way to reduce carbon is to ‘design it out’, or rethink how we can achieve our objective without necessarily relying on the traditional infrastructure required to do so, getting the thinking right at the outset remains key. Once this has been done – applying the same approach to the design and execution of the procurement is important. Major infrastructure projects give us the chance to lead the way, experiment and innovate as we seek to decarbonise.”*

*33) The TRA itself has a Business Plan for 2023 to 2026 which identifies that the UK Government’s plan for decarbonising all sectors of the UK economy meeting a net zero target as important elements which influence the delivery of the plan. In particular the TRA committed to the policy Net Zero Strategy:*



*Build Back Greener whereby the government of the day committed to an agenda of electrification of vehicles, low emissions, helping industry and reducing barriers and costs to encourage and drive climate responsible ambitions. In the Forward to the report the then Prime Minister, Boris Johnson, stated “This strategy sets out how we will make historic transitions to remove carbon from our power, retire the internal combustion engine from our vehicles and start to phase out gas boilers from our homes. But it also shows how we will do this fairly by making carbon free alternatives cheaper” and that in doing so the UK would focus on “Removing dirty fossil fuels from the global economy will lead to the creation of vast new global industries from offshore wind to electric vehicles and carbon capture and storage”. In setting out the strategy for decarbonisation the Executive Summary identifies four key concepts and commitments, including “We will work with businesses to continue delivering deep cost reductions in low carbon tech”. Despite a commitment to sharing those principles as “important elements” in the TRA’s business plan, the TRA has in fact worked against business to increase the cost of the low emission alternative and concluded, in this case, that electric machines (and the skilled green jobs they will create in the UK) are not fundamentally different from fossil fuel combustion engines.*

*34) In the TRA Blog article “Trade remedies and climate change policy – allies or enemies? – Trade Remedies Authority” of 2 August 2022 by Aproop Bhave, Chief Economist and Joanne Gill, Head of Economics Unit, the TRA identified that climate factors can be considered as part UK’s economic interest test and that it is possible to argue for the Secretary of State not to impose a Determination for a measure recommended by the TRA where “...access to cheaper environmental goods is considered necessary in the short to medium term for the UK’s transition to a lowcarbon economy.”. Despite both being raised by LiuGong group this appears to have been ignored in this case. We would agree with the thoughts of the authors of the TRA Blog that both trade remedies and climate change are topical policy*



*issues but that, as the Blog appears to suggest, they ought to be pulling in the same direction and not considered in isolation.*

*35) Various sources have also recognised the potential cost to the UK economy of failing to meet decarbonisation targets, for example the House of Lords estimated the cost of climate change to be around 5% of GDP per year, those costs are not considered in relation to the potential welfare outcomes of the TRA's Determination.*

*36) The potential costs to the economy were also highlighted in the Industrial Non-Road Mobile Machinery Decarbonisation Options: Techno-Economic Feasibility Study which identified that misalignment with global markets presented a real and significant risk to the machines exported by UK manufacturers; "Whilst decarbonisation policy for industrial NRMM is at an early stage internationally, if UK policy develops in a different direction to other markets, this could affect the UK's position as a net exporter of industrial NRMM. This particularly impacts machines that require specific infrastructure (e.g., hydrogen supply....).*

*37) The TRA and the Secretary of State have failed to have due regard to the duties under the Climate Change Act 2008, the government strategy for net zero and decarbonisation and the potential cost to the UK economy of increasing the cost and therefore providing further barriers for UK consumers to move to machinery with zero tail pipe emissions.*

#### **4.6.2 Reconsideration Finding**

496. The TRA's remit in an anti-dumping investigation is to determine whether the relevant goods are being dumped into the UK and if those dumped goods have caused injury to the UK industry. Where the TRA is satisfied that there is dumping and injury to the UK industry, it will apply the Economic Interest Test to determine if the implementation of a proposed trade remedy is in the wider economic interest of the UK.



497. LiuGong Group claims that the TRA's decision is inconsistent with the government's strategy for net zero and decarbonisation.
498. The question of broader government strategy lies outside the scope of the matters considered in the anti-dumping investigation. When the TRA makes a recommendation to the Secretary of State, the Secretary of State has the power to reject the TRA's recommendation if the Secretary of State is satisfied that it is not in the public interest to accept the recommendation. However, this power lies with the Secretary of State and there is no provision in the D&S Regulations for the TRA to consider wider matters in the public interest in making its determination.
499. In its Final Determination, the TRA has explained how it made its determination in accordance with the existing regulatory and policy framework. The determination made by the TRA was reasonable on the basis of the relevant information it had at the time of the investigation.
500. For the reasons set out above, the reconsideration finding is that the approach taken in the original investigation was reasonable, based on the evidence available at the time of the decision. The claims raised by LiuGong Group under this ground have not demonstrated that these findings should be varied. As a consequence, the reconsideration findings is that this ground should not be upheld.

## 5 Reconsidered decision

501. The reconsidered decision is to uphold the TRA's original decision made in the final Determination, as accepted by the Secretary of State in [Trade Remedies Notice 2025/10](#).
502. The reason for this decision is as follows.



**Caterpillar Group's claims:**

503. Issue 1 (grounds 1 to 4) : Injury determination

- The various elements of this issue have been addressed in the sections dealing with grounds 1-4 of Caterpillar Group's claim. The underlying basis for this claim is that the TRA should have used the actual customs value when calculating the injury margin.
- The TRA found that the export price was determined to be unreliable as the result of a compensatory arrangement between Caterpillar Group and its UK importer. As a consequence, and for the purposes of calculating the injury margin, the TRA constructed the export price and did not use the actual customs value.
- With regard to the claim made in relation to the inclusion of the prices of XXL excavators in the injury margin calculation, the Statutory Guidance on calculating injury margins guides the TRA to ensure that comparisons are made between products where there are both export sales and sales by UK industry. The TRA followed this guidance by not including XXL excavators in the calculation, as they could not be matched with a corresponding PCN of a UK manufactured product.
- With regard to the claim made in relation to the normal rate of profit, the TRA acted in accordance with the Statutory Guidance and took into consideration a number of relevant factors in determining an appropriate rate of profit.
- As a consequence, the TRA finds that none of the claims (Grounds 1 to 4) relating to the injury margin calculation demonstrate that the original findings should be varied. As a consequence, the reconsideration finding is that these grounds should not be upheld.

504. Issue 2 (grounds 5 to 14):Dumping margin determination



- The various elements of this issue have been addressed in the sections dealing with grounds 5-14 of Caterpillar Group's claim. The underlying basis for this claim is that the TRA should have (a) used the actual customs value when calculating the dumping margin, (b) determined that no PMS applies to Caterpillar Group, and (c) if a PMS is found to apply to Caterpillar Group, determine that the PMS does not affect price comparability.
- The TRA did not use the actual customs value when calculating the dumping margin. This was because the export price was determined to be unreliable as the result of a compensatory arrangement between Caterpillar Group and its UK importer. As a result, it was reasonable to construct the export price which in turn fed into the dumping margin calculation.
- With regard to the claim that PMS does not apply to Caterpillar Group, the TRA considered the broader factors that affected the excavator market in the PRC. Whilst having regard to the submissions made by Caterpillar Group regarding its global pricing strategy and the absence of direct state influence, the TRA found that the factors determining a PMS went beyond these considerations and that prices reflected non-commercial factors in the excavator market in the PRC. The TRA finds that this was a reasonable finding to make based on a holistic consideration of the relevant facts.
- With regard to the claim that the PMS does not affect price comparability, the TRA considered a number of factors to assess whether or not the PMS in the excavator market prevented a proper comparison between the like goods in the PRC and the relevant goods.

505. Issue 3 (grounds 15 to 18): Injury and causal link

- The various elements of this issue have been addressed in the sections dealing with grounds 15-18 of Caterpillar Group's claim. The underlying basis for this claim is that the TRA should have established the volume and value of imports based on the country of origin and not the country of dispatch, and



revised its injury and causal link analysis accordingly.

- With regard to establishing the volume and value of imports accordingly, the TRA explained its decision to use the OTS dataset and why this was the most appropriate dataset to use in the circumstances. It also acknowledged the limitations of the dataset and explained what steps it had taken to cross-reference its findings with other data sources.
- With regard to the determinations on the injury factors, the TRA has found that in the original investigation the TRA made a reasonable evaluation of these factors based on the information available at the time. The TRA also evaluated these factors holistically to make reasoned finding on whether or not UK industry was suffering injury.
- The TRA also analysed other known factors which might have been causing injury to UK industry and concluded that there were no other known factors that were causing injury and which broke the chain of causation of the dumped excavators from PRC.

#### 506. Issue 4: (grounds 19) Form of measure

- This issue has been addressed in the section dealing with ground 19 of Caterpillar Group's claim. The underlying basis for this claim is that the TRA should reconsider the form of the anti-dumping measure applicable to Caterpillar Group.
- As set out in the Statutory Guidance, the starting assumption is that any measure be imposed for 5 years and calculated as an *ad valorem* duty. Following application of the EIT, the TRA found that there was no measure that would be more appropriate than the *ad valorem* measure being proposed.



The TRA finds that this was a reasonable decision to make based on the available evidence and that there are no grounds to reconsider this decision.

### **LiuGong Group's claims:**

507. Inclusion of battery excavators

- The various elements of this issue have been addressed in the sections dealing with subgrounds 1-6 of LiuGong Group's claim. The underlying basis for this claim is that the TRA should not have included battery electric excavators in the scope of the investigation.
- The notice of initiation, which described the goods concerned, did not exclude battery electric excavators from the scope of the investigation. Following submissions from LiuGong Group, the TRA confirmed that battery electric excavators should remain within the scope of this investigation. This was because the available evidence indicated that the UK produced goods with an ICE had characteristics closely resembling those of an electric-powered excavator originating from the PRC, and that these excavators were also alike in all other respects, including physical characteristics and end use.
- With regard to the evidence used in making its determination, the TRA used evidence which was relevant for the anti-dumping investigation. With regard to questions around consistency with broader government policies, including environmental objectives, these are matters of public interest which lie outside the scope of an anti-dumping investigation.

## **5.1 Next steps**

508. Our reconsidered decision will be published in a Notice and can be found in the [public file](#).



509. If any interested party disagrees with our reconsidered decision, you can lodge an appeal to the Upper Tribunal to appeal our reconsidered decision. Details on how to do this can be found at [Appeal to the Upper Tribunal \(Tax and Chancery\): Overview - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/topics/tribunals-and-appeals/tribunals-and-appeals-overview).