



2024/1915

12.7.2024

COMMISSION IMPLEMENTING REGULATION (EU) 2024/1915

of 11 July 2024

imposing a provisional anti-dumping duty on imports of mobile access equipment originating in the People's Republic of China

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Member States

Whereas:

1. PROCEDURE

1.1. **Initiation**

- (1) On 13 November 2023, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of mobile access equipment ('MAE') originating in the People's Republic of China ('the country concerned' or 'the PRC') on the basis of Article 5 of the basic Regulation). It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 29 September 2023 by the 'Coalition to Restore a Level Playing Field in the EU Mobile Access Equipment Sector' ('CMAE') ('the complainant'). The complaint was made on behalf of the Union industry of MAE in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting injury that was sufficient to justify the initiation of the investigation.

1.2. **Registration of imports**

- (3) On 15 January 2024 and on 12 March 2024, the complainant submitted a request for registration of imports of MAE originating in the PRC pursuant to Article 14(5) of the basic Regulation.
- (4) In its submission of 22 January 2024 and of 21 May 2024, the Chinese Chamber of Commerce for import and export of Machinery and Electrical products (CCCME), empowered to represent eight exporting producers ⁽³⁾ in this investigation, submitted comments on the requests by the complainant to register the imports. It considered that the requests did not contain sufficient evidence justifying the imports registration. It mainly considered that the imports statistics were not reliable since CN codes contained other products, that in any event the increase was not substantial, and influenced by the seasonality of demand. It also considered that the demand-driven MAE market does not permit unexpected additional imports or stock piling.
- (5) The Commission rejected these comments of the CCCME since the second registration request submitted by the complainant on 12 March 2024 contained sufficient evidence regarding the increase of imports post initiation, including when taking into account the seasonality of demand.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21, ELI: <http://data.europa.eu/eli/reg/2016/1036/oj>.

⁽²⁾ Notice of initiation of an anti-dumping proceeding concerning imports of mobile access equipment ('MAE'), originating in the People's Republic of China, (OJ C, C/2023/783, 13.11.2023, ELI: <http://data.europa.eu/eli/C/2023/783/oj>).

⁽³⁾ Zhejiang Dingli Machinery Co., Ltd., Hunan Sinoboom Intelligent Equipment Co., Ltd, Fronteq (Changzhou) Machinery Co., Ltd., XCMG Fire-fighting Safety Equipment Co., Ltd, Zoomlion Intelligent Access Machinery Co., Ltd., Jiangsu Liugong Machinery, Co., Ltd, Lingong Heavy Machinery Co., Ltd and Sany Aerial Work Equipment Co., Ltd.

- (6) The Commission considered the CCCME's comments unsubstantiated. The analysis of the volumes of the imports after the initiation took into account the product concerned only and the effect of the seasonality was addressed by comparing the same periods of the year before and after the initiation. Based on the information in the requests and analysis of the import statistics before and after the initiation, the Commission concluded that there was sufficient evidence to justify registration of imports.
- (7) In accordance with Article 14(5) of the basic Regulation, by Commission Implementing Regulation (EU) 2024/1450⁽⁴⁾, the Commission therefore decided that imports of the product concerned should be made subject to registration for the purpose of ensuring that, should the investigation result in findings leading to the imposition of anti-dumping duties, those duties can, if the necessary conditions are fulfilled, be levied retroactively on the registered imports in accordance with the applicable legal provisions.

1.3. Interested parties

- (8) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the Chinese authorities, known importers, and users about the initiation of the investigation and invited them to participate.
- (9) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The Commission received comments that were addressed in the respective sections.

1.4. Comments by parties after the initiation

- (10) Comments were submitted by CCCME and by the complainant.

1.4.1. Comments by the CCCME

- (11) On 22 January 2024, the CCCME made a submission on different aspects of the investigation. The comments on specific aspects of the investigation were addressed where appropriate in the specific sections of this Regulation.
- (12) The CCCME also submitted comments regarding the complaint (including matters pertaining to injury and causation). These comments relating to the preliminary evidence in the complaint, arrived more than one month after the deadline of 37 days set in Section 5.2 of the Notice of Initiation and could not be thus considered. The Commission however recalled that the requirements for initiation of the investigation were met, i.e., that the adequacy and accuracy of the evidence presented by the complainant were considered to be sufficient. It also recalled that the legal standard of evidence required for a complaint ('sufficient evidence') makes it clear that the quantity and quality of information in the complaint is not the same as the one available at the end of an investigation. Parties have in any event the opportunity to comment on the preliminary findings including matters pertaining to injury and causality after the disclosure of the provisional findings.
- (13) The CCCME also argued that it could not fully exercise its right of defence because the evidence made available in the complaint was heavily redacted and contained only rough estimates, without sufficiently indicating the cause for it. It requested thus the Commission to ask the complainant to provide a sufficiently detailed open version.

⁽⁴⁾ Commission Implementing Regulation (EU) 2024/1450 of 23 May 2024 making imports of mobile access equipment originating in the People's Republic of China subject to registration (OJ L, 2024/1450, 24.5.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/1450/oj).

- (14) The Commission first noted that CCCME in its own name had no rights of defence as, not being a representative association within the meaning of the basic Regulation, it could not be considered as an interested party within the meaning of that Regulation. As far as rights of defence of the exporting producers it represented were concerned, the Commission considered that the version open for inspection by interested parties of the complaint contained all the essential evidence and non-confidential summaries of data provided under confidential cover in order for interested parties to exercise their right of defence throughout the proceeding. It also noted that the request of the CCCME arrived more than two months after the proceeding was initiated, and only contained mere statements but no substantiated claim on a concrete piece of evidence that was missing. The Commission thus rejected the claim.

1.4.2. *Comments by the complainant*

- (15) The complainant provided comments on the submission of the CCCME. It considered that the different comments should not be considered since they arrived after the procedural deadlines set up in the Notice of Initiation. It provided additional comments on the product scope, significant distortions and injury aspects of the investigation that were addressed where appropriate in the respective sections below.

1.5. **Sampling**

- (16) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.5.1. *Sampling of Union producers*

- (17) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the largest representative volume of sales and of production of the like product in the Union in the investigation period, which could reasonably be investigated within the time available.
- (18) This sample consisted of three Union producers which accounted for 55 % of the estimated total production in the Union and 52 % of sales of all Union producers of the like product on the Union market. By selecting the three largest Union producers and sellers in the investigation period, located in two different Member States, the Commission covered the largest representative volume of production and sales which could reasonably be investigated within the time available, in line with Article 17(1) of the basic Regulation. The Commission invited interested parties to comment on the provisional sample. No comments were received. The Commission concluded that the sample of Union producers was therefore representative of the Union industry.

1.5.2. *Sampling of importers*

- (19) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Annex of the Notice of Initiation within 7 days of the date of publication of the Notice. No importer provided the information and cooperated with the investigation.

1.5.3. *Sampling of exporting producers in the PRC*

- (20) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (21) Eighteen exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of four on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned were consulted on the selection of the sample.

- (22) The Coalition to Restore a Level Playing Field in the EU Mobile Access Equipment Sector (CMAE) argued that the Commission should ensure the representativeness of the sample by considering factors beyond the volume of exports like the ownership of the exporters, domestic sales and production capacity. The Commission in its analysis followed the provisions of Article 17(1) and focussed on the most relevant criteria to select the sample and, therefore, rejected these arguments.
- (23) In view of the above, the Commission maintained the original sample accounting for 68,91 % of the estimated total export volume of MAE to the Union from the People's Republic of China in the investigation period.
- (24) On 15 May 2024, JLG was informed that the Commission intended to apply Article 18 of the basic Regulation because during the verification of the questionnaire reply it appeared that a part of the reply was based on a system whose data could not be accessed in real time. The Commission could not ascertain whether the information used to prepare the questionnaire was downloaded before the initiation of the investigation or not. As a result, the Commission was unable to ascertain that the submitted information in the questionnaire reply derived from the accounting system of the company, and that the information accurately reflected in particular the consumption rates of the input materials.
- (25) On 23 May 2024, Sinoboom was informed that the Commission intended to apply Article 18 of the basic Regulation to the data that could not be verified in its questionnaire reply. During the verification visit an issue relating to the reporting of the factors of production, with regard to self-produced and purchased structural parts emerged. The Commission provisionally concluded that the data related to costs submitted by Sinoboom was not an accurate reflection of the costs actually incurred, in particular with regard to the self-produced parts.
- (26) Both JLG and Sinoboom submitted comments on the intended application of Article 18 of the basic Regulation. JLG disagreed with the application of best facts available on the basis of Article 18 and requested a hearing with the Hearing Officer. On 6 June 2024, in a meeting with the case team some clarifications were provided by JLG and, provisionally, it was decided to partially apply best facts available to the construction of the normal value of JLG. Their export prices could still be used for the calculation of the dumping margin as these were not affected by the issue described above. A final decision will be taken at definitive stage after further investigation, taking also into account the views of the Hearing Officer.
- (27) On 31 May 2024, Sinoboom submitted comments regarding the application of Article 18 but these did not change the provisional conclusion to apply best facts available as regards certain factors of production. Their export prices could still be used for the calculation of the dumping margin. A final decision about the scope of the application of facts available will be taken at definitive stage.

1.5.4. Questionnaire replies and verification visits

- (28) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (29) Furthermore, the complainant provided in the complaint sufficient evidence of raw material distortions in the PRC regarding the product concerned. Therefore, as announced in the Notice of Initiation, the investigation covered those raw material distortions to determine whether to apply the provisions of Article 7(2a) and 7(2b) of the basic Regulation with regard to the PRC. For this reason, the Commission sent additional questionnaires in this regard to the Government of the People's Republic of China.
- (30) The Commission sent questionnaires to the three sampled Union producers, the complainant, the sampled exporting producers, the known importers and to users. The same questionnaires were made available online on the day of initiation.
- (31) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following parties:

- (a) Union producers and its association:
- Haulotte Arges (Romania)
 - Haulotte Group (France)
 - Manitou (France)
 - Coalition to Restore a Level Playing Field in the EU Mobile Access Equipment Sector
- (b) Exporting producers in the PRC:
- Hunan Sinoboom Intelligent Equipment Co., Ltd. ('Sinoboom')
 - Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd. ('JLG')
 - Terex (Changzhou) Machinery Co., Ltd. ('Terex')
 - Zhejiang Dingli Machinery Co., Ltd. ('Dingli')

1.6. Investigation period and period considered

- (32) The investigation of dumping and injury covered the period from 1 October 2022 to 30 September 2023 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2020 to the end of the investigation period ('the period considered').

2. PRODUCT UNDER INVESTIGATION

2.1. Product under investigation

- (33) The product under investigation is mobile access equipment ('MAE') designed for the lifting of persons, self-propelled, with a maximum working height of 6 meters or more, and pre-assembled or ready-to-assemble sections thereof, excluding individual components when presented separately, and excluding person lifting equipment mounted on vehicles of Chapter 86 and Chapter 87 of the Harmonised System ('the product under investigation'), currently falling under CN codes ex 8427 10 10, ex 8427 20 19, ex 8428 90 90, ex 8431 20 00 and ex 8431 39 00 (TARIC codes: 8427 10 10 10, 8427 20 19 10, 8428 90 90 20, 8431 20 00 60 and 8431 39 00 10).
- (34) The product scope includes machines used for the lifting of people in a vast range of different applications and it includes articulated boom lifts, telescopic boom lifts, scissor lifts and vertical masts.

2.2. Product concerned

- (35) The product concerned is mobile access equipment, originating in the People's Republic of China ('the product concerned').

2.3. Like product

- (36) The investigation showed that the following products have the same basic physical and technical characteristics as well as the same basic uses:
- the product concerned;
 - the product produced and sold on the domestic market of the PRC;
 - the product under investigation produced and sold in the Union by the Union industry.
- (37) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.4. Claims regarding the product scope

2.4.1. Electrical and hybrid MAE

- (38) After initiation, the CCCME submitted that the product scope included a too broad variety of products such as booms or scissors, electrical and hybrid MAE or MAE with other type of propulsion (internal combustion engine (ICE), such as diesel, LPG, propane etc.) and that these products were not all alike.
- (39) The CCCME mainly argued that there were differences in physical and technical characteristics between the conventional ICE MAE and electric or hybrid MAE – because of the different propulsion, the two categories had different mechanical components and the electric or hybrid MAE did not have any of the technical functions of the conventional ICE MAE which was very different in terms of power and capacity. There were in CCCME's view differences with regards to the weight distributions and design, and in addition, conventional and electrical MAE also had different technical specificities such as a different autonomy, lifting capacity and mobility. Furthermore, the production process was different as well as the main uses: conventional MAE are used outdoor while the electrical or hybrid MAE indoor.
- (40) For these reasons, the CCCME argued that the electrical and hybrid MAE and conventional MAE did not share the same technical and physical characteristics and should not be treated as similar products. It was of the opinion that the electrical and hybrid MAE should be thus excluded from the product scope.
- (41) The complainant, on the other hand, considered that the Commission had a wide discretion in defining the product scope of an investigation. It also noted that all the MAE are a safer, more convenient alternative for ladders, scaffolding or towers and they are essentially a tool ensuring the safety and security of workers and that there were no differences justifying modification of the product scope. It argued that the fact that the conventional ICE MAE and electric or hybrid MAE had a different power source did not alter its basic characteristics, and that the differences between for instance an electrical and diesel lifts would not be visible from the outside of the product.
- (42) The CCCME considered that if the Commission did not decide to exclude from the product scope the electrical and hybrid MAE, alternatively should consider the exclusion of the products with regards to which the Union industry did not have capacity to meet the market demand such as:
- Electric/hybrid MAE without a hydraulic system (oil-free MAE);
 - Electric/hybrid scissors with a working height above 19 m;
 - Electric/hybrid booms with a working height above 24 m.
- (43) As according to the CCCME the Union did not have the capacity to produce these types of MAE, the CCCME was of the view that the imports of these MAE models from China could not have affected this market segment and could not have caused any injury to the Union producers. Moreover, imposing duties on these categories of MAE would not be in its view in the Union's interest, as there were no domestically produced models capable to replace the imports of these types. Hence, adopting trade defence measures against these types of MAE would only result in an increase in costs for downstream users, without adducing any benefit to the EU domestic industry, as the Union domestic industry cannot supply them and meet the market demand.
- (44) The complainant submitted that one of the models (electric/hybrid booms with a working height above 24 m) that allegedly was not produced by the Union producers, was produced by the producer Dynolift Oy and it considered that the MAE models were in any case interchangeable.
- (45) The Commission disagreed that the different power source, and the fact that electrical or hybrid MAE were generally used inside and conventional ICE MAE outside, the different components and different production/assembly line justified an exclusion of the electrical or hybrid MAE from the product scope. To the contrary, these MAE were to a large extent interchangeable, both categories fell under the product definition, and it was justified that both categories were part of the product scope.

- (46) The Commission also recalled that the description of the product scope entailed the main physical and technical characteristics of the product to include self-propelled MAE designed for the lifting of people, and it defined the minimum height of the platform. Both the conventional ICE MAE and electric or hybrid MAE complied with the description and had thus according to the Commission the same basic use and main physical characteristics.
- (47) The Commission considered the request of the CCCME to exclude certain product types. It concluded that there was not enough evidence that these product types were not produced in the Union, nor that the Union producers would not start production in the near future. There was also no evidence that they were not replaceable by machines with a different propulsion system. As the claim was not supported by evidence, the Commission provisionally rejected it.

2.4.2. Sections

- (48) The CCCME further submitted that the sections should be excluded from the scope of the investigation. It argued that sections of MAE included a big variety of products, such as chassis, turntable, lifting mechanism (consisting of scissor or boom), platform etc. These were in its view unfinished goods which did not share the same essential characteristics with the finished MAE. A platform with lifting mechanism was not comparable to an assembled MAE as it lacked a power train and wheels which confers mobility to the platform. Also, an elevating platform could also be mounted to a truck which was explicitly excluded from this investigation. Similarly, sections that lack the lifting component, which is one of the indispensable features of MAE, could not be considered as acquiring this essential characteristic.
- (49) Moreover, the CCCME argued that the additional processing costs (i.e. turning sections into finished MAE) were substantial and the added value of the producer lied in the welding and/or assembly of parts, testing, painting, and customizing of the end-product machines (and of course in the R & D and investments that preceded production). These involved complex operations requiring the use of special tools. The unassembled sections were also not competing in any way with the finished product, thus not causing injury to the Union industry, as no downstream user would ever consider acquiring such sections and using them as such. For these reasons, the CCCME considered that sections and finished MAE should not be part of the same product concerned.
- (50) The CCCME also submitted that it was not clear from the product definition if isolated components or sub-assemblies were excluded or not. If sections or sub-assemblies were included, it argued that the Union industry was not appropriately defined, and that the 25 % threshold set out by Article 5(4) of the basic Regulation was not met. Particularly, producers of sections and sub-assemblies were completely omitted and did not take part of the investigation.
- (51) The complainant disagreed with these claims of the CCCME. It considered that including sections fell under the discretion of the Commission and that it was in line with Commission practice. It considered that further processing of putting together a finished section in a specialised factory was limited, and that assembling 3 or 4 finished sections into final product was the very last step of the assembly process. It also considered that any MAE section was made exclusively for a particular model of machine, and always for a particular producer. It argued that the product scope did not include individual components but finished sections, only produced by the MAE industry.
- (52) The Commission considered the arguments made, but maintained the product scope as defined in the Notice of Initiation and in recital (27) above. The sections, when pre-assembled or ready-to-assemble as required, can only be used to assemble a MAE unit and, hence, are intrinsically linked to the finished MAE unit. Therefore, the Commission considered it appropriate to keep the sections, which are the chassis, turning table, lifting mechanism and the platform, in the definition of the product scope. The Commission also confirmed that individual components, when presented separately, did not fall within the product scope. Since these sections were only produced by the MAE industry, it considered that the Union industry was well defined. The Commission thus rejected the claim that the 25 % threshold set out by Article 5(4) of the basic Regulation was not met.

3. DUMPING

3.1. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation

- (53) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.
- (54) Consequently, in order to collect the necessary data in case of eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in the PRC to provide information regarding the inputs used for producing MAE. Eighteen exporting producers submitted the relevant information.
- (55) In order to obtain information, it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received.
- (56) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the information available, Brazil is a possible appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possible appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.
- (57) On 21 December 2023, the Commission informed by a note ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of MAE. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified Brazil, Mexico and Türkiye as potential appropriate representative countries.
- (58) On 17 May 2024, the Commission issued a second note on the factors of production ('the Second Note'). All the comments on the First Note were addressed in this Second Note and the relevant sources the Commission intended to use for the determination of the normal value were confirmed. The Second Note informed the interested parties about the choice of Brazil as the representative country. It also informed interested parties that it would establish amounts for selling, general and administrative costs ('SG&A') and for profits based on readily available information for the company Madal Palfinger S.A., a producer of the product in the same general category as MAE in the representative country.
- (59) Dingli proposed the use of Malaysia as the representative country, submitting the financial data of Favelle Favco Cranes Sdn. Bhd ('Favelle Favco') a producer of heavy lifting equipment including offshore, tower, wharf, and crawler cranes.
- (60) The Commission dismissed this proposal as Favelle Favco is not a producer of the PUI, nor of truck mounted mobile platforms, the product selected to replace MAE, that is more appropriate than the machines produced by Favelle Favco (see recital (189)). Truck mounted mobile platforms share their main components with several categories of MAEs but are built on the tailgate of a truck. Truck mounted mobile access equipment are close in terms of production process and input material to be considered a product in the same general category as the product under investigation. In addition, these truck mounted platforms are intended to lift persons instead of material, contrary to cranes, which do not share the main components with MAE either.

3.2. Normal value

- (61) According to Article 2(1) of the basic Regulation, 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'.
- (62) However, according to Article 2(6a)(a) of the basic Regulation, 'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks', and 'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits'.
- (63) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was appropriate.

3.3. Existence of significant distortions

- (64) Article 2(6a)(b) of the basic Regulation states that 'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
 - state presence in firms allowing the state to interfere with respect to prices or costs;
 - public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;
 - the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
 - wage costs being distorted;
 - access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state'.
- (65) As the list in Article 2(6a)(b) of the basic Regulation is non-cumulative, not all the elements need to be given for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list.
- (66) However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) of the basic Regulation must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country's economic and administrative set-up provide the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.
- (67) Article 2(6a)(c) of the basic Regulation provides that '[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector'.

- (68) Pursuant to this provision, the Commission issued a country report concerning China (‘the Report’) ⁽⁷⁾, which contains evidence of the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as selected sectors (such as the steel sector). Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. The Report concerning China was placed in the investigation file at the initiation stage.
- (69) The complainant referred to the evidence contained in the Report to point out numerous distortions in the Chinese economy. The complaint also complemented the Report with additional relevant evidence, such as reports by international organisations, academic papers or findings by trade defence authorities in other jurisdictions. Moreover, the complainant also referred to Commission findings in recent investigations which have established that the Chinese economy is fundamentally affected by interventions by the GOC.
- (70) More specifically, the complainant submitted that the MAE market in China is disconnected from normal market forces in view of a wide range of reasons, such as the fact that China is a communist State based on the ‘socialist market economy’ doctrine; the Chinese Communist Party (‘CCP’) exercises a strong influence over the country’s economy, including the private sector; the MAE sector is subject to state planning policies.
- (71) Furthermore, the complaint recalled additional details with respect to the following elements resulting in significant distortions.
- (72) First, the MAE sector is being served to a significant extent by enterprises that operate under the ownership, control or policy supervision or guidance of state authorities. Enterprises under the ownership, control, policy supervision or guidance of the Chinese authorities form a substantial part of the Chinese economy and of the MAE industry.
- (73) The complainant provided examples of a regional SASAC appointing the board of directors of the exporting producer Guangxi LiuGong Machinery Co., Ltd (Liugong), as well as of the National Development and Reform Commission (NDRC) announcing the ‘high-end transformation’ of the ‘big four’ in Chinese construction machinery: Sany Heavy Industry Co., Ltd. (Sany), Zoomlion Intelligent Access Machinery Co., Ltd. (Zoomlion), Liugong and XCMG Fire Fighting Safety Equipment Co., Ltd. (XCMG), all of which are key players on the MAE market.
- (74) Moreover, the complainant submitted that China considers the MAE industry ‘one of the important pillar industries’. Accordingly, SOEs and the state play an important role in the sector and China has since long planned a consolidation of its construction industry through giant mergers and acquisitions, in efforts to concentrate its enormous capacity in the hands of a few players. The complainant illustrated the consolidation process and state presence by recalling the corporate history of XCMG, as well as the role played by the sectoral industry association CCMA.
- (75) Second, state presence in firms allows the state to interfere with respect to prices or costs. The state exercises control over the SOE through its voting rights as an owner of the SOE and the CCP monitors the SOEs’ compliance with government policies, the nomination of management or members of the board, and is involved in key decisions. The complaint pointed out that XCMG is a SOE and was 100 % owned by the city of Xuzhou, until it underwent partial privatisation in 2020, following which the government control nevertheless remained at 80 %. Moreover, Liugong is also an SOE, and was selected as a ‘key SOE’ in the country by the SASAC in 2021. The complaint further provided references to formal (shareholding) and informal (personal overalps) ties between the state and the exporting producer Zoomlion.

⁽⁷⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People’s Republic of China for the purposes of Trade Defence Investigations, 20 December 2017 (SWD(2017) 483 final/2).

- (76) In addition, the complaint pointed out that state's direct influence over companies goes beyond SOEs in view of the compulsory presence of CCP committee in private companies and the CCP's increasing influence over companies' business decisions. The complaint provided a concrete example of the Sany group the chairman of which is not only CCP member but was also a representative of the 2022 National People's Congress. The Sany group, as well as other companies, such as Sinoboom, Dingli or Sunward Intelligent Equipment Co. Ltd. (Sunward), also closely align themselves with the GoC's policies.
- (77) The complaint further emphasized state influence also in the upstream sectors, notably with respect to steel production and supply, li-ion batteries, off-the-road tires, diesel engine and electricity.
- (78) Third, the complainant referred to public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces. According to the complaint, the system of binding plans, setting out priorities and goals for the central and local government, determines the direction of the Chinese economy. Chinese industries, whether state-owned or private, have a strong incentive to align their activities with the priorities in the relevant plans.
- (79) The 14th Five Year Plan ('FYP')⁽⁶⁾ designates high-end equipment, as well as new energy vehicles, as strategic emerging industries and it also holds that China will 'promote the innovative development of [...] engineering machinery'. The complainant submitted that, as a result of the public policies, the MAE sector is affected by structural overcapacities. Moreover, the complainant emphasized that FYPs also set out government policy and involvement in the upstream sector, which is crucial for the distortion of the prices downstream. The complaint referred to the relevant provisions – in particular concerning steel and the construction machinery sector – of the 14th FYP, as well as the Made in China 2025 strategy.
- (80) In addition, the complaint pointed out that by artificially modifying the level of raw materials supply, or by centrally setting the prices, the GOC manipulates the prices of inputs and intermediate products for the MAE sector. The complaint lists in this respect such factors as export quotas for coke, coking coal, and metal waste; export duties for iron ore, coke, coking coal, and steel scrap; export licensing requirements for coke and coking coal; and price-setting for electricity.
- (81) Moreover, public policies, such as the Belt and Road Initiative, result, according to the complaint in artificial creation of external outlets for the Chinese MAE industry. At the same time, different sets of policies, notably massive state-financed construction projects significantly increased demand for construction machinery on the Chinese domestic market which created artificial internal outlets for the MAE producers.
- (82) Fourth, the complaint pointed to the lack, discriminatory application or inadequate enforcement of Chinese bankruptcy, corporate and property laws. The complaint stressed in particular the artificial propping up of unviable companies in the construction sector impacting the downstream industry of construction machinery, as well as the lack of private land ownership and the related untransparent and politically motivated land provision.
- (83) Fifth, submitting that wage costs are distorted, the complaint referred to the fact that only one legally recognised trade union, the ACFTU, operates in China. This union is also subject to the leadership of the CCP. Moreover, China has also still not ratified several of the most important international conventions on labour. In addition, the Chinese workforce is impacted by the household registration system which was adopted to steer the allocation of labour resources towards the developing heavy industries in urban areas and which, given the discriminatory treatment of migrant workers, effectively creates a distortion of wages costs in China.

⁽⁶⁾ For an English version of the full text of the 14th FYP, see for example at: <https://cset.georgetown.edu/publication/china-14th-five-year-plan> (accessed on 31 May 2024).

- (84) Sixth, MAE producers benefit from access to finance granted by institutions which implement public policy objectives or otherwise are not acting independently from the state. Not only are the major banks in China state-owned, private banks also must take national policy into account when conducting their business which translates into the fact that, among other things, investments are preferentially channelled to 'encouraged' industries. The complaint illustrate these benefits to the Chinese MAE manufacturers by listing loans obtained in the past by Liugong, the Sany group, as well as XCMG, Zoomlion, Sonoboom and Dingli, complementing these references with reports which indicate policy motivation of the financial institutions providing those loans.
- (85) The complainant further indicated that bond and credit ratings in China are often distorted and systematically correspond to lower international ratings underlying the existing debt-ridden state-owned sector situation. This is due to the 'implicit government guarantees' provided to 'encouraged' or other designated industries excluding bond defaults.
- (86) Overall, the complainant submitted that the entire Chinese market is governed by systemic distortions that apply to the MAE sector and to the entire economy. The GOC intervenes at all levels of the supply chain of MAE, creating the situation where the input, the input of that input and so on, are all affected in one way or another by government distortions.
- (87) In conclusion, the complainant argued that because of significant distortions pursuant to Article 2(6a) of the basic Regulation are present in the MAE sector, the normal value must then be calculated exclusively on the basis of the costs of production and sales reflecting undistorted prices or benchmarks in a representative country with a similar level of development and an adequate level of social and environmental protection.
- (88) The Commission examined whether it was appropriate or not to use domestic prices and costs in China, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file. The evidence on the file included the evidence contained in the Report, as well as in its updated version ('updated Report') ⁽⁷⁾, which relies on publicly available sources.
- (89) That analysis covered the examination of the substantial government interventions in China's economy in general, but also the specific market situation in the relevant sector including the product concerned. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in China.

3.3.1. *Significant distortions affecting the domestic prices and costs in China*

- (90) The Chinese economic system is based on the concept of a 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of China. The core principle is the 'socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people' ⁽⁸⁾.
- (91) The state-owned economy is the 'leading force in the national economy' and the state has the mandate to ensure its 'consolidation and growth' ⁽⁹⁾. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasised as a general principle in all central pieces of legislation.

⁽⁷⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 10 April 2024 (SWD(2024) 91 final).

⁽⁸⁾ Updated Report – Chapter 2, p. 7

⁽⁹⁾ Updated Report – Chapter 2, pp. 7–8.

- (92) The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the state with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the state ownership ⁽¹⁰⁾.
- (93) In addition, under Chinese law, the socialist market economy is developed under the leadership of the CCP. The structures of the Chinese state and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the state are indistinguishable.
- (94) Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution.
- (95) Following the already existing first sentence of the provision: '[t]he socialist system is the basic system of the People's Republic of China' a new second sentence was inserted which reads: '[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China' ⁽¹¹⁾. This illustrates the unquestioned and ever growing control of the CCP over the economic system of China.
- (96) This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.
- (97) The Chinese state engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market ⁽¹²⁾. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.
- (98) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government.
- (99) Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets.
- (100) Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.).
- (101) The economic operators, private and state-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans, but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans ⁽¹³⁾.

⁽¹⁰⁾ Updated Report – Chapter 2, pp. 10, 18.

⁽¹¹⁾ Available at: http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.htm (accessed on 8 April 2024).

⁽¹²⁾ Updated Report – Chapter 2, pp. 29–30.

⁽¹³⁾ Updated Report – Chapter 4, pp. 57, 92.

- (102) Second, on the level of allocation of financial resources, the financial system of China is dominated by the state-owned commercial and policy banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project ⁽¹⁴⁾.
- (103) The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also, these parts of the financial sector are institutionally and operationally set up in a manner not geared towards maximising the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the state and the CCP ⁽¹⁵⁾.
- (104) Third, on the level of regulatory environment, the interventions by the state into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market-based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by state policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies ⁽¹⁶⁾.
- (105) Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both state and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining state control over key sectors or bolstering domestic industry ⁽¹⁷⁾.
- (106) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ⁽¹⁸⁾.

3.3.2. *Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country*

- (107) In China, enterprises operating under the ownership, control and/or policy supervision or guidance by the state represent an essential part of the economy.
- (108) Among the main economic operators in the sector of the product concerned features a number of companies with significant shareholding by State-affiliated entities. For example, XCMG is 28,24 % state-owned ⁽¹⁹⁾, with State shareholding in Liugong amounting to 31,24 % ⁽²⁰⁾ and in Zoomlion to 17,17 % ⁽²¹⁾.

⁽¹⁴⁾ Updated Report – Chapter 6, pp. 149–150.

⁽¹⁵⁾ Updated Report – Chapter 6, pp. 153–171.

⁽¹⁶⁾ Updated Report – Chapter 7, pp. 204–205.

⁽¹⁷⁾ Updated Report – Chapter 8, pp. 207–208, 242–243.

⁽¹⁸⁾ Updated Report – Chapter 2, pp. 19–24, Chapter 4, p. 69, pp. 99–100, Chapter 5, pp. 130–131.

⁽¹⁹⁾ See the company's 2022 annual report, p. 89; available at: http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2023/2023-4/2023-04-29/9182574.PDF (accessed on 31 May 2024).

⁽²⁰⁾ See the company's 2023 annual report, p. 114; available at: http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2024/2024-3/2024-03-30/9930890.PDF (accessed on 31 May 2024).

⁽²¹⁾ See the company's 2023 annual report, p. 135; available at: <https://q.stock.sohu.com/newpdf/202457231354.pdf> (accessed on 31 May 2024).

- (109) However, in China, the government control goes well beyond direct ownership. Not only is the sector of the product concerned is subject to several government policies (described in more detail in Section 3.3.4 below), the State's influence by means of CCP structures within companies (described in more detail in Section 3.3.3 below) effectively results in economic operators being under the government's control and policy supervision. Moreover, government control and policy supervision can be also observed at the level of the relevant industry associations ⁽²²⁾, in particular the China Construction Machinery Association ('CCMA') ⁽²³⁾ which also has a Decoration and Aerial Work Machinery Branch ⁽²⁴⁾.
- (110) For instance, CCMA states in Article 3 of its Articles of Association that the organisation 'adheres to the overall leadership of the Communist Party of China and, in accordance with the provisions of the Constitution of the Communist Party of China, establishes organizations of the Communist Party of China to carry out party activities and provide necessary conditions for the activities of party organizations. The entity in charge of registration and management of this association is the Ministry of Civil Affairs of the People's Republic of China, and the entity in charge of Party building is the Party Committee of SASAC' and that it 'accepts business guidance and supervision from entities in charge of registration and management, entities in charge of Party building, and industry management departments' ⁽²⁵⁾. Moreover, according to Article 36 of the Articles of Association, the persons in charge of the association need to '[a]dhere to the leadership of the Communist Party of China, support socialism with Chinese characteristics, resolutely implement the Party's line, principles, and policies, and have good political qualities' ⁽²⁶⁾.
- (111) XCMG, Sinoboom, Liugong, as well as Zoomlion are among the CCMA's members, XCMG and Zoomlion being also vice-presidents of the Association ⁽²⁷⁾.
- (112) In view of the above, state- and privately-owned producers alike in the sector of the product concerned are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the sector are subject to policy supervision and guidance.

3.3.3. *Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: State presence in firms allowing the state to interfere with respect to prices or costs*

- (113) The GOC is in position to interfere with prices and costs through state presence in firms. Indeed, CCP cells in enterprises, state-owned and private alike, represent an important channel through which the state can interfere with business decisions. CCP interventions into operational decision making have become the norm not only in State owned enterprises ('SOEs'), but also in private companies ⁽²⁸⁾, with CCP claiming leadership over virtually every aspect of the country's economy, given how far the state and Party structures have grown together in China.
- (114) According to China's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ⁽²⁹⁾) and the company shall provide the necessary conditions for the activities of the Party organisation.

⁽²²⁾ Updated Report – Chapter 2, pp. 24-27.

⁽²³⁾ See at: <http://www.cncma.org/> (accessed on 31 May 2024).

⁽²⁴⁾ See at: <http://www.cncma.org/article/480?pageTitle=%E5%88%86%E4%BC%9A%E5%90%8D%E5%BD%95> (accessed on 31 May 2024).

⁽²⁵⁾ See at: <http://www.cncma.org/article/472> (accessed on 31 May 2024).

⁽²⁶⁾ *Ibid.*

⁽²⁷⁾ See the list of CCMA's members, available at: <http://www.cncma.org/article/478?pageTitle=%E4%BC%9A%E5%91%98%E5%90%8D%E5%BD%95> (accessed on 31 May 2024).

⁽²⁸⁾ Article 33 of the CCP Constitution, Article 19 of the Chinese Company Law. See updated Report – Chapter 3, pp. 47–50.

⁽²⁹⁾ Updated Report – Chapter 3, p. 40.

- (115) In the past, this requirement appeared not to have always been followed or strictly enforced. However, since at least 2016 the CCP has been reinforcing its claims to control business decisions in companies as a matter of political principle⁽³⁰⁾, including exercising pressure on private companies to put ‘patriotism’ first and to follow Party discipline⁽³¹⁾.
- (116) Already in 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies⁽³²⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product concerned and the suppliers of their inputs.
- (117) In addition, on 15 September 2020 a document titled General Office of CCP Central Committee’s Guidelines on stepping up the United Front work in the private sector for the new era (‘the Guidelines’)⁽³³⁾ was released, which further expanded the role of the Party committees in private enterprises.
- (118) Section II.4 of the Guidelines states: ‘[w]e must raise the Party’s overall capacity to lead private-sector United Front work and effectively step up the work in this area’; and section III.6 states: ‘[w]e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers’. The Guidelines thus emphasise and seek to increase the role of the CCP in companies and other private sector entities⁽³⁴⁾.
- (119) The investigation confirmed that overlaps between managerial positions and CCP membership/Party functions exist also in the MAE sector.
- (120) To provide some examples, in the case of XCMG, the chairman of the XCMG Group and of XCMG Machinery serves also as the Party Secretary. Moreover, the general manager of the XCMG Group and director of XCMG Machinery is not only the Deputy Secretary of the XCMG Group’s Party Committee, he also previously served as member of the Party Leadership Group of the Xuzhou Municipal Government Office, as well as Deputy secretary-general of the Xuzhou Municipal CCP Committee⁽³⁵⁾.
- (121) XCMG is also very explicit about its unconditional loyalty to the CCP and its willingness to accept Party’s leading role. According to XCMG’s own statements: ‘[t]he “Red XCMG” Party Building Ecological System takes the glorious historical tradition of XCMG Group as the “red gene”, the organizational strength construction of grassroots party organizations as the “red cell”, and the role of high-quality party building work as the “red engine”. Moreover, “[i]n the 80 years since its establishment, XCMG has always integrated the leadership of the party into all levels of the company’s operations, making the party the most reliable core force when storms come, ensuring the correct direction of the company’s business development’. Apparently, XCMG intends to continue its allegiance to the CCP also in future since the company ‘will be guided by Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, fully implement the spirit of the 20th CPC National Congress and the two important speeches of General Secretary Xi Jinping, resolutely shoulder the important mission of state-owned enterprises as the “pillars” of the socialist economy with Chinese characteristics, [...] lead the company’s high-quality development with the strong leadership of the Party, and make new and greater contributions to the realization of the Chinese dream of the great rejuvenation of the Chinese nation!’⁽³⁶⁾. Incidentally, this statement also suggests that XCMG, irrespective of formal shareholding distribution considers itself an SOE.

⁽³⁰⁾ See for example: Blanchette, J. – Xi’s Gamble: *The Race to Consolidate Power and Stave off Disaster*; Foreign Affairs, vol. 100, no. 4, July/August 2021, pp. 10–19.

⁽³¹⁾ Updated Report – Chapter 3, p. 41.

⁽³²⁾ Available at: <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (accessed on 8 April 2024).

⁽³³⁾ General Office of CCP Central Committee’s Guidelines on stepping up the United Front work in the private sector for the new era: www.gov.cn/zhengce/2020-09/15/content_5543685.htm (accessed on 8 April 2024).

⁽³⁴⁾ Financial Times (2020) – Chinese Communist Party asserts greater control over private enterprise: <https://on.ft.com/3mYxP4j> (accessed on 8 April 2024).

⁽³⁵⁾ See the company’s 2022 annual report, p. 45; available at: http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2023-4/2023-04-29/9182574.PDF (accessed on 31 May 2024).

⁽³⁶⁾ See at: <https://www.xcmg.com/aboutus/news-detail-1127478.htm> (accessed on 31 May 2024).

(122) As for Liugong, the chairman and CEO of the company is a CCP member and he served as deputy to the 13th NPC and deputy to the 13th People's Congress of the Guangxi Zhuang Autonomous Region. Moreover, the company's vice-chairman serves as secretary of the company's Party Committee and, besides numerous other political functions, representative of the 14th People's Congress of Guangxi Zhuang Autonomous Region ⁽³⁷⁾.

(123) In addition, according to Article 31 of Liugong's Articles of Association ⁽³⁸⁾, the CCP committee within the company:

'shall perform the following duties in accordance with the Constitution of the Communist Party of China and other party regulations:

(i) Implement the main responsibility, give full play to the leadership role of the party committee, and carry out work around the production and operation of the enterprise;

(ii) Ensure and supervise the implementation of the party and state policies in the company;

[...]

(viii) Participate in the decision-making of major issues of the company, study and decide on major personnel appointments and removals of the company, study and discuss the company's reform, development and stability, major business management matters and major issues involving the vital interests of employees.'

(124) Moreover, according to Article 32 of the Articles of Association: '[t]he Party Committee of the company shall [...] form a system and mechanism for the Party organization to participate in the decision-making of major issues, and support the board of directors, the board of supervisors, and the management level to exercise their powers in accordance with the law'. Article 33 stipulates that '[t]he main procedures for the Party Committee to participate in the decision-making of major issues of the company are: the Party Committee shall hold meetings to discuss and study major issues that the board of directors and the management level intends to decide and put forward opinions and suggestions' ⁽³⁹⁾.

(125) Similar observations can be made with respect to Zoomlion, the chairman of which holds numerous public offices including being a representative of the 16th, 17th and 19th CCP National Congresses, representative of the 10th and 12th NPC, representative of the 8th, 9th and 10th CCP Congresses in Hunan Province and member of the 10th Committee of the Communist Party of China in Hunan Province. In addition, Zoomlion's chairman also serves as CCMA's vice-president ⁽⁴⁰⁾.

(126) Moreover, since years, Zoomlion has been zealous when it comes to subjecting business decisions to CCP leadership, as is apparent from its statements originating already in 2021: 'In the whole process of Zoomlion's reform and innovation, party building has always been the ballast stone of all work, playing a major role in political guidance and escort for high-quality development, ensuring that the company is steady and far-reaching on the road of sustained high-quality development. [...] Adhering to the leadership of the party and strengthening party building are the root and soul of enterprise reform. Zoomlion has always insisted on leading the reform and development of enterprises with party building, giving full play to the role of party organizations in taking overall charge and coordinating all parties, and using the advantages of party building to ensure the standardization and stability of enterprise reform. Take "adhering to the leadership of the party" as the mainstay of enterprise reform and development. Over the past 20 years, Zoomlion has experienced two major battles, namely, the reform of the

⁽³⁷⁾ See the company's 2023 annual report, p. 55; available at: http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2024/2024-3/2024-03-30/9930890.PDF (accessed on 31 May 2024).

⁽³⁸⁾ See at: http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2023/2023-12/2023-12-29/9750475.PDF (accessed on 31 May 2024).

⁽³⁹⁾ Ibid.

⁽⁴⁰⁾ See the company's 2023 annual report, p. 47; available at: <https://q.stock.sohu.com/newpdf/202457231354.pdf> (accessed on 31 May 2024).

science and technology system and the reform of state-owned enterprises [...]. The reform and restructuring lasted for more than 10 years, and the party committee at the upper level has always insisted on guiding the direction and managing the overall situation, and pre-approving major matters; [...] party's leadership is integrated into all aspects of the reform and embedded in all levels of corporate governance, ensuring the correct direction of the reform and effective measures. [...] Zoomlion has experienced rapid development in the first 20 years, experienced a 5-year industry downturn, and returned to a continuous upward development since 2017. Zoomlion has always insisted on party building to lead development and transformed the unique advantages of party building in enterprises into productivity, competitiveness and cohesion' ⁽⁴¹⁾.

(127) Also, in the case of Sinoboom, overlaps between managerial CCP functions exist as the company's chairman is not only a CCP member but also a representative of the 14th People's Congress of Hunan Province ⁽⁴²⁾.

(128) Moreover, publicly available information shows the close cooperation between Sinoboom and the government authorities, as well as financial institutions which pursue industrial policies mandated by the State: 'a ceremony to celebrate [Sinoboom]'s advancement into the top 50 global engineering machinery companies and the completion and commissioning of the first phase of SINOBOOM International Intelligent Manufacturing City project base. [...], chief engineer and first-level inspector of the Hunan Provincial Department of Industry and Information Technology, [...], deputy mayor of Changsha Municipal People's Government, [...], secretary of the Ningxiang Municipal Party Committee, [...], deputy secretary of the Ningxiang Municipal Party Committee and mayor, and other provincial and municipal government leaders, [...], deputy secretary of the Party Committee, vice chairman and general manager of Caixin Financial Holdings, [...], secretary-general of the China Construction Machinery Industry Association, Xu Hongxia, general manager of [Sinoboom], and representatives of partners such as financial institutions attended and witnessed another historic moment on the road to high-quality development of SINOBOOM Intelligent. [...] As an important partner of [Sinoboom], HUNAN CHASING Financial Holdings has organized its subsidiaries to provide [Sinoboom] with innovative comprehensive financial services covering the entire industrial chain, helping [Sinoboom] to move towards the capital market, and has been highly recognized by [Sinoboom]. [...] In the future, HUNAN CHASING Financial Holdings will unswervingly implement the strategic positioning and mission of our province's "three highs and four new", [...] provide innovative comprehensive financial services covering the entire life cycle and the entire industrial chain for enterprises in our province, and continuously contribute its wisdom and strength to the high-quality economic development of our province' ⁽⁴³⁾.

(129) The state's presence and intervention in the financial markets as well as in the provision of raw materials and inputs further have an additional distorting effect on the market ⁽⁴⁴⁾. Thus, the state presence in firms, in the MAE and other sectors (such as the financial and input sectors) allows the GOC to interfere with respect to prices and costs.

3.3.4. *Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces*

(130) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central, provincial and local governments must focus on. Relevant plans exist at all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of a binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government.

⁽⁴¹⁾ See at: https://www.sohu.com/a/474336777_120808812 (accessed on 31 May 2024).

⁽⁴²⁾ See at: <https://www.csust.edu.cn/qjxy/info/1483/13510.htm#:~:text=%E5%88%98%E5%9B%BD%E8%89%AF%E5%8C%8E5%85%A8%E7%90%83%E5%B7%A5%E7%A8%8B%E6%9C%BA%E6%A2%B0TOP50,%E5%8D%81%E5%9B%9B%E5%B1%8A%E4%BA%BA%E5%A4%A7%E4%BB%A3%E8%A1%A8%E3%80%82> (accessed on 31 May 2024).

⁽⁴³⁾ See at: <https://stock.hnchasing.com/main/aboutUs/jtyw/detail/1600404406236819458.html> (accessed on 31 May 2024).

⁽⁴⁴⁾ Updated Report – Chapter 14, Sections 14.1 to 14.3.

- (131) Overall, the system of planning in China results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ⁽⁴⁵⁾.
- (132) The Chinese authorities have enacted a number of policies guiding the functioning of the sector of the product concerned.
- (133) The 14th FYP aims to '[p]romote optimization and upgrading of manufacturing industry [...], [c]ultivate advanced manufacturing clusters and promote the innovative development of industries such as [...], construction machinery' as well as to ensure the 'in-depth implementation of special projects to enhance the core competitiveness and technological transformation of the manufacturing industry, encourage enterprises to apply advanced and applicable technologies, strengthen equipment updates and large-scale application of new products' ⁽⁴⁶⁾.
- (134) These aims were made more specific in the Notice on an Implementing Opinion on Raising the Reliability of Manufacturing Industry released by MIIT in 2023, setting the 'strategic goals of becoming a manufacturing power and quality power, focusing on key industries such as machinery [... so as to] form a group of manufacturing enterprises with high product reliability, strong market competitiveness and strong brand influence' and giving specific indications as to the upstream industries that are to be supported as a matter of priority: '[e]ngine fuel injection system, tractor power shift system, exhaust gas after-treatment system, digital hydraulic components and integrated electric drive system for construction machinery [...] and general basic components such as high-end bearings, precision gears, high-strength fasteners, high-performance seals' ⁽⁴⁷⁾.
- (135) Additionally, the MIIT further detailed the GOC's actions in a Notice on a Work Plan for the Sustained Growth of the Machinery Industry 2023-2024 ⁽⁴⁸⁾. According to this work plan, the GOC intends to 'strengthen quality brand building, [c]arry out actions to improve the reliability of mechanical products, [i]mplement the foundation building projects for basic product reliability [and] organize special activities for the upward development of Chinese brands, strengthen brand publicity and cultivation in key industries such as industrial machinery [...] and enhance the competitiveness of Chinese brands'. More specifically, as to construction machinery, the GOC indicates that 'efforts will be made to improve the basic capabilities of the industry, ensure breakthroughs in' ⁽⁴⁹⁾ and that it intends to '[g]uide enterprises to strengthen research and large-scale application of key core components such as batteries, motors, and electronic controls for new energy construction machinery.' Finally, the GOC intends to support demand for construction machinery by developing 'promotion support policies [and] explor[ing] the exit mechanism for old construction machinery, and support[ing] qualified regions to take the lead in implementing construction machinery registration management and exit mechanisms' ⁽⁵⁰⁾.
- (136) To provide additional examples on the province level, in the Zhejiang 14th FYP on Developing High-End Manufacturing ⁽⁵¹⁾ the government authorities have defined a number of 'key tasks', one of them being to support the sector of 'smart special equipment', and more specifically 'smart aerial work platforms' ⁽⁵²⁾.
- (137) Still on the province level, the Commission observed that Hunan has introduced specific measures to support the MAE industry and its relevant suppliers ⁽⁵³⁾.

⁽⁴⁵⁾ Updated Report – Chapter 4, pp. 56–57, 99–100.

⁽⁴⁶⁾ See Section III.6.3 of the 14th FYP.

⁽⁴⁷⁾ See Section III and Box I; available at: https://www.gov.cn/zhengce/zhengceku/202307/content_6889718.htm (accessed on 31 May 2024).

⁽⁴⁸⁾ See at: https://www.gov.cn/zhengce/zhengceku/202309/content_6901732.htm (accessed on 31 May 2024).

⁽⁴⁹⁾ Ibid

⁽⁵⁰⁾ Ibid, see Section III.4.2

⁽⁵¹⁾ See at: [157823f5651e42ea85038c86b74becca.pdf](https://www.zj.gov.cn/157823f5651e42ea85038c86b74becca.pdf) (zj.gov.cn) (accessed on 30 May 2024).

⁽⁵²⁾ Ibid., Section III.6.

⁽⁵³⁾ See at: <http://cpc.people.com.cn/n1/2024/0529/c64387-40245669.html> (accessed on 31 May 2024).

- (138) On the municipal level, the Xuzhou (Jiangsu) Municipal Party Committee and Municipal Government, in addition to formulating the Xuzhou Construction Machinery Development Plan (2021-2030) ⁽⁵⁴⁾, have set up a specific support project ‘333’ Innovation Ecosystem to Make Construction Machinery ‘No 1 Industry’ ⁽⁵⁵⁾. This municipal project has also been selected by the provincial authorities as a typical ‘case for reform and innovation for the construction of a strong manufacturing province’ ⁽⁵⁶⁾. The project aims at making Xuzhou the ‘capital of construction machinery’ by organising industry clusters through bringing together and supporting companies, including XCMG ⁽⁵⁷⁾, as also confirmed by the Xuzhou Municipality Party Committee Secretary: ‘Xuzhou will develop and expand the construction machinery industry with greater determination, a larger pattern and more practical measures, and strive to build an advanced manufacturing cluster with international competitiveness, providing strong support for Jiangsu to demonstrate new achievements in strengthening, supplementing and extending the industrial chain’ ⁽⁵⁸⁾.
- (139) Through these and other means, the GOC therefore directs and controls virtually every aspect in the development and functioning of the sector, as well as the upstream inputs.
- (140) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives concerning the sector. Such measures impede market forces from operating freely.

3.3.5. *Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws*

- (141) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than China, the Chinese system is characterised by systematic under-enforcement.
- (142) The number of bankruptcies remains notoriously low in relation to the size of the country’s economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the state in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ⁽⁵⁹⁾.
- (143) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China ⁽⁶⁰⁾. All land is owned by the state (collectively owned rural land and State-owned urban land) and its allocation remains solely dependent on the state. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ⁽⁶¹⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁶²⁾.

⁽⁵⁴⁾ See at: <http://js.news.cn/20230801/a47ffa9814f94a6c8345969906ea2aec/c.html>, (accessed on 31 May 2024).

⁽⁵⁵⁾ See at: <https://www.xhby.net/content/s6639f820e4b0706ddc4cddda.html> (accessed on 31 May 2024).

⁽⁵⁶⁾ See at: https://gxt.jiangsu.gov.cn/art/2024/4/2/art_6281_11208011.html (accessed on 31 May 2024).

⁽⁵⁷⁾ See <https://www.xhby.net/content/s6639f820e4b0706ddc4cddda.html> (accessed on 31 May 2024).

⁽⁵⁸⁾ See <http://js.news.cn/20230801/a47ffa9814f94a6c8345969906ea2aec/c.html> (accessed on 31 May 2024).

⁽⁵⁹⁾ Updated Report – Chapter 6, pp. 171–179.

⁽⁶⁰⁾ Updated Report – Chapter 9, pp. 260–261.

⁽⁶¹⁾ Updated Report – Chapter 9, pp. 257–260.

⁽⁶²⁾ Updated Report – Chapter 9, pp. 252–254.

- (144) Much like other sectors in the Chinese economy, the producers of the product concerned are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the construction machinery, and therefore MAE, sector. This is illustrated by the example of XCMG in Xuzhou: ‘in order to help XCMG expand its industrial “tonnage”, since 2018, the Xuzhou Municipality has secured more than 2 000 mu of land for the construction machinery industry [...] through approvals and requisitions’⁽⁶³⁾. The present investigation revealed nothing that would call those findings into question.
- (145) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the sector of the product concerned.

3.3.6. *Significant distortions according to Article 2(6a)(b), fifth indent of the basic Regulation: wage costs being distorted*

- (146) A system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collective organisation. China has not ratified a number of essential conventions of the International Labour Organisation, in particular those on freedom of association and on collective bargaining⁽⁶⁴⁾.
- (147) Under national law, only one trade union organisation is active. However, this organisation lacks independence from the state authorities and its engagement in collective bargaining and protection of workers’ rights remains rudimentary⁽⁶⁵⁾. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area.
- (148) This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration⁽⁶⁶⁾. Those findings lead to the distortion of wage costs in China.
- (149) No evidence was submitted to the effect that the MAE sector would not be subject to the Chinese labour law system. The sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in China).

3.3.7. *Significant distortions according to Article 2(6a)(b), sixth indent of the basic Regulation: access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state*

- (150) Access to capital for corporate actors in China is subject to various distortions.
- (151) First, the Chinese financial system is characterised by the strong position of state-owned banks⁽⁶⁷⁾, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similar to non-financial SOEs, the banks remain connected to the state not only through ownership but also via personal relations (the top executives of large state-owned financial institutions are ultimately appointed by the CCP)⁽⁶⁸⁾ and they regularly implement public policies designed by the GOC.

⁽⁶³⁾ See https://www.js.gov.cn/art/2022/11/14/art_63909_10663820.html (Accessed 31 May 2024).

⁽⁶⁴⁾ Updated Report – Chapter 13, pp. 360–361, 364–370.

⁽⁶⁵⁾ Updated Report – Chapter 13, p. 366.

⁽⁶⁶⁾ Updated Report – Chapter 13, pp. 370–373.

⁽⁶⁷⁾ Updated Report – Chapter 6, pp. 137–140.

⁽⁶⁸⁾ Updated Report – Chapter 6, pp. 146–149.

- (152) In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the state⁽⁶⁹⁾. While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (153) For example, the GOC has clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the state's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues⁽⁷⁰⁾. Also, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities 'serve the national development objectives and the real economy', and in particular how they 'serve strategic and emerging industries'⁽⁷¹⁾.
- (154) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government⁽⁷²⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important⁽⁷³⁾. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (155) Second, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (156) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces but are influenced by government-induced distortions. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018⁽⁷⁴⁾. Official media in China have recently reported that the CCP called for 'guiding the loan market interest rate downwards'⁽⁷⁵⁾. Artificially low interest rates result in under-pricing, and consequently, the excessive utilisation of capital.
- (157) Overall credit growth in the China indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly, with the GOC a number of times opting to either avoid defaults, thus creating so called 'zombie' companies, or to transfer the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.

⁽⁶⁹⁾ Updated Report – Chapter 6, p. 149.

⁽⁷⁰⁾ See official policy document of the China Banking and Insurance Regulatory Commission of 28 August 2020: *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020–2022)*: <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (accessed on 8 April 2024). The Plan instructs to 'further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector'. Moreover, the Plan's section II aims at promoting the organic integration of the Party's leadership into corporate governance: 'we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management'.

⁽⁷¹⁾ See CBIRC's *Notice on the Commercial banks performance evaluation method*, issued on 15 December 2020: http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm (accessed on 8 April 2024).

⁽⁷²⁾ Updated Report – Chapter 6, pp. 157–158.

⁽⁷³⁾ Updated Report – Chapter 6, pp. 150–152, 156–160, 165–171.

⁽⁷⁴⁾ OECD (2019), *OECD Economic Surveys: China 2019*, OECD Publishing, Paris, p. 29, available at: https://doi.org/10.1787/eco_surveys-chn-2019-en (accessed on 8 April 2024).

⁽⁷⁵⁾ http://www.gov.cn/xinwen/2020-04/20/content_5504241.htm (accessed on 8 April 2024).

- (158) In essence, despite the steps that have been taken to liberalize the market, the corporate credit system in China is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (159) No evidence was submitted in the present investigation demonstrating that the sector of the product concerned is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.3.8. *Systemic nature of the distortions described*

- (160) The Commission noted that the distortions described in the updated Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above as well as in Part I of the updated Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above and in Part II of the updated Report.
- (161) The Commission recalls that in order to produce the product concerned, certain inputs are needed. When the producers of the product concerned purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors. These distortions were described in detail above, in particular in Sections 3.3.1–3.3.7. The Commission pointed out that the regulatory setup underpinning those distortions is generally applicable, MAE producers being subject to those rules as any other economic operator in China. The distortions have therefore a direct bearing on the cost structure of the product concerned.
- (162) As a consequence, not only the domestic sales prices of the product concerned are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the updated Report.
- (163) Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout China. This means, for instance, that an input that in itself was produced in China by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.
- (164) Sinoboom, in their observations submitted on 3 January 2024, expressed its general position that Article 2(6a) of the basic Regulation should not be applied due to a lack of evidence of significant distortions in the Chinese MAE industry and it requested the Commission to accept the domestic prices and costs duly reported by Sinoboom. Other than that, Sinoboom referred to the CCCME comments concerning the existence of significant distortions. Accordingly, the Commission arguments concerning (the alleged lack of) evidence of significant distortions are listed below in response to the CCCME's arguments.
- (165) On 3 and on 22 January 2024, the CCCME provided a number of comments, concluding that no sufficient evidence exists that significant distortions as described in Article 2(6a)(b) of the basic Regulation exist in relation to Chinese MAE sector, as well as all the input materials. Therefore, the CCCME requested the Commission to use domestic prices and costs in China, as they reflect, in the CCCME's view, undistorted prices. To support its position the CCCME raised the following arguments.

- (166) First, the CCCME claimed that no evidence would reveal that the market of MAE in China is under significant distortions. In particular, the Report is updated and MAE is not mentioned in it, nor is it referred to in the 14th FYP or in the Notice to the 14th FYP; China opened up its financial system over the last seven years and welcomed foreign investments on its territory; China made significant progress in strengthening its IP protection; China has also added important reforms to the framework of SOEs, reducing overcapacities, increasing their competitiveness, which greatly decreased the number of allegedly 'zombie' companies.
- (167) This argument could not be accepted. The Commission published and placed on the file the updated Report which largely confirms the types and extent of distortions described in the Report and provides additional details on how the distortions developed and how they continue. The Commission noted in this respect, that the Chinese financial system shows the same distortive characteristics observed already at the time of publication of the original Report (see Section 3.3.7 above). The same applies to the SOE sector (see Section 3.3.2 above) where the Commission observed for instance that any alleged increased competitiveness would have frequently resulted from policy-driven corporate restructurings.
- (168) Second, construction machinery sector being part of the Chinese 'green development' and 'quality of industrial products' policy agendas does not mean that the MAE sector falls within these policies. The MAE sector in fact belongs to the industrial equipment sector.
- (169) The Commission disagreed with this view. First, MAE is frequently used in the context of construction works, in contradiction to the CCCME's distinction between construction machinery and industrial equipment. Moreover, the Commission pointed out that the greening and industrial adjustment ambitions of the 14th FYP applies to the entirety of the Chinese economy, as apparent for example from Articles VIII or XXXIX of the 14th FYP.
- (170) Third, the CCCME questions the SOE presence in the sector. In particular, the CCCME opposes qualifying XCMG as an SOE since its shares are publicly traded and some foreign shareholders are among its shareholders. As to Liugong, the CCCME submitted that the company is not an SOE but a public company traded at the Shenzhen Stock Exchange. In this connection, the CCCME urged the Commission to exercise extreme care about the sources and warned against the use of unreliable information sources, such as the website seetao.com.
- (171) This argument could not be accepted. First, the Commission made reference to the observations in recitals (107)–(110) concerning the state ownership in XCMG, as well as Liugong and other MAE producers, as well as concerning other types of government control. In addition, the Commission recalled that both XCMG and Liugong, are members (XCMG even vice-president) of the CCMA which explicitly adheres to the CCP leadership and accepts business guidance and supervision by the State authorities (see recitals (110)–(111)). Consequently, irrespective of the nominal State ownership stake in these enterprises or the fact that a portion of their shares is held by foreign shareholders, they operate under the control or policy supervision or guidance of PRC's authorities and the State is in position to interfere with their prices or costs. As to sources used to support arguments concerning the existence or absence of significant distortions, the Commission noted that while the CCCME invited the Commission use reliable sources, the CCCME itself referred repeatedly to sources which cannot be considered as reliable, such as a newspaper owned by the Central Propaganda Department of the CCP.
- (172) Fourth, irrespective of XCMG's and Liugong's ownership type, the CCCME argued that their limited exports to the EU would not enable any distortions to permeate into total Chinese MAE exports into the EU, as neither company is price setting player at EU level. The sampled Chinese producers, which incidentally happen to be fully US owned companies, exert a stronger influence over the price-setting in the EU.
- (173) This argument is misplaced. Under Article 2(6a) of the basic Regulation, the Commission does not assess whether significant distortions affect price setting in the US but whether it is appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions. Consequently, this argument was rejected.

- (174) Fifth, the CCCME claimed that there is no state presence in firms allowing the state to interfere with respect to prices or costs. In particular, there is no evidence that the management personnel of XCMG and/or Liugong would act under the interference of the State. Similarly, Zoomlion is a public listed company too, with private ownership including oversea investors and with Hunan SASAC owning only 14,4 % of shares, insufficient to exert any type of meaningful control able to create distortions.
- (175) This argument is based on misrepresentation, namely that ownership below the nominal majority of shares precludes the State from interfering with the business operation of an enterprise. The Commission rejected it for reasons laid out in great detail in Sections 3.3.2 and 3.3.3. above, in particular in recitals (109) to (111) and (120) to (129).
- (176) Sixth, the CCCME pointed out that participation of government officials to the inaugural ceremonies or meetings between a company's management board and government officials do not bear the evidentiary value of any state interference. Such practices are a custom not only in China but for instance also in France.
- (177) The Commission could not accept this argument. While references to third countries, such as France, are of no relevance in the present context, the Commission noted that the links between the companies' management in the MAE sector and between Chinese government and/or CCP members go well beyond participation in ceremonies, as detailed in Section 3.3.3 above.
- (178) Seventh, concerning significant distortions in the upstream markets, the CCCME pointed out the specifics of US investigations in which 'adverse facts available' are used, beside noting that the US assessment took place more than three years ago. Moreover, the CCCME contested the distortive potential of the 14th FYP by quoting its Article XXXIX and stating that the provision refers to environmental ambitions in the mining industry, as opposed to economic distortions. In this context, the CCCME emphasised that Europe is also pursuing green ambitions through its Green Deal and Fit for 55 frameworks. Penalizing environmental initiatives in a state of climate crisis would discourage such ambitions and have grave consequences for the world.
- (179) This argument could not be accepted. The Commission complemented the arguments presented by the complainant by its own research (see Sections 3.3.1 to 3.3.7) thereby demonstrating the presence of significant distortions, irrespective of the evidentiary value of the US assessment. Similarly, the distortive potential of the 14th FYP as the document in the centre of China's complex system of government industrial planning was explained in detail in the updated Report (see in particular recitals (97) to (100) above). Taking a single quote from the 14th FYP out of that industrial policy planning system cannot change that distortive effect of the planning system. The Commission noted further that Europe's green ambitions have no relevance in the context of an assessment carried out pursuant to Article 2(6a) of the basic Regulation.
- (180) Eight, the CCCME contests any connection between specific EV battery producers and/or projects with the MAE sector, pointing also out that those of XCMG's MAE models equipped with engines by the Chinese state-owned manufacturer Yuchai are destined for internal consumption, as the engine does not meet the high standard requirements of third countries. Similarly, the CCCME submitted that the agreement between Zoomlion and the state-owned Dongfeng Motor Corporation already expired and the transaction under that agreement were in any event made at arms' length. The CCCME further recalled that Chinese producers use various MAE parts manufactured by Western manufacturers while EU MAE producers purchase a number of parts from China.

- (181) The Commission did not accept this argument. In the context of establishing presence of state-owned companies in the upstream sectors, the specific contractual conditions between Zoomlion and Dongfeng Motor Corporation are of secondary importance. Similarly, the alleged fact that certain engines provided by Yuchai were incorporated into MAE models for the domestic market does not call into question the significant presence of SOEs among the MAE engines manufacturers. The Commission also noted that the CCCME does not dispute the complainant's reference to strong State presence in further input markets, such as for mining and processing of ferrous metal ores (60 %), support activities for mining (97 %) or smelting and processing of ferrous metals (72 %). The Commission failed to see the relevance of the fact that Chinese producers allegedly use various MAE parts manufactured by Western manufacturers or that EU MAE producers purchase a number of parts from China.
- (182) Ninth, the CCCME argued that no evidence would exist indicating that the MAE sector benefits from public policies or measures discriminating in favour of domestic suppliers. The CCCME submitted in this respect that the reference in the 14th FYP to 'emergence industries' could in no way be translated into the existence of discrimination or distortions, not least because MAE do not represent high-end equipment. Moreover, the MAE sector does not benefit from the Belt and Road Initiative which is not aimed at industrial equipment – to which MAE belongs – but at construction sector, a sector in which there are no distortions in the CCCME's view and the development of which is in any event independent from the MAE sector. The CCCME stated that the Chinese authorities are rather deregulating the construction sector and that while government interventions are a necessity in the sector, loans to developers are being granted at market value.
- (183) The Commission was not persuaded by this argument. As explained in detail in Section 3.3.4, the MAE sector benefits from numerous public policies, whether directly, or as part of a larger sector in which the MAE manufacturers operate (see in particular recitals (133)–(137)). Moreover, the Commission found the CCCME's reference to the construction sector as an area in which market principles prevail highly implausible, not least given that the Chinese housing sector, i.e. a sector directly related to the construction sector, remains the focus of the regulatory action by the Chinese authorities ⁽⁷⁶⁾. Consequently, the Commission rejected the CCCME's argument.
- (184) Lastly, the CCCME claimed that China made significant progress in the bankruptcy sector, as well as that China has implemented important reforms to the framework of SOEs, reducing overcapacities, increasing their competitiveness, which greatly decreased the number of 'zombie' companies, reducing distortions on the market.
- (185) This argument is essentially a repetition of the one addressed already in recital (167) above. The Commission noted further that rather than providing factual information concerning the alleged market-oriented reforms, the CCCME referred to a GOC statement originating from 2017, as well as to third parties' articles which actually confirm the existence of distortions. Therefore, this argument was rejected.

3.4. Representative country

3.4.1. General remarks

- (186) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ⁽⁷⁷⁾;
 - Production of the product under investigation in that country;
 - Availability of relevant data in the representative country;

⁽⁷⁶⁾ See for example: <https://www.imf.org/en/News/Articles/2024/02/02/cf-chinas-real-estate-sector-managing-the-medium-term-slowdown> (accessed on 31 May 2024). See for example the recent observations by the IMF at: <https://www.imf.org/en/News/Articles/2024/02/02/cf-chinas-real-estate-sector-managing-the-medium-term-slowdown> and <https://www.imf.org/en/News/Articles/2024/05/28/pr24184-china-imf-staff-completes-2024-art-iv-mission> (accessed on 31 May 2024).

⁽⁷⁷⁾ <https://data.worldbank.org/income-level/upper-middle-income>

- Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.

(187) As explained in recitals (57) to (58) above, the Commission issued two notes for the file on the sources for the determination of the normal value: the First Note on production factors of 21 December 2023 and the Second Note on production factors of 17 May 2024. These notes described the facts and evidence underlying the relevant criteria, and also addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note on production factors, the Commission informed interested parties of its intention to select Brazil as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

3.4.2. Availability of relevant public data in the representative country

(188) The Commission could not identify a country having the same level of economic development as China having production of the product under investigation and relevant financial information readily available. As a consequence, the Commission looked for possible representative countries with production of a product in the same general category and/or sector of the product under investigation.

(189) The Commission identified a product in the same general category as MAE in order to select a representative country. The product is truck mounted mobile platforms. Truck mounted mobile platforms share their main components with several categories of MAEs but are built on the tailgate of a truck. The vehicles are purchased by the manufacturers and have minimal impact on the composition of the lifting part of the platform. Truck mounted mobile access equipment were sufficiently close in terms of end use, production process and input materials, and as a result SGA and profit, to be considered a product in the same general category as the product under investigation.

(190) Sinoboom proposed to use mobile and crawler cranes produced by Liebherr-International AG in Brazil as the product in the same general category as MAE.

(191) The Commission dismissed this proposal because cranes are material handlers, used for lifting goods instead of persons. The former are explicitly excluded from the scope of the PUI.

(192) The Commission identified production of truck mounted mobile platforms in two countries with a similar level of economic development to China: Brazil and Serbia.

(193) The manufacturing facility in Serbia was not operational in the IP. The Commission, therefore, selected Brazil as appropriate representative country as the country was producing truck mounted mobile platforms. The Commission examined then the availability of financial data.

(194) With regard to Brazil, Madal Palfinger Brazil, a 100 % owned subsidiary of Palfinger GmbH, a manufacturer of MAE headquartered in Austria, produced truck mounted platforms. Financial data was available for 2022 and 2023 covering the entire IP.

(195) Dingli and the CCCME argued that the Brazilian company, Madal Palfinger, was not a proper source for profit and SG&A because it does not produce the PUI.

(196) Dingli also argued that Madal Palfinger was a 100 % owned subsidiary of an EU corporation.

(197) The Commission dismissed these arguments on the grounds that there was no production of the product under investigation in any suitable country with a similar level of economic development other than Mexico and Türkiye. The EU ownership of the Brazilian manufacturer was considered irrelevant because Madal Palfinger is an integral part of the domestic industrial complex in Brazil and Latin America.

- (198) In its comments to the Second Note, the CCCME noted that if a significant part of Madal Palfinger's business corresponded to intra-group transactions and operations, the company's costs and profits cannot be considered reliable for the purposes of constructing normal value as these transactions were not made in the ordinary course of trade.
- (199) The Commission dismissed this argument because upon examining the detailed accounts of Madal Palfinger for the IP, it found no sign of 'unreliable intra-group transactions'. Also, no evidence was provided by CCCME showing that a significant part of Madal Palfinger's business consisted of this type of transactions.
- (200) The CCCME argued that Brazil currently applies anti-dumping and/or countervailing measures on hot-rolled steel, heavy plates, steel wire, steel flat bar, carbon steel tubes, stainless steel tubes, copper tubes and cold-rolled stainless-steel sheet. As steel materials represent the most fundamental MAE inputs, including hot-rolled steel sheet and plate, steel bars and hollow structural shapes, the import restrictive measures distorted the Brazilian domestic market price of these steel inputs.
- (201) The Commission dismissed this argument, as trade defence measures are not considered to distort the markets where they are applied. On the contrary, these measures are meant to restore level playing field. The mere existence of these measures cannot be a reason for the exclusion of the country as a representative country.

3.4.3. *Level of social and environmental protection*

- (202) Having established that Brazil may be considered as an appropriate representative country in terms of similar level of development as China and of availability of relevant financial data, the Commission did not consider it necessary to assess the level of social and environmental protection of the other potential representative countries.

3.4.4. *Conclusion*

- (203) In view of the above analysis, Brazil met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country.

3.5. **Sources used to establish undistorted costs**

- (204) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under investigation by the exporting producers and invited the interested parties to comment and propose readily available information on undistorted values for each of the factors of production mentioned in that note.
- (205) Subsequently, in the Second Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use the statistics published by the Brazilian Institute of Geography and Statistics (IBGE) for establishing undistorted costs of labour ⁽⁷⁸⁾ and the electricity price statistics published by the Government of Brazil in the Monthly Energy Bulletin for electricity ⁽⁷⁹⁾ and the price of gas for industrial users in Brazil as published by the Ministry of Mines and Energy ⁽⁸⁰⁾.
- (206) The CCCME and Sinoboom submitted that the Commission solely provided final duty paid prices and failed to disclose the 'raw data' on the basis of which it established the final undistorted value.

⁽⁷⁸⁾ <https://www.ibge.gov.br/estatisticas/economicas/industria/9042-pesquisa-industrial-anual.html?=&t=destaques>

⁽⁷⁹⁾ <https://www.gov.br/mme/pt-br/assuntos/secretarias/sntep/publicacoes/boletins-mensais-de-energia/2022-2/ingles/brazilian-monthly-energy-bulletin-december-2022.pdf/view>

⁽⁸⁰⁾ <https://www.gov.br/mme/pt-br/assuntos/secretarias/sntep/publicacoes/boletins-mensais-de-energia/2022-2/ingles>

- (207) The Commission dismissed this argument because it informed parties that it relied on GTA, a readily available source of information containing duty paid prices. Also, it was not clear what was meant by 'raw data' as argued by CCCME and Sinoboom.
- (208) In the Second Note, the Commission also informed the interested parties that due to the unusually large number of factors of production of the sampled exporting producers that provided complete information and the negligible weight of some of the raw materials in the total cost of production, items having negligible weight in terms of value were grouped under 'consumables'. Further, the Commission informed that it will calculate the percentage of the consumables on the total cost of raw materials and apply this percentage to the recalculated cost of raw materials
- (209) The CCCME argued that the grouping of costs under 1 % of the total into the category of consumables is unacceptable because these are individual cost items.
- (210) The Commission dismissed this argument because in view of the unusually large number of FOPs in this case the grouping of insignificant inputs was found to be appropriate. As it concerned insignificant cost, the impact on the dumping margin calculation was considered to be minor.

3.6. Undistorted costs and benchmarks

3.6.1. Factors of production

- (211) Considering all the information submitted by the interested parties and collected during the verification visits, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of Mobile Access Equipment

Factor of Production	Commodity code	Undistorted value	Unit
Raw materials			
tyres	4011 80 10, 4011 80 20, 4011 80 90	7 270,47	CNY/No
other articles of cement, of concrete/ of artificial stone	6810 99	12,21	CNY/kg
other hydraulic power motors	8412 29	3 580,21	CNY/No
elliptical steel with nickel hubcaps used to produce re	7326 90 10	590,03	CNY/kg
other diesel engines, stationary, P ≥ 337,5 kW, Rpm > 1 000	8408 90 10	185 696,71	CNY/No
other diesel engines/semi-diesel	8408 90 90	82 558,74	CNY/No
hydraulic cylinders	8412 21 10	2 915,39	CNY/No
parts of other fork-lift trucks	8431 20 19	65,48	CNY/kg
taps and other appliances for pipes, etc.	8481 80 99	50,88	CNY/No

Factor of Production	Commodity code	Undistorted value	Unit
transmission boxes, reducers, etc. of speed	8483 40 10	1 204,16	CNY/No
electric generators of continuous current, Pot ≤ 750 W	8501 31 20	3 904,53	CNY/No
electric motor of continuous current, 750 W < Pot ≤ 75 kW	8501 32 10	1 917,83	CNY/No
ot.elect.motor altern.cur.poli-phase 750 W < P ≤ 75 kW	8501 52 90	5 247,16	CNY/No
other elect.accumulators, of lead, weig ≤ 1 000 kg	8507 20 10	164,80	CNY/No
boards with programmable control apparatus, T ≤ 1 kV	8537 10 20	662,95	CNY/No
insulated copper wire F/winding, F/ elect.use	8544 11	125,14	CNY/kg
other tubes of vulc.rubber, N/Hard.N/ reinf.with fittin.	4009 12 90	216,13	CNY/kg
oth.rubber tubes vulc.reinfor. text. mat.with fitt.	4009 32 90	162,20	CNY/kg
protecting, bands wheelwork, etc. for tires of rubber	4012 90 90	25,56	CNY/kg
hot-rolled iron/steel, W ≥ 60 cm, N/Coils, E > 10 mm	7208 51	7,55	CNY/kg
hot-rolled iron/steel, W ≥ 60 cm, N/Coils, 4,75 ≤ T ≤ 10 mm	7208 52	27,62	CNY/kg
hot-rolled iron/steel, W ≥ 60 cm, N/Coils, 3 mm ≤ T < 4,75 mm	7208 53	24,52	CNY/kg
hot-rolled iron/steel, W ≥ 60 cm, Coils, 4,75 mm < T ≤ 10 mm	7208 37	4,96	CNY/kg
tubes, pipes and hollow profiles, of cast iron	7303	15,28	CNY/kg
pipes of N/alloy steel, seamless, F/ coated of wells, et	7304 29 10	19,90	CNY/kg
doors, windows, etc. of cast iron/ iron/steel	7308 30	131,16	CNY/kg
oth. structures and their parts, of fused iron/iron/steel	7308 90 90	31,03	CNY/kg

Factor of Production	Commodity code	Undistorted value	Unit
oth. tanks of iron/steel, 50 L ≤ C ≤ 300 L, N/Thermal Disp.	7310 10 90	48,95	CNY/kg
other tanks, etc. of iron/steel, C < 50 L	7310 29 90	63,01	CNY/kg
oth. cans of iron/steel, closed F/ sold.crimp. C < 50 L	7310 21 90	47,73	CNY/kg
cotters/cotter-pins, etc. of cast iron, iron or steel	7318 24	120,22	CNY/Kg
other moulded articles, of steel	7325 99 10	81,98	CNY/kg
other moulded articles, of cast iron or iron	7325 99 90	18,15	CNY/kg
rotary positive displac.pumps, flow ≤ 300 L/min. of gear	8413 60 11	1 343,94	CNY/No
parts of self-propelled fork-lift trucks	8431 20 11	61,91	CNY/kg
parts of oth.vehic.f/mov.load, with lifts dispositive	8431 20 90	49,60	CNY/kg
rotative valves, of boxes of hydraulic direction, with pine cone	8481 20 11	990,15	CNY/No
transmission boxes, reducers, etc. of speed	8483 40 10	1 204,16	CNY/No
parts of transmis.shafts, cranks, bearings housing, etc.	8483 90	113,13	CNY/kg
electric motor of continuous current, 37,5 W < Pot ≤ 750 W	8501 31 10	162,38	CNY/No
ot. elect.motor altern.cur.poli-phase 750 W < P ≤ 75 kW	8501 52 90	5 247,16	CNY/No
accumulator chargers (electric converters)	8504 40 10	124,20	CNY/No
other static converters electric	8504 40 90	504,74	CNY/No
electric storage batteries lithium ion	8507 60	123,93	CNY/No
support with apparatus of cnc, T ≤ 1 kV, C/Proc/Bus ≥ 32 bits	8537 10 11	992,20	CNY/kg
oth.boards,panels,etc. with appar. com. num.comp.T ≤ 1 kV	8537 10 19	2 039,73	CNY/kg

Factor of Production	Commodity code	Undistorted value	Unit
oth. boards, etc. with elect. circuit switches appar. $T \leq 1$ kV	8537 10 90	900,57	CNY/kg
oth. parts f/elec.circuit switches apparatus	8538 90 90	270,98	CNY/kg
ignition wiring sets and other wiring sets used in vehicles.	8544 30	220,62	CNY/kg
other electric conductors F/Tension ≤ 1 000 V, fitted with connectors	8544 42	407,62	CNY/kg
other electric conductors F/Tension ≤ 80 V	8544 49	135,35	CNY/kg
other wheels, their parts and accessories f/motor vehicles	8708 70 90	46,72	CNY/No

Consumables

The Commission grouped all inputs below 1 % of the cost of production into consumables.

Labour

Hourly rate of labour ⁽¹⁾	N.A.	61,93	CNY/hour
Energy			
Price of electricity, industrial use ⁽²⁾	N.A.	1,04	CNY/kWh
Price of gas, industrial use ⁽³⁾	N.A.	0,532	CNY/kWh

⁽¹⁾ See for example: <https://www.imf.org/en/News/Articles/2024/02/02/cf-chinas-real-estate-sector-managing-the-medium-term-slowdown> (accessed on 31 May 2024). See for example the recent observations by the IMF at: <https://www.imf.org/en/News/Articles/2024/02/02/cf-chinas-real-estate-sector-managing-the-medium-term-slowdown> and <https://www.imf.org/en/News/Articles/2024/05/28/pr24184-china-imf-staff-completes-2024-art-iv-mission> (accessed on 31 May 2024).

⁽²⁾ <https://data.worldbank.org/income-level/upper-middle-income>

⁽³⁾ <https://www.ibge.gov.br/estatisticas/economicas/industria/9042-pesquisa-industrial-anual.html?=&t=destaques>

- (212) For some factors of production in Brazil that were reported in CNY/piece in GTA, for the calculation of the normal value the Commission used the duty paid price in kilograms, as reported as a secondary price in GTA, as this was considered to be more accurate because these FOPs vary in size, i.e. their weight can be significantly different. Prices reported in pieces did not accurately capture these differences.
- (213) The Commission included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. To establish this amount, the Commission relied on data from the sampled exporting producers.
- (214) Following comments of Dingli, the CCCME and Sinoboom that the benchmark for engines published in the Second Note is incorrect, the Commission accepted the argument and used either the duty paid price in kilograms or the duty paid price in pieces, as reported as a secondary price in GTA.
- (215) Due to the partial application of Article 18 to Sinoboom, see recital (25), the Commission allocated costs of one reported COM Type to other COM Types using a calculated allocation ratio. Some of the costs were considered consumables.

3.6.1.1. Raw materials and inputs

- (216) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer (ex-works), the Commission used as a basis the weighted average import price to the representative country as reported in the GTA to which import duties were added. Transport costs were added to this price using the methodology described in recital (218). An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council ⁽⁸¹⁾. The Commission decided to exclude imports from the PRC into the representative country as it concluded that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. The remaining volumes were considered to be representative.
- (217) For a number of factors of production, the actual costs incurred by the cooperating exporting producers represented a negligible share of the total raw material costs in the investigation period- The Commission decided to include those costs into consumables as shown in Table 1.
- (218) The Commission expressed the transport cost for the supply of raw materials of the sampled exporters as a percentage of the actual cost of each raw material and then applied the same percentage to the undistorted cost of the same raw material in Brazil, in order to obtain the undistorted transport cost. This cost was added to the import price inclusive of import duties in order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer.

3.6.1.2. Labour

- (219) The Brazilian Institute of Geography and Statistics (IBGE) publishes detailed information on wages in different economic sectors in Brazil. The Commission used the latest available statistics covering the year 2021 for average labour cost in the sector of manufacturing of machines, equipment and equipment for transporting and lifting loads and people.
- (220) The CCCME and Dingli requested the use of ILO statistics claiming that IBGE data is based on the results of a voluntary survey.
- (221) The Commission rejected the request because the ILO does not distinguish salary based on specific business categories; manufacturing is the most specific category that can be used. In addition, in ILO data there is no distinction based on the size of companies The IBGE survey also serves as the source of the ILO database.
- (222) The CCCME and Dingli requested the use of PIA Table 1.1 ⁽⁸²⁾ for the calculation of labour costs, claiming that Table 1.1 provides data showing headcounts of employees related to production and their salary, whereas, Table 2.2 provides general data for local units of industrial companies, including all employees beyond production related staff.
- (223) The Commission rejected the request because PIA Table 2.2 ⁽⁸³⁾ that was used for the calculation provides data on much more business specific categories, specifically in the sector of manufacturing lifting equipment.
- (224) The CCCME argued in their comments related to labour cost that in the calculation of social security contribution the Commission should only include contributions to the Instituto Nacional do Seguro Social (INSS) and the Fundo de Garantia do Tempo de Serviço (FGTS).

⁽⁸¹⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33, ELI: <http://data.europa.eu/eli/reg/2015/755/oj>). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

⁽⁸²⁾ <https://www.ibge.gov.br/estatisticas/economicas/industria/9042-pesquisa-industrial-anual.html?=&t=downloads>.

⁽⁸³⁾ Idem.

- (225) This claim was not substantiated. The Commission provisionally rejected the argument because there was no sufficient evidence submitted by the CCCME for limiting the relevant part of the labour costs to the contributions mentioned above, according to Commission research, there are additional contributions in Brazil ⁽⁸⁴⁾.
- (226) The CCCME and Dingli requested the use of exchange rates for 2021 not the exchange rates during the IP for the calculation of labour costs. The Commission relied on the exchange rate in the IP for the conversion of labour costs from Brazilian reais to Chinese yuan incurred in 2021.
- (227) The Commission adjusted the calculations accordingly.
- (228) The Commission based its calculation on labour costs from 2021, the only available data, and, in order to bring these costs to actual values in the IP, the Commission applied the labour costs index for 2016-2021, 106,24 %. The CCCME and Dingli proposed the use of a more recent indexation, covering the period from 2021 to the investigation period. Such average income index according to IBGE data is 103,1 %. The Commission accepted the proposal and adjusted the values.

3.6.1.3. Electricity

- (229) The price of electricity for industrial users in Brazil is published by the Government of Brazil in the Monthly Energy Bulletin. The Commission used the data on the industrial electricity prices in the corresponding consumption band in CNY/kWh as published for the period October 2022–September 2023.
- (230) In their comments on the second FOP Note, the CCCME and Dingli pointed out a clerical error in the use of the exchange rate for the calculation of the electricity and gas price. The error was corrected by the Commission.
- (231) Dingli and the CCCME argued that a deduction 17,5 % VAT should be subtracted from the price of electricity and gas.
- (232) The Commission rejected this argument as VAT is a genuine cost paid by Madal Palfinger in the representative country.

3.6.1.4. Natural gas

- (233) The price of natural gas for the industrial sector in Brazil is published by the Ministry of Mines and Energy. The Commission used the industrial electricity prices in CNY/kWh as published for the period October 2022–September 2023.

3.6.1.5. Manufacturing overhead costs, SG&A, profits and depreciation

- (234) According to Article 2(6a)(a) of the basic Regulation, ‘the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits’. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (235) The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (236) The CCCME argued that the Commission should use data in the accounts of Madal Palfinger to identify the share of manufacturing overheads based on the available data.
- (237) The Commission rejected the argument and used the percentage of overheads incurred by sampled exporting producers, verified during the verification visits, for the calculation of individual margins, as this, despite of the distortions, led to much more precise results per company than relying on the general overhead costs extracted from the accounts of Madal Palfinger.

⁽⁸⁴⁾ INSS: The Brazilian Salaries and Benefits – BPC Partners (bpc-partners.com) and <https://bpc-partners.com/fact-sheets/inss-brazilian-salaries-benefits>.

- (238) In the second FOP Note, in order to establish an undistorted and reasonable amount for manufacturing overheads, SG&A, profit and depreciation, the Commission relied on the financial data for 2023 for Madal Palfinger S.A. as published in the periodical *Pioneiro* ⁽⁸⁵⁾.
- (239) Dingli commented that the Commission should calculate the weighted average of the SG&A and profit concerning the IP using 2022 data in addition to 2023 data. The Commission accepted the claim and recalculated the SG&A and profit accordingly by using a weighted average of financial data for 2022 and 2023, in order to properly reflect the IP. Financial data covering exclusively the last quarter of 2022 and Q1–Q3 of 2023 was not available.
- (240) Sinoboom and Dingli suggested the exclusion of sales revenue relating to exports for the purposes of calculating the SG&A.
- (241) The Commission rejected the argument because it could not identify the profit and loss account related to export and domestic sales. As a consequence, the cost of domestic and export sales could not be separated.
- (242) The CCCME and Dingli argued that the Commission adjusted financial expenses of Madal Palfinger by removing the value of 'present value adjustments', whereas left financial income unadjusted for the value of the item of identical nature and requested that the Commission adjusts financial income of the Brazilian company by the value of 'present value adjustments', amounting to 11 526 thousand BRL as indicated in note 19 to the financial statements.
- (243) This claim was not substantiated. The Commission provisionally rejected it because it was considered that 'present value adjustments' for financial income were in the ordinary course of trade, therefore, it was lacking a sufficiently clear basis to remove them.
- (244) Dingli and the CCCME claimed that shipping costs, shipping insurance and commissions should be removed from the SG&A calculation.
- (245) The Commission rejected the proposal because it did not have sufficient information on identifying revenue and costs related to shipping, shipping insurance and commissions allowing for the separation of export and domestic sales related costs.

3.7. Calculation

3.7.1. Normal value

- (246) On the basis of the above, the Commission constructed the normal value per product type on the ex-works level of trade in accordance with Article 2(6a)(a) of the basic Regulation.
- (247) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producers. The consumption rates provided by the sampled exporting producers were verified during the verification visit. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country.
- (248) Once the undistorted manufacturing cost established, the Commission applied the manufacturing overheads, SG&A and profit as noted in recitals (234)–(238). They were determined on the basis of the financial statements of Madal Palfinger S.A. as explained in recital (238).

⁽⁸⁵⁾ https://ads.clicrbs.com.br/PUBLICIDADE-LEGAL/PIO/Publicidade_Legal_PIO_290324_madalpalfinger.pdf.

- (249) To the costs of production established as described in the previous recitals, the Commission applied the SG&A and profit of Madal Palfinger S.A.. The SG&A, expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production, amounted to 21,61 %. Profit, expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 10,86 %. The Commission considered these amounts to be reasonable within the meaning of Article 2(6a)(a) of the basic Regulation for the ex-works level of trade.
- (250) Terex's claimed that eight COM_types used were undistorted. The Commission rejected these because they were purchased through domestic channels or an intragroup sale. Further, Terex claimed that thirteen other raw materials were also undistorted. The Commission found that these were below 1 % of the cost of production, respectively, and as a consequence grouped them into consumables.
- (251) Due to the partial application of Article 18 to JLG, see recitals (24)–(28), the normal value for JLG was constructed based on information from other cooperating sampled exporting producers with regard to a number of representative product types that were sold both by other exporting producers and JLG. The Commission relied on the usage rates of these exporters together with benchmarks for Brazil.

3.7.2. *Export price*

- (252) The sampled exporting producers exported to the Union through related companies. The export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, and for profits of 5 % accruing, taking into account the provisional rejection of the claim of Terex that it was operating as a singly economic entity, as set out above.

3.7.3. *Comparison*

- (253) Article 2(10) of the basic Regulation requires the Commission to make a fair comparison between the normal value and the export price at the same level of trade and to make allowances for differences in factors which affect prices and price comparability. In the case at hand the Commission chose to compare the normal value and the export price of the sampled exporting producers at the ex-works level of trade. As further explained below, where appropriate, the normal value and the export price were adjusted in order to: (i) net them back to the ex-works level; and (ii) make allowances for differences in factors which were claimed, and demonstrated, to affect prices and price comparability.

3.7.3.1. *Adjustments made to the normal value*

- (254) As explained in recital (246), the normal value was established at the ex-works level of trade by using costs of production together with amounts for SG&A and for profit, which were considered to be reasonable for that level of trade. Therefore, no adjustments were necessary to net the normal value back to the ex-works level.

3.7.3.2. *Adjustments made to the export price*

- (255) In order to net the export price back to the ex-works level of trade, adjustments were made on the account of customs duty, other import charges, freight, handling loading and ancillary expenses, as well as packing expenses,
- (256) Allowances were made for the following factors affecting prices and price comparability: credit cost, warranty and guarantee expenses, expenses for technical assistance and services, bank charges and commissions.
- (257) The Commission, where appropriate, also deducted, in accordance with Article 2(9), SG&A and a profit of 5 %, which was considered reasonable for unrelated importers (see recital (252) above).

- (258) Terex China claimed that it should be treated as a single economic entity together with other entities pertaining to the same corporate group ("Terex Corporation"), as far as the calculation of the normal value is concerned. According to the company, Terex China serves as the contract manufacturer of Terex Global GmbH (TGG), registered in Switzerland. Terex China procuring the raw materials and manufacturing products on behalf of TGG. The group applies Cost Plus Appropriate Mark-up in lieu of profits to contract manufacturers, the mark-up rate is 6 %. According to TGG, companies of the various Terex entities involved in the production and sale of MAE operate as a single economic entity, despite being legally distinct.
- (259) The group manages its global production centrally based on the sales forecast input from the various affiliates responsible for regional sales. Further, Terex China has no selling expenses related to EU sales because the group affiliates in the Union, operate as the sales department for EU sales. Finally, Terex China has no direct contacts with EU customers since the sales in the Union are organised and executed by its group affiliates.
- (260) The Commission reviewed the claim and the evidence on file. According to the Manufacturing Services and Supply Agreement between Terex China and TGG, Terex China refunds TGG in case of products not meeting the necessary specifications. Moreover, any disputes arising out of or in connection to the Agreement, shall be governed by and construed in accordance with the laws of the State of Delaware, USA. Further, the purchase price for the products supplied by Terex to TGG or its affiliates are based on arm's length amount as agreed to between the Parties from time to time. The Commission considered that these elements show competing interests.
- (261) In addition, the Commission found that other producers than Terex China also sold via TGG.
- (262) With regard to the relationship between Terex China and TGG on one hand, and Genie France, a related company, and Terex Italia on the other hand, their contracts contain payment of an arm's length mark-up in the range of 5–10 %, a clause providing that the parties are acting as independent contractors, a clause for choice of law and jurisdiction in case of dispute and a clause defining the relationship between the parties as 'seller and buyer'.
- (263) In view of the above elements, the claim of the various Terex entities involved in the production and sale of MAE operating as a single economic entity was provisionally rejected.

3.7.4. Dumping margins

- (264) For the sampled cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (265) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Hunan Sinoboom Intelligent Equipment Co., Ltd.	55,3 %
Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd.	54,5 %
Terex (Changzhou) Machinery Co., Ltd.	41,1 %
Zhejiang Dingli Machinery Co., Ltd.	45,1 %

- (266) As explained in recitals (24) to (27), in accordance with Article 18 of the basic Regulation, for Sinoboom and JLG, the Commission made use of the facts available. For Sinoboom, as regards their purchased input materials, the corresponding benchmark prices of these input materials were used to determine the normal value.

- (267) Regarding JLG, the due to the partial application of Article 18, as illustrated in recital (24) above, the normal value was constructed based on information calculated for other cooperating sampled exporting producers. The Commission relied on the usage rates of these exporters together with benchmarks for Brazil. The constructed normal value was then compared with the export prices of JLG. In the case of Sinoboom, due to the partial application of Article 18 (recitals (25) and (26) above), the costs of one COM Type reported by the company were allocated to other COM Types using a calculated allocation ratio (please refer to recital (215)). Thus, the calculated dumping margins for JLG and Sinoboom amounted to 54,5 % and 55,3 % respectively. The Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation on the basis of the margins of the sampled exporting producers, but disregarding the margins established in the circumstances referred to in Article 18 of the basic Regulation.
- (268) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 42 %.
- (269) For all other exporting producers in the PRC, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total imports from the country concerned to the Union in the IP, that were established on the basis of Eurostat.
- (270) The level of cooperation in this case is high because the exports of the cooperating exporting producers constituted more than 90 % of the total imports during the IP. On this basis, the Commission decided to establish the dumping margin for non-cooperating exporting producers at the level of the sampled company with the highest dumping margin.
- (271) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Other cooperating companies	42 %
All other companies	55,3 %

4. INJURY

4.1. Units and sections of the units

- (272) The product under investigation defined in Section 2 includes both units (whole machines) and sections of the units. However, the below analysis of the different injury indicators only focuses on units, and not on individual sections. Although the Union industry produced both units and sections during the period considered, it did not sell nor purchase sections separately. The sections produced are always used for a specific machine type, normally produced on order. Hence, the injury analysis was provisionally only based on units.

4.2. Definition of the Union industry and Union production

- (273) According to the complainant, during the investigation period, the like product was manufactured by 22 producers in the Union. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(274) The total Union production during the investigation period was established at around 35 000 units (complete machines). The Commission established the figure on basis of all the available information concerning the Union industry, namely the verified questionnaire reply received from the complainant, where possible crosschecked with the questionnaire replies of the sampled Union producers.

(275) As indicated in Section 1.5.1, three Union producers were selected for the sample, representing 56 % of the total Union production of the like product.

4.3. Union consumption

(276) The Commission established the Union consumption on basis of:

- the sales data concerning the Union industry's sales on the Union market, provided by CMAE, crosschecked with the verified data of the sampled Union producers;
- the sales quantities provided by the cooperating exporting producers for imports from the PRC ⁽⁸⁶⁾; and
- the imports from all other third countries, as recorded in the Comext database of Eurostat ⁽⁸⁷⁾.

(277) Union consumption developed as follows:

Table 2

Union consumption (in units)

	2020	2021	2022	IP
Total Union consumption	28 481	45 725	58 226	63 086
<i>Index</i>	100	161	204	222

Source: CMAE, questionnaire replies of sampled Union producers, data provided by the cooperating exporting producers, Eurostat.

(278) In the period considered, the Union consumption increased by 122 %.

4.4. Imports from the country concerned

4.4.1. Volume and market share of the imports from the country concerned

(279) Imports from the PRC were based on the data provided by the cooperating exporting producers that were considered to represent 100 % of imports to the Union.

(280) The market share of the Chinese imports was established by comparing import volumes with the Union market consumption as per Table 2 above.

(281) Imports into the Union from the country concerned developed as follows:

Table 3

Import volume and market share

	2020	2021	2022	IP
Volume of imports from the PRC (units)	10 401	23 124	31 233	33 946

⁽⁸⁶⁾ It is considered that the cooperating exporting producers represent nearly 100 % of the imports to the Union from the PRC.

⁽⁸⁷⁾ Imports statistics in Comext were reported in tonnes. The Commission converted the tonnes to units based on a conversion ratio established based on the data of the cooperating exporting producers.

	2020	2021	2022	IP
<i>Index</i>	100	222	300	326
Market share (%)	37	51	54	54
<i>Index</i>	100	138	147	147

Source: Data provided by the cooperating exporting producers.

(282) During the period considered, the volume of imports of the product concerned from the PRC increased by 226 % and their market share went from 37 % in 2020 to 54 % in the IP, representing an increase of 47 %.

4.4.2. *Prices of the imports from the country concerned: price undercutting and price suppression*

(283) The Commission established the prices of imports based on data provided by the cooperating exporting producers that were considered close to 100 % of imports to the Union.

(284) The weighted average price of imports into the Union from the country concerned developed as follows:

Table 4

Import price (in EUR/unit)

	2020	2021	2022	IP
Price of imports from the PRC (per unit)	11 149	12 257	17 502	17 879
<i>Index</i>	100	110	157	160

Source: Data provided by the cooperating exporting producers.

(285) In the period considered, the average price of the Chinese imports increased by 60 %, reaching a level of 17 879 EUR/unit in the IP.

(286) The Commission determined the price undercutting during the investigation period by comparing:

- the weighted average sales prices per product type of the three sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
- the corresponding weighted average prices per product type of the imports from the sampled Chinese exporting producers to the first independent customer on the Union market, established on a Cost, Insurance, Freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.

(287) The price comparison was made for the same product type for transactions at the same level of trade, duly adjusted where necessary. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period. On basis of the above, a weighted average undercutting margin of 13,4 % was established for the dumped Chinese imports on the Union market.

(288) In any event, regardless of the existence of price undercutting, the Commission provisionally established that the Chinese imports significantly suppressed the prices of the Union industry, which had to sell at below costs during the IP. The underselling margins per sampled exporting producer are significant.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (289) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (290) As mentioned in Section 1.5.1, sampling was used for the determination of possible injury suffered by the Union industry.
- (291) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on basis of data contained in the complaint and the complainant's reply to a specific questionnaire. The data related to all Union producers. The Commission evaluated the microeconomic indicators on basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (292) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity and magnitude of the dumping margin.
- (293) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.5.2. Macroeconomic indicators

4.5.2.1. Production, production capacity and capacity utilisation

- (294) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Production, production capacity and capacity utilisation

	2020	2021	2022	IP
Production volume (units)	17 743	26 427	32 349	35 402
<i>Index</i>	100	149	182	200
Production capacity (units)	70 732	70 762	73 152	75 111
<i>Index</i>	100	100	103	106
Capacity utilisation (%)	25	37	44	47
<i>Index</i>	100	149	176	188

Source: CMAE, questionnaire replies by the sampled Union producers.

- (295) In the period considered, the production of the Union industry increased by 100 % achieving more than 35 000 units in the IP. The increase in the production positively impacted the capacity utilisation, which increased by 88 % over the period considered.

4.5.2.2. Sales volume and market share

(296) The Union industry's sales volume and market share developed over the period considered as follows:

Table 6

Sales volume and market share

	2020	2021	2022	IP
Sales volume on the Union market (units)	14 675	18 214	22 048	23 794
<i>Index</i>	100	124	150	162
Market share (%)	52	40	38	38
<i>Index</i>	100	77	73	73

Source: CMAE, questionnaire replies by the sampled Union producers.

(297) In the period considered, the sales volumes of the Union producers of the product concerned increased by 62 %. However, since they were not able to benefit fully from the increase in Union consumption of 122 % (see Table 2), the market share of the Union producers decreased by 27 %.

4.5.2.3. Growth

(298) In the period considered, the consumption of the product concerned increased 122 %. In the same period, the market share of the Union industry decreased by around 27 %, and the market share of the imports from the PRC of the product concerned increased by 47 %. Although the production and sales of the Union industry increased in absolute terms, they were not able to benefit from the increased Union consumption in terms of market share. To the contrary, the Union industry lost market share and was thus not even able to maintain its position.

4.5.2.4. Employment and productivity

(299) Employment and productivity developed over the period considered as follows:

Table 7

Employment and productivity

	2020	2021	2022	IP
Number of employees	2 215	2 624	3 027	3 099
<i>Index</i>	100	118	137	140
Productivity (unit/FTE)	8	10	11	11
<i>Index</i>	100	126	133	143

Source: CMAE, questionnaire replies by the sampled Union producers.

(300) In the period considered, employment in the Union increased by 40 %. In combination with the increase in productivity (of 43 %), the production in the same period increased by 100 % (see Table 5).

4.5.2.5. Magnitude of the dumping margin

- (301) All dumping margins provisionally established (see Section 3.6.4) were significantly above de minimis level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial given the volume and prices of imports from the country concerned.

4.5.3. Microeconomic indicators

- (302) Two of the sampled Union producers were part of the same group. Therefore, the sample consisted of only two different economic operators. The Commission thus accepted the request of the sampled Union producers to provide the information in range for reasons of confidentiality.

4.5.3.1. Prices and factors affecting prices

- (303) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 8

Sales prices in the Union

	2020	2021	2022	IP
Average price in the Union in ranges (EUR/unit)	(30 000–35 000)	(30 000–35 000)	(30 000–35 000)	(35 000–40 000)
<i>Index</i>	100	102	105	116
Cost of production in ranges (EUR/unit)	(30 000–35 000)	(30 000–35 000)	(35 000–40 000)	(35 000–40 000)
<i>Index</i>	100	101	114	114

Source: Questionnaire replies of the sampled Union producers.

- (304) The table above shows the evolution of the unit sales price on the Union market as compared to the corresponding cost of production during the period considered.
- (305) Over the period considered, the prices of the factors of production increased substantially. The costs increase of more than 30 % concerned mainly the prices of steel, of semi-conductors and of energy. Since the production utilisation increased from a very low level in 2020 (25 %) to 47 % in the IP, and since the fixed costs remained the same, the overall costs increased to a lesser extent.
- (306) In parallel, the volume of imports of MAE from China increased between 2020 and 2022 by 200 % (see Table 3) at prices significantly below the Union industry prices (see Table 4). This price pressure prevented the Union industry from increasing prices to reflect the increasing costs. As the result, the Union industry was forced to set its prices at an unsustainably low level in order not to lose too much market share. Therefore, although not directly visible from Table 8 because of the ranges, on average, the costs of production were higher than the sales prices throughout the whole period. Accordingly, in the period considered, the Union industry continued operating at losses (see Table 11), even in a situation of a booming market and increasing sales. In normal market conditions, i.e. in the absence of strongly increasing imports at unfairly low prices, the Union industry would have been able to benefit and return to a profitable situation.

- (307) The Union industry's average unit sales prices to unrelated customers in the Union increased by 16 % and the average cost of production of the Union industry increased by 14 % over the period considered. The major factor that influenced the increase of the cost of production was the increase in the raw material price over the period considered. On average, the costs of production were higher than the sales prices over the period considered.

4.5.3.2. Labour costs

- (308) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 9

Average labour costs per employee

	2020	2021	2022	IP
Average labour costs per employee (EUR)	(50 000–60 000)	(50 000–60 000)	(60 000–70 000)	(60 000–70 000)
<i>Index</i>	100	98	102	107

Source: Questionnaire replies of sampled Union producers.

- (309) During the period considered, the average labour costs per employee went up by 7 %.

4.5.3.3. Inventories

- (310) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

Inventories

	2020	2021	2022	IP
Closing stocks (tonnes)	(1 000–1 500)	(1 000–1 500)	(1 000–1 500)	(1 500–2 000)
<i>Index</i>	100	78	102	130
Closing stock as a percentage of production (%)	5–10	0–5	0–5	5–10
<i>Index</i>	100	52	56	65

Source: Questionnaire replies of the sampled Union producers.

- (311) During the period considered the level of closing stock varied. In the IP, it was 30 % higher compared to 2020. Closing stock as a percentage of production decreased by 35 % over the period considered.

- (312) Most product types of the like product are produced by the Union industry based on specific orders of the users. Therefore, stocks are not considered to be a meaningful injury indicator for this industry.

4.5.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

- (313) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2020	2021	2022	IP
Profitability	[(- 5 %)-0 %]	[(- 5 %)-0 %]	[(- 15 %)-(- 10 %)]	[(- 5 %)-0 %]
<i>Index</i>	100	127	- 85	141
Cash flow (1 000)	[40 000-50 000]	[20 000-30 000]	[(- 30 000)-(- 20 000)]	[- 30 000-(- 20 000)]
<i>Index</i>	100	53	- 49	- 46
Investments (1 000)	[30 000-40 000]	[10 000-20 000]	[10 000-20 000]	[10 000-20 000]
<i>Index</i>	100	43	42	36
Return on investments	[5 %-10 %]	[35 %-40 %]	[(- 45 %)-(- 40 %)]	[(- 35 %)-(- 30 %)]
<i>Index</i>	100	408	- 424	- 330

Source: Questionnaire replies of sampled Union producers.

- (314) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (315) In 2020 the financial situation of the Union industry was already affected by the rise in Chinese imports which started in 2018. As explained in Section 4.5.3.1, the price pressure from unfair imports on the Union market prevented the Union industry from increasing prices to reflect the increasing costs. As the result, the Union industry was forced to set its prices at an unsustainably low level to maintain sufficient volume. Since the Union industry could not, under the pressure of the low-priced Chinese imports, increase its production, this reflected in a low-capacity utilisation, which increased from 25 % in 2020 to 47 % in the IP, but remained under 50 % compared to the capacity utilisation of the sampled Chinese exporting producers which was, depending on the company and the year, between 53 % to 99 %.
- (316) Although in 2021, the profitability improved by 27 %, the Union industry remained loss making. In 2022, the financial situation of the Union industry worsened, as profitability went down by 185 %. The drop in profitability in 2022 was caused by the abnormal increase in costs of production driven by increased raw material prices in combination with the fact that sales prices were based fixed for a certain period of time. Therefore, the sales prices could not be increased accordingly which translated in heavy losses. Therefore, despite the expanding market and the massive increase in consumption, the Union industry was not able to keep up with the continuous cost increase. This situation worsened in 2022. As the result, during the period considered overall profitability increased but it remained negative in the investigation period – between [(- 5 %)-0 %]. Cash flow dropped considerably (by 146 %) and in parallel, the level of yearly investments decreased by 64 % over the period considered. The return on investments followed the same downward trend, it decreased during the period considered by 440 %.

4.5.3.5. Conclusion on injury

- (317) The year 2020 which was taken as the reference point for the analysis of trends was according to the complainant strongly impacted by the pandemic situation and the Union industry's activities were the lowest over the last decade. Therefore, the increase of indicators from 2020 was not an indication for a growing industry but rather meant a recovery back to previous level of activities.
- (318) Indeed, the data submitted for 2019 by the complainant confirmed that in 2020, the Union industry's production and sales were exceptionally low – in 2019, the volume of production of the Union producers was similar to the level of the production in the IP, and the sales of the Union industry on the Union market between 2019 and the IP decreased by 14 %. However, as the reference year 2020 was impacted by the pandemic situation, a number of indicators showed an increase in the period considered. In particular, the production of the Union industry increased by 100 % and its sales on the Union market increased by 62 %.
- (319) Despite the considerable increase in Union consumption of the product concerned during the period considered (by 122 %), the Union industry was not able to increase its sales correspondingly in order to at least maintain its market share. On the contrary, due to the Chinese imports at significant dumped prices during the period considered the market share of the Union industry decreased from 52 % to 38 %. In parallel, the volume of the Chinese imports increased substantially, by 226 %, in the same period and their market share increased from 37 % to 54 %. In addition to the losses incurred by the Union industry throughout the period considered, other injury indicators like cash flow, level of investments and return of investments developed negatively as well.
- (320) On basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (321) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could, at the same time, have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. The Commission examined imports from third countries and the export performance of the Union industry. No other factors that could have caused the injury to the Union industry was known to exist.

5.1. Effects of dumped imports

- (322) As set out in Section 4.3.1, the import volumes of the product concerned from the PRC increased significantly over the period considered. Prices of imports also undercut the Union industry's prices by 13,4 % on average. The Union industry was therefore unable to maintain or increase its market share and benefit from the increased consumption of the product concerned on the Union market during the period considered. This situation had a serious impact on the Union industry's profitability, which was negative throughout the whole period considered.
- (323) Therefore, the Commission provisionally concluded that those dumped imports had a negative impact on the situation of the Union industry.

5.2. Effects of other factors

- (324) The Commission also examined whether other known factors, individually or collectively, were capable of attenuating the causal link established between the dumped imports to the effect that such link would no longer be genuine and substantial.

5.2.1. Imports from other countries

- (325) The Commission established the imports from other third countries on basis of Eurostat data. Since the data for these imports under some of the CN codes were only reported in tonnes (and not in units), the Commission could not establish volumes and prices per unit, like it was done for the Union industry and for imports from China, based on data provided by the sampled exporting producers. Therefore, the volumes and prices of imports from other third countries could not be directly compared with those of the Union industry and imports from China and were, hence, only indicative, though the trends based on these volumes and prices over the period considered were accurate. To establish the market shares, however, the Commission used a conversion factor from tonnes into units based on the data of the cooperating Chinese exporting producers⁽⁸⁸⁾. As regards prices the Commission did not consider this as accurate, as in view of the differences in product mix the use of a conversion factor would not lead to accurate prices per unit.
- (326) Apart from the PRC, the product concerned was imported to the Union from several other countries which collectively accounted for 8 % of the market share in the IP:

Table 12

Imports from other countries

Country		2020	2021	2022	IP
United Kingdom	Volume (tonnes)	0	5 291	6 827	8 497
	<i>Index</i>	—	100	129	161
	Market share (%)	0	2	2	3
	Average price (EUR/tonne)	0	5,90	5,22	5,76
	<i>Index</i>	—	100	89	98
United States	Volume (tonnes)	9 104	8 164	7 985	8 052
	<i>Index</i>	100	90	88	88
	Market share (%)	7	4	3	3
	Average price (EUR/tonne)	2,41	2,18	2,94	2,35
	<i>Index</i>	100	122	122	98
Other third countries	Volume (tonnes)	7 540	7 986	9 362	9 586
	<i>Index</i>	100	106	124	127
	Market share (%)	5	4	3	3
	Average price (EUR/tonne)	5,76	5,67	5,88	6,01
	<i>Index</i>	100	102	102	104

⁽⁸⁸⁾ The Commission used a conversion factor of 4 888 kg per unit.

Country		2020	2021	2022	IP
Total of all third countries except the PRC	Volume (tonnes)	16 643	21 442	24 174	26 135
	<i>Index</i>	100	129	145	157
	Market share (%)	12	10	8	8
	Average price (EUR/tonne)	3,93	4,40	4,72	4,80
	<i>Index</i>	100	120	120	122

Source: Eurostat.

- (327) Apart from China, the two next biggest importing countries to the Union were the United States and the Union Kingdom, with each having a market share of 3 % in the IP. The rest of the countries (except China) together represented in the IP a market share of around 3 %. The prices of imports from these countries increased during the period considered by 22 %.
- (328) In absolute terms, the level of imports from total of all third countries except the PRC increased by 57 %, however, due to the increased consumption on the Union market, the market share of all of these countries decreased by 4 percentage points during the period considered, and were far lower than the market share of Chinese imports.
- (329) The Commission therefore provisionally concluded that imports from other countries have not contributed to the injury suffered by the Union industry.

5.2.2. Export performance of the Union industry

- (330) The Commission assessed the export volume based on the information submitted by CMAE. Export prices were determined based on the questionnaire replies of the sampled Union producers.
- (331) The volume and prices of exports of the Union industry developed over the period considered as follows:

Table 13

Export performance of the Union industry

	2020	2021	2022	IP
Export volume (units)	4 037	8 303	10 127	11 658
<i>Index</i>	100	206	251	288
Average price (EUR/tonne)	(30 000–35 000)	(35 000–40 000)	(30 000–35 000)	(30 000–35 000)
<i>Index</i>	100	106	103	93

Source: CMAE, questionnaire replies of sampled Union producers.

- (332) In the period considered, the Union industry increased its export volume by 188 %. However, as mentioned in Section 4.4.3.5, in 2020 the Union industry was strongly impacted by the pandemic situation which impacted its level of exports. Before the pandemic, their level of exports was similar to the level achieved in 2021.

- (333) The average export prices decreased, in the period considered, by 7 %, and they were, in the IP, below the average cost of production. However, these export prices per unit varied from around 13 000 EUR/unit to 49 000 EUR/unit.
- (334) Overall, the investigation revealed that the majority of the export sales of the sampled Union producers were profitable. Hence, it was concluded that the export performance of the Union industry was positive and could not contribute to the injury suffered by the Union industry.

5.2.3. *Electric and hybrid machines*

- (335) As mentioned in Section 2.4.1 above, the CCCME argued that the electrical and hybrid MAE should be excluded from the product scope. It submitted that the Union producers traditionally focused on conventional MAE while the Chinese producers focused on exporting electrical MAE. Furthermore, the CCCME argued that some of the models were not produced by the Union producers (see recital (39)) and, therefore, imports of these MAE models from China and of the electrical MAE in general could not have affected this market segment and could not have caused any injury to the Union producers.
- (336) The Commission disagreed. The comparison between the product types imported by the sampled exporting producers and the product types sold by the Union industry showed that, in general terms, more than 90 % of the product types sold by the sampled Union producers were comparable with the product types imported from China. Furthermore, in the IP, more than 60 % of the sales of the sampled Union producers on the Union market concerned electrical MAE. The Commission further noted that sales of the hybrid MAE by both the Union industry and the Chinese exporting producers were negligible. Therefore, the electrical MAE sold by the Union producers competed with the product types sold by the Chinese exporting producers.
- (337) In addition, the Commission considered that the effect of imports of relatively cheaper electrical machines, such as for instance of electrical scissors, was that it became economically less viable for the Union producers to compete with certain product types. Therefore, the fact that certain product types were produced less could not lead to the conclusion that these product types did not compete with the imports from China but was rather the effect of the dumped imports.
- (338) Therefore, the Commission concluded that the dumped imports of the electrical MAE from China contributed to the injury caused to the Union industry.

5.3. **Conclusion on causation**

- (339) The Commission distinguished and separated the effect of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The effect of these other factors, if any, on the Union's industry performance were however limited.
- (340) In light of the above considerations, the Commission provisionally established a causal link between the injury suffered by the Union industry and the dumped imports from China, which was not attenuated by the factors mentioned above.

6. LEVEL OF MEASURES

- (341) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.
- (342) In the present case, the complainant claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation.
- (343) At this stage, the Commission provisionally established that the conditions for applying Article 7(2a) are not present. The Commission will continue investigating the matter at definitive stage.

- (344) Therefore, at the provisional stage, the provisional anti-dumping duties were set in accordance with Article 7(2) of the basic Regulation. Thus, in order to conduct the assessment on the appropriate level of measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation. Then it examined whether the dumping margin of sampled exporting producers would be higher than the injury margin.

6.1. Examination of the margin adequate to remove the injury to the Union industry

- (345) The injury would be removed if the Union industry were able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic Regulation.
- (346) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the PRC, the level of profitability needed to cover full costs and investments, research and development ('R & D') and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.
- (347) The complainant submitted that, based on the prior performance of the Union industry, under normal market conditions a reasonable profit of 10,2 % should be considered. This level of the target profit was, however, not evidenced nor supported by the findings of the investigation.
- (348) Information relating to the establishment of the normal profit was additionally included in the questionnaire sent to the sampled Union producers. This included the profitability of the like product for the 10 years preceding the investigation period.
- (349) One of the sampled Union producer provided a target profit of 17,7 % which was however based on standard variable costs and not on realised profit. The Commission thus could not take this profit into account. The Commission thus decided to use the profit achieved for Europe in 2018 by two of the sampled producers that were related, for the MAE sales, since the year, 2018 was according to the MAE producers the last year which preceded the surge of the Chinese imports and it resulted in a target profit of 7 %. The Commission thus provisionally decided to use the target profit of 7 %.
- (350) In accordance with Article 7(2d) of the basic Regulation, two of the sampled Union producers provided information with regard to future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and from the ILO Conventions listed in Annex 1a to the basic Regulation, that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2).
- (351) The Commission considered that for some of the costs, the companies did not bring sufficient evidence that these costs were based on obligatory requirements under a Multilateral Environmental Agreement or ILO Conventions but that they were rather projects to meet the market demand to produce electrical MAE. The Commission however accepted to add indirect CO₂ cost in the energy consumption, and these costs were added to the non-injurious price.
- (352) On this basis, the Commission calculated a non-injurious price for the like product of the Union industry by applying the above-mentioned target profit margin to the cost of production of the sampled Union producers during the investigation period, and then added the adjustments under Article 7(2d) on a type-by-type basis.
- (353) The Commission then determined the underselling margin level based on a comparison of the weighted average import price of the individual sampled cooperating exporting producers in the PRC, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

- (354) The injury elimination level for 'other cooperating companies' and for 'all other companies' was defined in the same manner as the dumping margin for these companies (see Section 3.7.4).

Company	Dumping margin (%)	Injury margin (%)
Hunan Sinoboom Intelligent Equipment Co., Ltd.	55,3	64,6
Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd.	54,5	23,6
Terex (Changzhou) Machinery Co., Ltd.	41,1	14,3
Zhejiang Dingli Machinery Co., Ltd.	45,1	31,3
Other cooperating companies	42,0	28,0
All other companies	55,3	64,6

7. UNION INTEREST

- (355) The Commission examined whether, despite the determination of injurious dumping, the imposition of measures would not be against the Union interest in accordance with Article 21 of the basic Regulation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, upstream suppliers, users, distributors and unrelated importers.

7.1. Interest of the Union industry

- (356) The Union industry producing the mobile aerial platforms is composed according to the complainant of 22 companies and employs according to its information more than 3 000 staff. None of the producers opposed the initiation of the investigation.
- (357) As concluded in Section 4.4.3.5, the dumped imports from the PRC negatively impacted the situation of the Union producers of the product concerned: despite the increase in consumption on the Union market, the market share of the Union producers did not increase, and its profitability declined.
- (358) Given the conclusion in Section 4.5.3.5 that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation, imposing measures would allow the Union industry to start benefitting from fair trade conditions in the Union market, end the price depression, and will enable the Union industry to improve its profitability towards a sustainable level and to recover. The Union industry would also be able to increase its production and the capacity utilisation which would further positively impact its performance.
- (359) The absence of measures is likely to have further significant negative effects on the Union industry in terms of lower sales, production volume and the capacity utilisation, and further price suppression leading to further financial deterioration of its economic situation in terms of profitability and investments. The entirety of these circumstances would threaten the viability of the Union industry.
- (360) The Commission therefore concluded that the imposition of the measures is in the interest of the Union industry.

7.2 Interest of upstream suppliers

- (361) Beyond the direct employment, the MAE industry also relied on a comprehensive network of upstream suppliers of the different MAE components which are then assembled on the production lines of the Union industry. The complainants alone relied according to their information on at least 280 suppliers, of which an estimated 260 operate in the Union. This would translate according to the estimate of the Union industry in about 32 000 jobs in the EU in at least 14 different Member States: Italy, Poland, France, Germany, Belgium, Hungary, Slovenia, Sweden, Denmark, Finland, Spain, the Netherlands, Ireland and Romania.
- (362) In the absence of additional information available to the Commission, based on the above the Commission considered that besides the positive effect on the financial situation of the Union industry, the imposition of anti-dumping duties might positively impact the MAE suppliers, situated across a broad range of Member States.

7.3 Interest of users, distributors and unrelated importers

7.3.1 Rental companies

- (363) According to the complainant, the vast majority of users (between 75–90 %) are rental companies.
- (364) Only one of the users in the Union, the rental company Kiloutou, provided a complete questionnaire reply. Kiloutou belongs to a group active in renting an equipment and site machinery to building and construction professionals. The company considered that if anti-dumping duties were imposed on Chinese imports, users on the Union market could experience higher costs for mobile access equipment since this business relied on cost-effective access equipment.
- (365) The complainant at the other hand considered that as the lifetime of the machines was long and since every machine was rented and used many times, the price fluctuation was diluted. Also, with the average machine price around EUR [35 000–40 000], any price fluctuations were divided over several years and several instances of use, and over different customers. In its view, the size of the fleet of the big rental companies was also relatively big compared to the annual Union consumption. Taken altogether, the size of these fleets, and the relatively slow replacement rate, makes the users much less vulnerable to price fluctuations. Rental companies were in its view also protected by potential increases in price resulting from measure by their ability to pass these effects on to their customers, allowing them to maintain their margins.
- (366) The complainant also argued that machines were also commonly resold by rental companies or other buyers. These re-sales, even after several years of use, could be done at a considerable portion of the purchase price. Therefore, any increase in price resulting from the measure would also, in turn, increase the re-sale price of the used machines.
- (367) Based on the above, the Commission considered that the impact on the rental companies were indeed less significant than if they were further 'processing' the product concerned. Since machines remained in general the property of the rental companies, any increase of its price would directly reflect in an increase of its assets. The fact that the machines were used over a longer period diminished in the Commission's view the negative effect of a potential price increase as well.
- (368) Therefore, the Commission concluded that measures would not have a disproportionate effect on rental companies.

7.3.2 Other users

- (369) The other users of MAE are mostly construction companies, industrial and agricultural or companies that are regularly in need of use these machines such as logistical centres and airports. These are in most cases large companies.

- (370) In the complainant's view, the impact of price increases on these companies is limited since the mobile aerial platforms only represent a marginal portion of their equipment and of their costs. These end-users are companies with sufficient volume of activities making the investments in the platforms a limited portion of their costs.
- (371) The Commission considered that the companies that purchase MAE have different core activities and the cost of MAE would in general be marginal compared to the total costs of these companies. Any potential price increase of MAE would add to their costs but not to the extent to have a serious financial impact of its operation. The Commission thus concluded that the impact of the measures on these other users was limited.

7.3.3. *Unrelated importers and traders*

- (372) In the absence of cooperation of importers and traders, the Commission considered that the unrelated importers and traders could continue to source the mobile access equipment from multiple sources, and they could resell them at prices allowing them to maintain their margins. The Commission thus considered that in case the anti-dumping measures are imposed, the impact on unrelated importers and traders was limited.

7.4 **Conclusion on the Union interest**

- (373) Although the overall price level of MAE is expected to increase, in view of the above the Commission found that the overall benefits of the measures outweigh the potential negative impact for importers and users. The Commission considered that it was also important for the main users – the rental companies – that production of MAE continues to take place in the Union market, to diversify their fleets. In case the rental companies were entirely dependent on imports, they would face possibly extended lead times and supply disruptions and price increases at longer term.

8. PROVISIONAL ANTI-DUMPING MEASURE

- (374) On the basis of the conclusions reached by the Commission on dumping, injury, causation, level of measures and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (375) Provisional anti-dumping measures should be imposed on imports of MAE originating in China, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties was set at the level of the lower of the dumping and the injury margins.
- (376) On basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Provisional anti-dumping duty
Hunan Sinoboom Intelligent Equipment Co., Ltd.	55,3 %
Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd.	23,6 %
Terex (Changzhou) Machinery Co., Ltd.	14,3 %
Zhejiang Dingli Machinery Co., Ltd.	31,3 %
Other cooperating companies	28 %
All other companies	55,3 %

- (377) The individual company anti-dumping duty rates specified in this Regulation were established on basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. Following comments received after pre-disclosure, a clerical error related to the volumes used for the calculation of the injury and dumping margin for Terex was corrected and resulted in a downward adjustment of the margins. A clerical error was also corrected for Sinoboom, resulting in a slightly lower dumping margin. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (378) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (379) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (380) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (381) Statistics of MAE are frequently expressed in pieces. However, there is no such supplementary unit for MAE specified in the Combined Nomenclature laid down in Annex I to Council Regulation (EEC) No 2658/87⁽⁸⁹⁾. It is therefore necessary to provide that not only the weight in kg or tonnes but also the pieces for the imports of the product concerned must be entered in the declaration for release for free circulation. Pieces should be indicated for TARIC codes: 8427 10 10 10, 8427 20 19 10, 8428 90 90 20, 8431 20 00 60 and 8431 39 00 10.

9. INFORMATION AT PROVISIONAL STAGE

- (382) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.
- (383) Comments on the accuracy of the calculations were taken into account, where appropriate.

⁽⁸⁹⁾ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1, ELI: <http://data.europa.eu/eli/reg/1987/2658/oj>).

10. FINAL PROVISIONS

- (384) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission within a fixed deadline.
- (385) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of mobile access equipment designed for the lifting of persons, self-propelled, with a maximum working height of 6 meters or more, and imports of pre-assembled or ready-to-assemble sections thereof, excluding individual components when presented separately, and excluding person lifting equipment mounted on vehicles of Chapter 86 and Chapter 87 of the Harmonised System, currently falling under CN codes ex 8427 10 10, ex 8427 20 19, ex 8428 90 90, ex 8431 20 00 and ex 8431 39 00 (TARIC codes: 8427 10 10 10, 8427 20 19 10, 8428 90 90 20, 8431 20 00 60 and 8431 39 00 10), and originating in the People's Republic of China.

2. The rates of the provisional anti-dumping duty applicable for the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Provisional anti-dumping duty	TARIC additional code
Hunan Sinoboom Intelligent Equipment Co., Ltd.	55,3 %	89DL
Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd.	23,6 %	89DM
Terex (Changzhou) Machinery Co., Ltd.	14,3 %	89DN
Zhejiang Dingli Machinery Co., Ltd.	31,3 %	89DO
Other cooperating companies	28 %	See Annex
All other companies	55,3 %	8999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (the country concerned). I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.

4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

5. Where a declaration for release for free circulation is presented in respect of the product referred to in paragraph 1, irrespective of its origin, the number of items imported shall be entered in the relevant field of that declaration, provided this indication is compatible with Annex I to Regulation (EEC) No 2658/87.

6. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447 ⁽⁹⁰⁾ the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

7. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Implementing Regulation (EU) 2024/1450.

The data on imports registered in accordance with Article 1 of Implementing Regulation (EU) 2024/1450 shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.

8. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.

2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.

3. Interested parties wishing to request a hearing with the Hearing Officer in trade proceedings are invited to do so within 5 calendar days of the date of entry into force of this Regulation. The Hearing Officer shall examine requests submitted outside this time limit and may decide whether to accept such requests if appropriate.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 1 shall apply for a period of six months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 July 2024.

For the Commission
The President
Ursula VON DER LEYEN

⁽⁹⁰⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558, ELI: http://data.europa.eu/eli/reg_impl/2015/2447/oj).

ANNEX

People's Republic of China (PRC) cooperating exporting producers not sampled:

Country	Name	TARIC additional code
PRC	Lingong Heavy Machinery Co., Ltd.	89DP
PRC	Zoomlion Intelligent Access Machinery Co., Ltd.	89DQ
PRC	XCMG Fire Fighting Safety Equipment Co., Ltd.	89DR
PRC	Sunward Intelligent Equipment Co., Ltd.	89DS
PRC	Haulotte Access Equipment Manufacturing (Changzhou) Co., Ltd.	89DT
PRC	Fronteq (Changzhou) Machinery Co., Ltd.	89DU
PRC	Jiangsu Liugong Machinery Co., Ltd.	89DV
PRC	Hangcha Group Co., Ltd.	89DW
PRC	Shandong Chufeng Heavy Industry Machinery Co., Ltd.	89DX
PRC	Reeslift Ltd.	89DY
PRC	Mantall Heavy Industry Co., Ltd	89DZ
PRC	Shandong Qiyun Group Co., Ltd	89EA
PRC	Jinan Juxin Machinery Co., Ltd	89EB
PRC	Shandong Yuntian Intelligent Machinery Equipment Co., Ltd.	89EC