COMMISSION IMPLEMENTING REGULATION (EU) 2025/45

of 8 January 2025

imposing a definitive anti-dumping duty and definitely collecting the provisional duty imposed 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] and in particular Article 9(4) thereof,

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 Regulation (EU) 2016/1036 ('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') or ('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.

(3) On 27 March 2024, the Commission initiated an anti-subsidy investigation with regard to imports of mobile access equipment originating in the People's Republic of China. It published a Notice of Initiation in the *Official Journal of the European Union* [3].

1.2. Registration

(4) On 15 January 2024 and on 12 March 2024, the complainant submitted requests for registration of imports of MAE originating in the PRC pursuant to Article 14(5) of the basic Regulation.

(5) The Commission made imports of MAE originating in the PRC subject to registration by Commission Implementing Regulation (EU) 2024/1450 of 23 May 2024 [4] ('the registration Regulation').

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[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, C/2023/783, 13.11.2023, ELI: https://eur-lex.europa.eu/eli/C/2023/783/oj.

[3] Notice of initiation of an anti-subsidy proceeding concerning imports of mobile access equipment ('MAE'), originating in the People's Republic of China, C/2024/2362, 27.3.2024, ELI: http://data.europa.eu/eli/C/2024/2362/oj.

[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.

1.3. **Provisional measures**

(6) In accordance with Article 19a of the basic Regulation, on 14 June 2024, the Commission provided parties with a summary of the proposed duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. Interested parties were invited to comment on the accuracy of the calculations within three working days. The comments were addressed where appropriate.

(7) On 12 July 2024, the Commission imposed provisional anti-dumping duties on imports of MAE originating in the PRC by Commission Implementing Regulation (EU) 2024/1915 of 11 July 2024 ([5]) ('the provisional Regulation').

1.4. **Subsequent procedure**

(8) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the Government of the People's Republic of China ('GOC'), the complainant, the Chinese Chamber of Commerce for import and export of Machinery and Electrical products ('CCCME') ([6]), exporting producers Hunan Sinoboom Intelligent Equipment Co., Ltd. ('Sinoboom'), Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd. ('JLG'), Terex (Changzhou) Machinery Co., Ltd. ('Terex'), and Zhejiang Dingli Machinery Co., Ltd. ('Dingli'), a user - Construct Machines S.R.L., and a trader - Norbert Wienold GmbH filed written submissions making their views known on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation.

(9) In addition to the comments on the provisional measures, the complainant referred to recital (343) of the provisional Regulation where the Commission provisionally concluded that the conditions for applying Article 7(2a) were not present. The complainant requested the Commission to provide additional disclosure of the findings about the application of the lesser duty rule before the definitive disclosure. It argued that the application of the lesser duty rule was a crucial element that had an enormous impact on the Union producers and exporters alike and by not disclosing detailed findings, the Commission made it impossible for the complainant to supply additional evidence and it breached its rights of defence.

(10) The Commission found that an early disclosure of its findings to the complainant on the application of the lesser duty rule was not warranted because it would discriminate between interested parties. An early disclosure to all interested parties on the same issue would lead to discriminatory treatment of the concerns voiced by different parties and would open the gate for other early disclosure requests while the 10-day deadline for comments on the final disclosure is of a statutory nature (Article 20(5) of the basic Regulation) ([7]). By providing, in the definitive disclosure document, the reasons on the basis of which it was concluded that the conditions of Article 7(2a) were not met and inviting the complainant and all interested parties to comment on these findings, the rights of defence of all parties were respected.

(11) The parties who so requested were granted an opportunity to be heard. Hearings took place with the complainant, the CCCME, and companies Sinoboom, JLG, Terex and Dingli. On 10 June 2024, Sinoboom submitted a hearing request to the Hearing Officer. The request was withdrawn on 18 June 2024 in light of a similar hearing organised with the case team. Sinoboom was informed of its right to revert to the Hearing Officer in case no satisfactory solution was found in the meeting with the case team. Hearings took place with Dingli on 29 August 2024, CCCME and Terex, respectively, on 5 September 2024, JLG on 6 September 2024 and Sinoboom on 9 September 2024.

([5]) Commission Implementing Regulation (EU) 2024/1915 of 11 July 2024 imposing a provisional anti-dumping duty on imports of mobile access equipment in the People's Republic of China, OJ L, 2024/1915, 12.7.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/1915/oj.

([6]) The CCCME was empowered via power of attorney to represent eight exporting producers in this investigation.

([7]) Refer to Footnote 1.

(12) The Commission continued to seek and verify all the information it deemed necessary for its final findings. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions when appropriate.

(13) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of MAE originating in the PRC ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

(14) Parties who so requested were also granted an opportunity to be heard. Hearings took place respectively with Dingli and the complainant on 15 November 2024, and with JLG and Terex on 19 November 2024.

(15) Following comments on the definitive disclosure, the Commission revised the definitive anti-dumping duty applicable to Dingli, to other cooperating companies in Annex and to all other companies. The underlying dumping calculations were re-disclosed and Dingli was given an opportunity to comment. The other interested parties were also given an opportunity to comment on the newly calculated definitive anti-dumping duties. No further comments of a nature to change the Commission findings were received.

1.5. **Claims on initiation**

(16) Following provisional disclosure, the CCCME disputed the Commission's findings in recital (14) of the provisional Regulation that the CCCME in its own name had no rights of defence. The CCCME repeated its comments already addressed in recital (14) of the provisional Regulation and added that if the Commission were to reject the CCCME's interested party status, it shall reject that of the CMAE, too.

(17) The Commission confirmed its findings and conclusions in recital (14) of the provisional Regulation but clarified that the CCCME was considered an interested party as far as it represented the exporting producers who provided it with a power of attorney. In that sense, the status of the CCCME was not different than that of the CMAE.

1.6. **Sampling**

(18) In the absence of comments regarding the sampling of Union producers, importers and exporting producers, the Commission confirmed recitals (16) to (23) of the provisional Regulation.

1.7. **Investigation period and the period considered**

(19) As stated in Section 1.6 of the provisional Regulation, 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 CONCERNED AND LIKE PRODUCT**

2.1. **Product under investigation**

(20) As set out in recitals (33) to (34) of the provisional Regulation, 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).

(21) 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.

(22) Sections, pre-assembled or ready-to-assemble, consist of four categories in particular: 1) chassis, 2) turret or turntables, 3) platform or baskets, 4) lifting mechanism for MAE. The lifting mechanism include booms (telescopic and or articulated, with or without jibs) for telescopic boom lift, articulated boom lift or vertical mast and scissor arms for scissor lift. They do not include individual components when presented separately.

2.2. **Product concerned**

(23) As set out in recital (35) of the provisional Regulation, the product concerned is mobile access equipment, originating in the People's Republic of China ('the product concerned').

2.3. **Like product**

(24) In recitals (36) to (37) of the provisional Regulation, the Commission concluded that the product concerned, the product produced and sold on the domestic market of the PRC; and the product under investigation produced and sold in the Union by the Union industry were therefore like products within the meaning of Article 1(4) of the basic Regulation. No comments were received on this conclusion.

2.4. **Claims on the product scope**

(25) The CCCME, and the exporting producer Sinoboom submitted comments on the product scope. As reply to the comments of the CCCME and Sinoboom, the complainant submitted that the product scope should remain unchanged.

2.4.1. *Claim to exclude electrical MAE*

(26) The CCCME disagreed with the rejection by the Commission of the claim summarized in recitals (45) to (46) of the provisional Regulation to exclude electrical and hybrid MAE from the product scope. It repeated that there was a clear and obvious difference in physical and technical characteristics between conventional, and electrical or hybrid MAE. The CCCME also repeated that these two categories of MAE had basic differences in mechanical components, used different propulsion and had different technical functions and use. Additionally, it argued that they were used by different industries, such as construction, maintenance, warehousing or manufacturing. The CCCME gave an example of diesel scissor lifts which in its view tended to be used as outdoor equipment, due to the fact that such machines have bigger engines, tires and frames and therefore can be easily moved across uneven terrain. On the contrary, electric scissor lifts tended to be used in its view as indoor equipment because they are smaller, more agile and have less power, therefore they are better to use in tight and narrow spaces. For these reasons the CCCME considered that these two categories did not share the same essential characteristics and did not form homogenous products.

(27) After definitive disclosure, the CCCME repeated the claim on the difference between conventional and electrical types of MAE. It argued that the Commission's position that the electrical MAE "may be" progressively used in environments or in industries which previously used MAE with conventional propulsion was speculative. It also defended that the Union industry itself also explicitly acknowledged that the essential difference between the two product categories resided in the propulsion engine, which determined the usage conditions, that combustion engines were for rough-terrain outdoor uses and electric engines for interior industrial applications. The CCCME further argued that since the argument related to the future, it was irrelevant for the IP. It thus argued that the product scope was wrongly defined from the start, and the injury findings on the basis of erroneous product definition were thus questionable.

(28) The Commission observed that the CCCME did not bring additional arguments or evidence that would justify the exclusion of the electrical MAE. Therefore, as explained in recitals (45) to (46) of the provisional Regulation, it maintained that both categories (conventional and electrical or hybrid MAE) shared the same essential characteristics and that it was justified that they were both part of the product scope. The Commission further observed that the market of MAE was constantly evolving and in view of the environmental concerns, amongst others, electrical MAE may be progressively used in environments or in industries which previously used MAE with conventional propulsion. There would thus not be a rational to exclude electrical MAE from the product scope, based on, amongst others, that they were, already in the IP, mostly used for indoor applications. More importantly, notwithstanding the indoor or outdoor use of MAE, both electrical and conventional MAE shared the same basic main characteristics and use, and both fall within the definition of the product concerned. Therefore, the Commission maintained that the product scope was defined correctly.

2.4.2. *Claim to exclude MAE of working height of 28 metres and higher*

(29) As a response to the provisional findings and repeated after definitive disclosure, the CCCME also defended that its request to exclude hybrid or electrical MAE of working height of 28 metres and higher that were not produced by the Union industry was well founded, contrary to the Commission's statements. It further considered that the fact that the Commission mentioned that these MAE could be produced in the future was not relevant because if these MAE were not imported during the period considered, the injury findings were distorted since these types could not harm the Union industry. The CCCME argued that companies Dinolift and Manitou could only produce MAE of working height of up to 28 metres.

(30) The Commission considered that indeed the information on the webpage of the company Dinolift and annual report of Manitou stated that they could produce MAE of working height of up to 28 metres. This however did not evidence that these producers or other producers on the market could not produce MAE of working height of above 28 meters at all, should there be a demand, or that they would not start producing it in the near future. As the Commission already considered in recital (337) of the provisional Regulation, 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 or low demand for these product types. Furthermore, the Commission considered that the fact that in the IP, the sampled Union producers did not sell all the product types that exist on the market, or that some product types were not sold in the IP by the Union producers at all, did not have a bearing on the overall conclusions on injury to the Union industry. - The Commission thus maintained that there was no reason to exclude any of the product types from the product scope and it maintained its conclusions in recital (47) of the provisional Regulation.

2.4.3. *Claim to exclude sections of MAE and if not excluded, to list them in the operative part of the Regulation*

(31) In response to the provisional findings and after definitive disclosure, the CCCME repeated that the inclusion of pre-assembled sections or ready-to-assemble sections was unwarranted - in the absence of a free market for MAE sections in the Union, no material injury if any could have been caused to Union producers of MAE sections by Chinese imports of the like product. The CCCME further requested that the Commission would explicitly list the sections concerned (i.e. the chassis, turning table, lifting mechanism and the platform) in the definition of the product scope in the executive part of the measures, in order to ensure the consistency of implementation and avoid any confusion about the scope.

(32) The Commission found that there were no additional substantiated arguments submitted by the CCCME to exclude sections. The Commission thus maintained its conclusions mentioned in recital (52) of the provisional Regulation that the sections should remain part of the product scope.

(33) The Commission, on the other hand, considered the request of the CCCME to explicitly list the sections in the definition of the product scope in the executive part of the measures as justified, and adapted the operative part of Regulation accordingly.

2.4.4. *Claim to exclude spider lifts*

(34) The exporting producer Sinoboom requested spider lifts to be excluded from the product scope. It argued that a spider lift was a very particular type of MAE featuring a narrow door access and lower weight and ground pressure compared to other types of MAE. It argued that a spider lift can be used in different terrains and contexts, but it is unique in its ability to fit narrow spaces, making it particularly useful for indoor places like shopping malls, stadiums, rail stations, hotels and airports. Sinoboom also argued that there was a very little production in the Union of these types. Sinoboom considered for all these reasons that spider lifts from China were not in competition with the spider lifts produced in the Union and that imposing duties on its imports would penalize both importers and downstream users and consumers.

(35) The Commission considered that the request was not founded. Spider lifts, despite its particularities, shared the same essential characteristics with the other types of MAE. Sinoboom itself pointed out that two producers of spider lifts existed which showed that there was a production of spider lifts in the Union. A lifting mechanism, a shape or that it could fit narrow spaces did not change it use which was to allow workers to work in height in a safe way. Therefore, the spider lifts imported from China competed with spider lifts produced in the Union. The claim that the production in the Union could not meet the demand was not supported by any evidence. Even if that was the case, that the Union industry cannot meet demand is not a relevant criterion to exclude a product type from the product scope; the objective of the imposition of duties was to make the MAE imported at a fair price, and not to prevent imports of that spider lifts or other MAE. The Commission thus rejected the claim.

2.4.5. *Conclusion on the product scope*

(36) In view of the above-mentioned reasons the Commission decided to maintain its conclusions set out in recital (52) of the provisional Regulation.

3. **DUMPING**

(37) Following provisional disclosure, the Commission received comments from the GOC, Dingli, Terex, JLG, Sinoboom and the CCCME on the provisional dumping findings.

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

(38) The CCCME and Sinoboom questioned the Commission's decision to select truck mounted platforms as the product in the same general category as MAEs. The CCCME argued that the dismissal of a Malaysian crane producer as a suitable source for establishing benchmarks of undistorted SG&A and profit was baseless. Both interested parties mentioned above pointed out important differences between truck mounted mobile platforms and MAEs, arguing that their technical characteristic and production process are different than that of MAEs, having a major impact on their cost of production.

(39) The CCCME claimed that if the Commission selects Brazil, another producer of lifting equipment than Madal Palfinger S.A. ('Madal Palfinger') should be chosen as a suitable source for establishing benchmarks of undistorted SG&A and profit. Sinoboom proposed a manufacturer of mobile and crawler cranes as an alternative Brazilian producer.

(40) Neither the Commission, nor interested parties could identify a country with a similar level of economic development as China where MAEs were produced. The Commission, therefore, selected a product in the same general category as MAEs based on the defining characteristics of the investigated product, as stated in Section 2 of the Notice of Initiation ([8]), namely lifting equipment that is mobile, self-propelled, and used for lifting persons. The

([8]) Notice of initiation of an anti-dumping proceeding concerning imports of mobile access equipment ('MAE'), originating in the People's Republic of China, C/2023/783, 13.11.2023, ELI: https://eur-lex.europa.eu/eli/C/2023/783/oj.

Commission, therefore, excluded static cranes used for material handling. As far as mobile crawler cranes are concerned, since the definition of the investigated product explicitly excludes material handlers ([9]), they cannot be considered a product in the same general category as MAEs.

(41) Truck mounted mobile platforms are obviously mobile and principally used for lifting persons. The only difference with MAEs is their propulsion mechanism that in the case of the latter is inbuilt while for truck mounted mobile platforms it is provided by a vehicle. The Commission reaffirmed its conclusion in the second note on the factors of production ('the Second Note') that in view of their similar defining characteristics and use, production process and input material, truck mounted mobile platforms are in the same general category as MAEs. The differences put forward by the CCCMA and Sinoboom were not such as to undermine the fundamental similarities in the defining characteristics of the two products. The claim was rejected.

(42) No manufacturer of truck mounted mobile platforms was proposed by interested parties as a suitable source for establishing benchmarks of undistorted SG&A and profit. Therefore, Madal Palfinger, a producer in Brazil identified by the Commission in the Second Note was the only company considered for further analysis.

(43) The CCCME and Sinoboom argued that Madal Palfinger's accounts cannot be considered reliable for the purposes of constructing normal value as it is owned by a company headquartered in the EU (Austria) and some of the transactions captured therein were not made in the ordinary course of trade. They referred to the notes of the 2023 accounts of Madal Palfinger containing the statement that "[t]he difficult economic and political conditions in LATAM also had an impact on production. Capacity was adjusted accordingly, especially in Brazil. Internal supply relationships with the production sites in the USA were expanded and the process of standardizing […]." ([10])

(44) The Commission found that the reliability of the transactions in the accounts of Madal Palfinger for the purposes of constructing normal value was not jeopardized by the capacity adjustment within the Palfinger Group mentioned in the notes to its 2023 financial accounts because in terms of sales and general expenses and profit the large majority of transactions of Madal Palfinger in the domestic and international market remained reliable.

(45) The Commission reaffirmed its conclusion in recital (197) of the provisional Regulation that the ownership of Madal Palfinger was irrelevant for the investigation. The financial data sourced at Madal Palfinger reflects the sales transactions done by the Brazilian producer and not by its European owner.

(46) Following definitive disclosure, the CCCME reiterated claims related to the unreliability of Madal Palfinger's accounts due to intra-group transactions. Also, the CCCME quoted a statement in the 2023 Report of the Palfinger Group ([11]) referring to Argentina ([12]) instead of Brazil. These claims were already addressed in recitals (44) and (45).

(47) Therefore, the conclusion in recital (58) of the provisional Regulation was confirmed.

3.2. **Normal value**

3.2.1. *Existence of significant distortions*

(48) The details of the existence of significant distortions were set out in Section 3.3 of the provisional Regulation.

([9]) *The product subject to this investigation is mobile access equipment designed for the lifting of persons…"*, Section 2, Ibid.

([10]) See pg. 28 of the 2023 annual accounts of Madal Palfinger , https://assets.palfinger.com/importdata/corporate/newsroom/en/reports/2023/PALFINGER_GB2023_EN_open.pdf.

([11]) Idem. Palfinger | Annual Report 2023 | Downloads available at https://i-report.palfinger.ag/2023/en/downloads.

([12]) Idem, pg. 28 "Internal supply relationships with the production sites in the USA were expanded and the process of standardizing as well as optimizing production **at the Rio Tercero plant in Argentina** continued." Emphasis added.

(49) Upon imposition of provisional duties, the GOC submitted, on 29 July 2024, a set of comments in which it claimed that: (i) deficiencies exist in the Report; (ii) Article 2(6a) of the basic Regulation is inconsistent with the WTO Anti-Dumping Agreement ('ADA'); (iii) the Commission's investigative practices under Article 2(6a) of the basic Regulation are inconsistent with WTO law; (iv) the Commission should comprehensively examine whether there are distortions in the market of the representative country and its own. On the same date, the CCCME submitted comments according to which: (i) Article 2(6a) of the basic Regulation is incompatible with the WTO agreements and the ruling of the WTO Dispute Settlement Body in the European Union - Anti-dumping measures on Biodiesel from Argentina ([13]) case; (ii) there are no significant distortions within the meaning of Article 2(6a)(b) of the basic Regulation in the MAE sector in China.

(50) More specifically, the GOC argued that, first, the updated Report perpetuates the problem of the Report by continuing to make subjective, one-sided and incorrect assessment of the market economy of China. This is, in the GOC's view, in particular because: (a) China has established a socialist market economy in accordance with its own specific realities and China's socialist market economy has been continuously improved and developed, with the market playing a decisive role in the allocation of resources and the GOC playing a better role in fully stimulating the vitality of the economy. There is not just one model of market economy, the market economy should be inextricably linked to the history, culture and realities of each country; (b) the content of the updated Report is incorrect, one-sided and seriously deviates from the objective reality, using the legitimate competitive advantages of Chinese industries and the normal institutional differences between China and Europe as the basis for determining whether there is significant market distortion, completely avoiding the question of whether significant market distortions exist within the EU itself; (c) the Commission has only issued Staff Working Documents on China and Russia which brings suspicions that this is driven by political considerations, leading to concerns regarding most-favoured-nation ('MFN') treatment; (d) the Commission accepts the significant distortion allegations raised by domestic industries, using the (updated) Report as the main evidence, thus providing advantages to the EU's industries. Based on the Report, the Commission decides to initiate cases, conduct investigations, and make conclusions, which results in the Commission looking more favourably at the evidence brought by the EU industries, a practice inconsistent with the basic legal principles of fairness and justice.

(51) The Commission disagreed. With Chinese historical and cultural specifics being indeed well outside the context of the analysis of significant distortions pursuant to Article 2(6a) of the basic Regulations, the updated Report – which is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the Chinese authorities, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources – focuses on instances pointing towards the existence of distortions in the sense of Article 2(6a)(b) of the basic Regulation. The relevant distortions have been described in detail in Sections 3.3.2. to 3.3.8. of the provisional Regulation, taking into account not only the updated Report but the entire body of evidence on the file, and the GOC failed to add any specific information calling into question that analysis. To the contrary, with regard to the GOC's claim that the market is playing a decisive role in the allocation of resources under the socialist market economy model, the Commission pointed out that even the most recent relevant Chinese policy documents demonstrate the lack of such market-based resource allocation. In particular, Resolution of the Central Committee of the Chinese Communist Party ('CCP') on Further Deepening Reform Comprehensively to Advance Chinese Modernization, adopted at the third plenary session of the 20th Central Committee of the CCP on 18 July 2024 ('3rd Plenum Resolution'), unequivocally affirms Marxism-Leninism to be the guiding philosophy underlying the GOC's economic policy and explicitly commits to pursue policies contradicting the allocation of resources based on market principles ([14]).

([13]) European Union – Anti-dumping measures on Biodiesel from Argentina, Report of Appellate Body, WT/DS473/AB/R, §6.23.
([14]) See for instance Sections II.5. or III.8. of the 3rd Plenum Resolution.

(52) Concerning the GOC's claim regarding the violation of the MFN treatment, the Commission recalled that, as provided for by Article 2(6a)(c) of the basic Regulation, a country report shall be produced for any country only where the Commission has well-founded indications of the possible existence of significant distortions in a specific country or sector in that country. Upon the entry into force of the provisions of Article 2(6a) of the basic Regulation in 2017, the Commission had such indications of significant distortions for China. The Commission also published a report on distortions in Russia in 2020 and updated the Report on China in 2024. Where appropriate, other reports may follow. Furthermore, the Commission recalled that the reports are not mandatory for the application of Article 2(6a) of the basic Regulation. Article 2(6a)(c) of the basic Regulation describes the conditions for the Commission to issue country reports, and according to Article 2(6a)(d) of the basic Regulation the complainants are not obliged to use the report, nor is the existence of a country report a condition to initiate an investigation under Article 2(6a) of the basic Regulation. According to Article 2(6a)(e) of the basic Regulation, sufficient evidence proving significant distortions in any country brought by complainants fulfilling the criteria of Article 2(6a)(b) of the basic Regulation is sufficient to initiate the investigation on that basis. Therefore, the rules concerning country-specific significant distortions apply to all countries without any distinction, and irrespective of the existence of a country report. As a result, by definition the rules concerning country distortions do not violate the MFN treatment.

(53) Regarding the claim that by publishing reports on distortions the Commission would provide advantages to the EU's industries, the Commission reiterated its position that the (updated) Report is an evidence-based document (see recital (51) above). It was placed on the investigation file so that any interested party would have had ample opportunity to rebut, supplement or comment on the facts and the evidence on which it is based. As noted in recital (55) of the provisional Regulation, the GOC chose not to submit arguments or evidence rebutting the sources included in the Report. Accordingly, rather than the Commission practice being inconsistent with the basic legal principles of fairness and justice, it was the GOC which failed to make use of its procedural rights to it.

(54) Second, the GOC argued that Article 2(6a) of the basic Regulation is not compatible with the WTO law, in particular since: (a) the concept of significant distortions cannot be found in the WTO Anti-dumping Agreement ('ADA'). Instead, Article 2.2 ADA contains an exhaustive list of situations in which the determination of normal value can be made using either the constructed normal value or the export-to-third-country price methodology. A "significant distortion of the market" does not belong to any of those situations; (b) Article 2.2. ADA requires that the normal value shall be constructed by using cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits. Article 2.2.1.1 ADA further clarifies that costs shall be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in conformity with generally accepted accounting principles in the exporting country and reasonably reflect the costs of production and distribution relating to the product under investigation. Article 2(6a) of the basic Regulation goes therefore beyond the WTO rules for the use of constructed normal value.

(55) These arguments could not be accepted. The Commission considered that the provision of Article 2(6a) of the basic Regulation is fully consistent with the European Union's WTO obligations, including the possibilities to construct normal value provided in Article 2.2 ADA. As explicitly clarified by the WTO Appellate Body in DS473 ([15]), WTO law permits the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The Commission recalled in this connection that once it is determined that due to the existence of significant distortions in the exporting country in accordance with Article 2(6a)(b) of the basic Regulation it is not appropriate to use domestic prices and costs in the exporting country, the normal value is constructed by reference to undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a) of the basic Regulation. The same provision of the basic Regulation also allows the use of domestic costs if they are positively established not to be distorted. In that context, the exporting producers had the possibility to provide evidence that their individual SG&A costs and/or other input costs were undistorted. However, in Sections 3.3.2. to 3.3.8. of the provisional Regulation, the Commission established the existence of distortions in the MAE sector and there was no positive evidence as to the factors of production of individual

([15]) Appellate Body Report, European Union – Anti-Dumping Measures on Biodiesel from Argentina, WT/DS473/AB/R and Add.1, adopted 26 October 2016, DSR 2016:VI, p. 2871, Para 7.10.

exporting producers being undistorted. Therefore, whether the Chinese companies' records were kept in accordance with the generally accepted accounting principles of China, or whether the records reasonably reflected the costs associated with the production and sale of the product under investigation in China, cannot affect the conclusion concerning the application of the methodology under Article 2(6a) of the basic Regulation.

(56) Third, the GOC claimed that the Commission's investigative practices are WTO inconsistent, insofar as the Commission did not examine whether the records of the Chinese exporters were in conformity with the generally accepted accounting principles of the exporting country or reasonably reflected the costs of production and sale of the product under investigation, but rejected the records of the Chinese exporters on the ground of so-called significant distortion of the market, which is inconsistent with Article 2.2.1.1 of the WTO Anti-Dumping Agreement and the findings of the Appellate Body in DS473 and of the Panel in DS494 emphasized that, according to Article 2.2.1.1 of the ADA, as long as the producer's cost records accurately and reliably reflect all the costs actually incurred and are genuinely associated with the production and sale of the product under consideration, they should be considered as "reasonably reflect the costs associated with the production and sale of the product under consideration" and the investigating authority shall use such records to determine the production costs of the enterprise under investigation. The GOC therefore invited the Commission to correct its practice to make it consistent with these WTO requirements.

(57) The Commission had to reject these claims. As to conformity of the Chinese exporters' records with generally accepted accounting principles, this argument was already addressed in recital (54) - (56) above. Moreover, with respect to DS494, the Commission recalled that both the EU and the Russian Federation appealed the findings of the Panel, which are not final and therefore, according to standing WTO case-law, have no legal status in the WTO system, since they have not been endorsed by the Dispute Settlement Body through a decision by the WTO Members. In any event, the Panel Report in that dispute specifically considered the provisions of Article 2(6a) of the basic Regulation to be outside the scope of the dispute.

(58) Fourth, the GOC submitted that the Commission accepted the data of the representative country and used it to replace the cost of Chinese producers without comprehensively assessing whether there is any significant distortion in Brazil in accordance with the six criteria pursuant to Article 2(6a)(b) of the basic Regulation. In the GOC's view, the Commission should proactively investigate and prove the existence of distortions in the representative countries, rather than just passively waiting for the parties involved in the case to submit evidence. Moreover, despite submissions by Chinese exporting producers concerning anti-dumping and/or countervailing measures on steel materials in Brazil, the Commission did not investigative whether those import restrictive measures in Brazil had distorted the prices of the relevant Brazilian producers but arbitrarily rejected the arguments of the Chinese exporting producers. Still with respect to the cost data in Brazil, the GOC took the position that since the Commission had found significant distortions in the products of Chinese enterprises on the basis of intra-group transactions, the Commission should also have investigated and proved whether the prices of the selected enterprises in Brazil were not "distorted" due to intra-group transactions when selecting the representative enterprises. Furthermore, the GOC claimed that the Commission should comprehensively examine whether there are distortions in the EU internal market. The GOC considers this to be the case due to, for example, the fact that EU institutions and Member States have adopted a variety of approaches similar to China's to guide their economies and industries, including but not limited to, issuing guidance of the authorities, requiring the financial system, especially commercial banks, to assume social responsibility, implementing economic relief programs, and formulating energy policies that encourage and guide the power sector.

(59) The Commission did not find these arguments to be correct. As for the assessment of data in the representative country, the Commission recalled that, in accordance with Article 2(6a)(a) of the basic Regulation, the Commission proceeds to construct the normal value on the basis of data other than domestic prices and costs (unless such costs are positively established not to be distorted) in the exporting country only where it establishes that such data is appropriate to reflect undistorted prices and costs. In this process, the Commission is bound to use only undistorted data. In that respect, far from waiting passively, the Commission does its own analysis and invites interested parties to comment on the proposed sources for the determination of the normal value in the early stages of the investigation, namely via the notes on the undistorted sources it intends to use released early on in the proceeding. The Commission's ultimate decision as to which undistorted data should be used to calculate the normal value takes full account of all comments received by parties, as well as Commission's own research. All relevant aspects of the analysis are described in detail in Section 3.4. of the provisional Regulation, including in recital (199) with concerning the intra-group transactions and recital (201) with respect to the anti-dumping and countervailing measures in Brazil. As for the alleged distortions in the EU, the Commission has already pointed out, in response to a similar argument raised by the CCCME, in recital (179) of the provisional Regulation that EU policies have no relevance in the context of an assessment carried out pursuant to Article 2(6a) of the basic Regulation. The Commission reiterated that according to Article 2(6a)(b) of the basic Regulation, the potential impact of one or more of the distortive elements listed in that provision is analysed with regard to prices and costs in the exporting country. The cost structure and price formation mechanisms in other markets, such as in the EU, are not part of this analysis.

(60) As to the arguments raised by the CCCME, first, the association reiterated its earlier claim that neither the ADA or China's Protocol of Accession to the WTO, nor the ruling of the DSB allows the Commission to deviate from the general methodology of determining the normal value under Article 2.2.1 ADA, i.e. i.e. using the costs and prices of the exporting producer or those existing in the export country, on the ground that significant distortions are found to exist in the exporting country. The CCCME submitted in this respect that its argument to this end, submitted on 3 January 2024, was not addressed by the Commission.

(61) Given that the CCCME's argument is largely identical with the one raised by the GOC and addressed in recitals (54) - (57) above, the Commission referred to its position laid out in these recitals.

(62) Second, concerning the alleged lack of significant distortions in the MAE sector in China, the CCCME submitted that: (a) that in the last seven years, China opened up its financial system and welcomed foreign investments on its territory, including US and European MAE producers; (b) China has made significant progress in strengthening its IP protection and it also conducted important reforms to the framework of SOEs, which reduce overcapacities and increase their competitiveness; (c) the 14th Five-Year Plan ('FYP') refers only to the construction machinery sector, while the MAE sector, i.e. aerial work platform industrial equipment industry is not even mentioned in the 14th FYP. The fact that MAE is frequently used in the context of construction works does not justify, in the CCCME's view, the Commission's approach to consider the MAE sector to be part of the construction machinery industry; (d) the Commission's reasoning concerning state presence in firms is hypocritical as none of the companies referred to by the Commission, such as XCMG or Liugong are included in the sample of the present investigation and thus do not represent the major force of the Chinese industry. Moreover, if the Commission considers that state shareholding in MAE producers are the reason for the distortion of the market, the Commission should also conclude that EU Member States, such as France, Germany or Poland, are also distorting the market by owning shares of stock exchange listed companies.

(63) The Commission could not accept these arguments. The CCCME did not provide any specific evidence disproving the Commission's analysis in Sections 3.3.2., 3.3.5. and 3.3.7. of the provisional Regulation, a mere statement that foreign investments are welcome in China or that reforms to the framework of SOEs have been conducted cannot alter the Commission's assessment in this respect. Moreover, the Commission pointed out that recent Chinese policy documents, such as the 3rd Plenum Resolution, demonstrate that the SOE reform process, aims primarily at consolidating and strengthening the presence of SOEs in strategic industries ([16]). Concerning the fact that the MAE sector is not specifically mentioned in the 14th FYP, the Commission described in recitals (130) – (138) of the provisional Regulation the Chinese planning system which sets out priorities and prescribes the goals for authorities on the central, provincial and local government level, including how that system, even if not specifically mentioning the MAE sector in the national 14th FYP, features explicit provisions for the product concerned at the subcentral levels. As for EU states holding shares in companies, the Commission has already pointed out the lack of relevance of this line of argumentation in recital (59) above. Moreover, the Commission has also laid out in recitals (107) – (111) and (171) of the provisional Regulation that the State control in the Chinese MAE producers at hand goes well beyond ownership and amounting to a significant distortion according to Article 2(6a) (b), first indent of the basic Regulation.

(64) Following definitive disclosure, the CCCME reiterated its claims related to the incompatibility of Art. 2(6a) with the WTO Agreement. The claims were already addressed in recitals (51) to (61) .

(65) In view of the above, the Commission confirmed its conclusions reached in Section 3.3. of the provisional Regulation.

3.2.2. *Representative country*

(66) Following provisional disclosure, the CCCME claimed that given that there is no other country at a similar level of economic development as China and producing MAEs, the Commission should have selected another country than Brazil that is a producer of a similar product belonging to the same general category. The CCCME repeated its proposal to select Malaysia as an alternative representative country.

(67) In recital (60) of the provisional Regulation the Commission already rebutted this claim adding further elements in recital (41) above.

(68) The conclusions in recital (203) of the provisional Regulation were confirmed.

3.2.3. *Undistorted costs and benchmarks*

3.2.3.1. Factors of production

(69) Sinoboom claimed that the use of the Global Trade Atlas (GTA) ([17]) led to an unreasonable outcome for certain Factors of production ('FOPs'), such as engines and other materials ([18]), for which Sinoboom claimed substantial price differences between its own costs and the benchmark. The company claimed that in order to obtain undistorted benchmarks for these, the Commission should use Sinoboom's reported data or an alternative method.

([16]) See Section II.5. of the 3rd Plenum Resolution: „*We will deepen reform of state capital and state-owned enterprises (SOEs), improving the institutions and mechanisms for management and oversight, strengthening strategic coordination between relevant administrative departments, and working to refine the layout of the state-owned sector and adjust its structure. All this will help state capital and SOEs get stronger, do better, and grow bigger.* (…) *State capital will be steered toward major industries and key fields that are vital to national security and serve as the lifeblood of the national economy.* (…) *We will establish a system to assess SOEs' performance in fulfilling their strategic missions* (…)."

([17]) International Import Export Trade Data: Global Trade Atlas | S&P Global (spglobal.com), https://www.spglobal.com/market-intelligence/en/solutions/products/maritime-global-trade-atlas.

([18]) Considering that the claim relates to the costs of certain FOPs of Sinoboom, the specific FOPs shall not be named for business confidentiality reasons.

(70) The Commission considered that Sinoboom's data was subject to significant distortions established for the PRC as determined in Section 3.2.1 above and in recitals 64 - 185 of the provisional Regulation. Therefore, it could not be used in the calculation of the constructed normal value under Article 2(6a) of the basic Regulation. The Commission, consequently, also rejected the claim that the existence of differences between the distorted prices of FOPs used by the company and benchmark prices retrieved from GTA demonstrates that the GTA prices are "unrepresentative".

(71) Sinoboom argued that the HS codes selected by the Commission for certain FOPs differ from those reported during the verification of its questionnaire reply. The company requested the use of the reported HS codes.

(72) The Commission revised the benchmarks for the FOPs mentioned in recital (71) to ensure consistency with the HS codes reported by Sinoboom. The Commission noted, however, that the use of alternative HS codes on occasion required the use of a different unit of measurement. The Commission converted the respective benchmarks on the basis of the conversion table provided by the company. The HS codes used, together with the adjustments were disclosed to Sinoboom.

(73) Sinoboom submitted that for some FOPs, prices were expressed in different units of measurement in the provisional disclosure from those reported for the corresponding materials in the questionnaire reply. The company argued that a change in the unit of measurement can create obvious distortions in the construction of Sinoboom's normal value, since these benchmark values will be applied to material consumption rates calculated on the basis of different units of measurement. The result was a "mismatch of the cost information" alleged by Sinoboom. The company claimed that in the case of these FOPs, the Commission should have resorted to an alternative database.

(74) The Commission found the claim unsubstantiated and rejected the argument that it should resort to an alternative database because it ensured the correct use of an equivalent measurement unit in line with the one reported by Sinoboom by relying on the secondary unit ([19]) as reported in GTA. Where warranted by the specificities of certain FOPs, the Commission used an alternative unit of measurement and converted the benchmark accordingly.

(75) Sinoboom alleged that there were inconsistencies in FOP prices across different pre-disclosure annexes for four FOPs ([20]). The benchmark unit price indicated in annex 4.1 and annex 2.2 of the pre-disclosure are different. Sinoboom requested the Commission to review the discrepancy and correct it.

(76) The Commission at definitive stage disclosed a new annex 4.1 correcting the clerical error and the resulting inconsistency between FOP prices.

(77) Dingli claimed that the Commission had used a wrong benchmark for a FOP accounting for a significant share of their cost. The company suggested the use of another benchmark.

(78) After analysing it the Commission accepted the claim. As a consequence, the Commission recalculated the normal value for the company which resulted in its decrease.

(79) Terex noted that in order to correct a clerical error made by the Commission the prices of two FOPs ([21]) should be changed. The company argued that, at the provisional stage, due to a clerical error, the Commission mistyped one FOP and used a wrong benchmark for another one.

([19]) "Secondary unit" or "secondary quantity" is often used to provide additional measurement information alongside the primary unit of measurement for a particular commodity. In this case the secondary unit was always Kgs. When the primary unit was numbers or pieces, GTA provided the value in Kgs as well.

([20]) The specific FOPs shall not be named for business confidentiality reasons. Sinoboom labelled the specific FOPs as business confidential information not susceptible to summarization because their price is substantially different from a publicly disclosed benchmark, leading to disclosure of specific costs for the company.

([21]) The specific FOPs shall not be named for business confidentiality reasons.

(80) The Commission acknowledged the clerical error and accepted the claim regarding the first FOP and corrected the benchmark accordingly. Concerning the claim for the second FOP price, the Commission rejected the claim and clarified that the benchmark used was based on the secondary unit published in GTA. As a result, the Commission adjusted the normal value.

(81) The CCCME re-submitted its claim that grouping material amounting to less than 1% in the total cost of production into the category of consumables is inappropriate, claiming that for some sampled producers these inputs may represent up to a fifth of the total cost of production.

(82) The Commission noted that the CCCME did not dispute its consistent practice to express consumables as a percentage of the raw materials on the basis of the cost data reported by the producers. As the major cost items, like engines, batteries, valves, tyres and harnesses, representing more than 80% of the total COP, were not grouped, the methodology used was considered appropriate. Furthermore, the Commission considered that the number of FOPs was exceptionally high, up to 200 items, so that identifying benchmarks for each would have added unnecessary complexity to the investigation and would have not led to a different result considering the general distortions applicable in the PRC market. The Commission noted that one of the sampled exporting producers itself, grouped FOPs in its questionnaire reply. On this basis, the claim was rejected.

(83) Following definitive disclosure, Dingli claimed that the benchmark for two factors of production ([22]) needed to be corrected.

(84) In the case of the first benchmark, Dingli submitted evidence proving that the input used in its production process fell under a different customs code than that used by the Commission. The Commission accepted the claim and changed the benchmark. The new benchmark was disclosed to Dingli. In the case of the second benchmark, however, no evidence supporting the claim was provided. The Commission, therefore, rejected the claim.

3.2.3.2. Raw materials

(85) The CCCME requested that the Commission discloses to all interested parties the original GTA data extracted from the database for Brazilian benchmarks, showing the automatic matching performed by the algorithm between customs codes from different jurisdictions, used to calculate the undistorted value of raw materials.

(86) The request was accepted, the Commission included the requested data in the disclosure to interested parties.

(87) Following definitive disclosure, the CCCME claimed that the GTA data disclosed as per recital (86) was not sufficient to exercise its rights of defence. The Commission rejected the claim, since the data disclosed allowed all interested parties to see which methodology, which benchmarks and which values were used.

(88) Sinoboom claimed that for domestically purchased components, the Commission should use FOB prices by deducting transport, insurance etc. related costs from the CIF price as shown in GTA. Sinoboom purchased raw materials and other inputs from the domestic market, resulting in FOB prices that do not include ocean freight cost, insurance and import duties. GTA import prices used by the Commission included the ocean freight cost, insurance cost and in some cases import duties.

([22]) The specific FOPs were claimed to be business confidential information.

(89) The Commission used corresponding costs of production and sale in an appropriate representative country with a similar level of economic development as China for the construction of the normal value, as foreseen in Article 2(6a)(a) of the basic Regulation ([23]). These prices, retrieved from the GTA, include transport, insurance and duties, and were considered corresponding to the costs of production in the representative country. In addition, the Commission notes that the fact that Chinese exporting producers purchase from domestic sources certain input material for the manufacture of MAEs, does not mean that Brazilian manufacturers also acquire the same input material in the Brazilian domestic market. The Commission rejected the argument.

3.2.3.3. Labour

(90) Dingli and the CCCME re-submitted their claim that the 1.1 version of the Pesquisa Industrial Annual ('PIA') labour statistics table in Brazil ([24]) should be used for the calculation of labour costs instead of PIA table 2.2 ([25]) because data of industrial sector 28.22 covering manufacturing of machines, equipment and equipment for transporting and lifting loads and people, together with data specifically related to production activities, was readily available in it.

(91) The claim was rejected in recital (223) of the provisional Regulation, arguing that PIA Table 2.2 provides data on much more business specific categories. Dingli and the CCCMA provided evidence that this distinction was also possible when using PIA Table 1.1, therefore, the claim was accepted. The Commission revised the calculation of labour costs using data in PIA table 1.1 for the year 2022.

(92) The CCCME re-submitted its claim that the Commission should limit social security costs to the contributions to the Instituto Nacional do Seguro Social ('INSS') and the Fundo de Garantia do Tempo de Serviço ('FGTS') because in note 17 to the financial statements of Madal Palfinger ([26]) only INSS and FGTS dues were taken into consideration for the purposes of calculation of social security contributions.

(93) In recital (225) of the provisional Regulation, the Commission provisionally rejected the same claim as the investigation revealed that other types of social security contributions existed in Brazil and their rates can vary. The CCCME did not submit any additional substantive elements showing that contrary to the provisional conclusion of the Commission, in recital (225) of the provisional Regulation, there were no other possible social security contributions in Brazil than INSS and FGTS dues. The Commission upheld the rejection of the claim.

(94) Following definitive disclosure, the CCCME reiterated its claim that only INSS and FGTS dues should be taken into account for the calculation of social security contribution. The claim was already addressed in recital (93).

(95) Dingli submitted that only social charges paid by the employer for production staff should be considered for the calculation of the labour cost, the social charges paid for non-production staff, should be subtracted. The allocation of the contribution should be based on the rate between the total salary of production and non-production staff.

(96) The Commission found that there was merit in the argument of Dingli because only costs related to the production of the product under investigations should be taken into account when calculating the benchmark for labour costs and re-calculated the amount of social charges accordingly.

(97) Following definitive disclosure, Dingli claimed that, while the Commission accepted the claim as stated in recital (96), the re-calculation of the amount of social charges did not reflect this.

([23]) See footnote 1.
([24]) Pesquisa Industrial Annual labour statistics table https://www.ibge.gov.br/estatisticas/economicas/industria/9042-pesquisa-industrial-anual.html?=&t=downloads.
([25]) Idem.
([26]) https://ads.clicrbs.com.br/PUBLICIDADE-LEGAL/PIO/Publicidade_Legal_PIO_290324_madalpalfinger.pdf.

(98) The Commission rejected the claim because the social charges were re-calculated after the publication of provisional measures. The Commission calculated the value of contributions and divided these by the number of employees in production, effectively not considering the persons not involved in production.

(99) Dingli pointed out that when converting the hourly labour cost in Brazilian real ('BRL') into Chinese yuan ('CNY'), the Commission did not apply the exchange rate for 2021. In the provisional calculations, the exchange rate used to convert BRL into euro ('EUR') relates to the year 2022; the exchange rate used to convert EUR to CNY relates to the IP. At definitive stage, in order to arrive at hourly labour costs in the IP, the Commission applied the labour costs index for 2023 to the latest available data from 2022. The resulting labour cost was then converted to CNY using exchange rates in the IP.

(100) The Commission rejected the claim that it should apply the 2021 exchange rate as it became moot at definitive stage because 2022 data was used.

(101) Following definitive disclosure, Dingli claimed that by adjusting the 2022 Brazilian labour costs to 2023 figures, and then converting these into RMB by using the exchange rate applicable during the IP, the Commission double counted inflation. Dingli claimed that either the exchange rates for the IP should be used without adjustment, or if an adjustment was made, then the 2022 exchange rates should be used.

(102) The Commission rejected the claim, because Dingli failed to demonstrate that the variation of the labour cost index from 2022 to 2023 was linked to inflation exclusively. The Brazilian labour cost index does not show the variation in the value of salaries but the total cost of employing the labour force on an hourly basis that can be affected by other factors than inflation. Furthermore, the parallel adjustment of the 2022 index and the use of the exchange rate in the IP, therefore, did not result in double counting. On the contrary, the adjustments ensured that the benchmark reflected the labour cost to be paid in the IP based on the information at hand.

(103) Following definitive disclosure, the CCCME claimed that the Commission wrongly used the consumer price index to adjust the labour cost of 2022 to that of the IP. According to the CCCME, using the average income index was more appropriate.

(104) The Commission used the average national consumer price in the IP, derived from the Instituto Brasileiro de Geografia e Estatística ([27]) (IBGE) statistics, to index labour costs. The CCCME did not submit evidence showing why this methodology was not accurate. Hence, the claim was rejected.

(105) Following definitive disclosure, the CCCME claimed that the methodology for calculating annual working hours was wrong. The Commission, instead of multiplying the mean weekly hours actually worked relating to economy activity category 28, manufacture of machinery and equipment obtained from ILOSTAT, by the total number of weeks in a calendar year, first calculated the daily working hours by dividing the weekly hours by 5 working days per week, and then multiplied the so calculated daily working hours by the alleged 220 available working days per year.

([27]) IBGE | Portal do IBGE | IBGE, https://www.ibge.gov.br/

(106) The Commission referred to the calculations made available to interested parties which detailed how the benchmark related to labour cost was calculated. In particular, the Commission used the total annual labour costs per employee for companies with more than 30 employees and adjusted it using the average of the national consumer price index of year 2022 over the IP average. ILO statistics were used to calculate the average weekly hours worked in Brazil for 2022 in the sector (ISIC level 2 activity 28). The average annual cost per employee linked to production (indexed) was divided by the mentioned mean weekly hours arriving at value for the labour cost. On this basis, and in the absence of more specific comments, the claim was rejected. Based on the above the Commission set the hourly labour cost at 70,60 CNY in the representative country.

3.2.3.4. Electricity and Natural gas

(107) The CCCME and Dingli re-submitted the claim that the Commission should subtract 17,5 % VAT from the cost of electricity and gas and referred to recent Commission practice where this claim has been accepted.

(108) The Commission accepted the claim and subtracted the amount of VAT from the cost of electricity and natural gas, because it found that Brazilian companies were entitled to tax credits for ICMS ([28]) on electricity and gas used for industrial production.

(109) Following definitive disclosure, the CMAE claimed that the Commission should use the applicable ICMS rates of gas and electricity in Rio Grande do Sul state, where Madal Palfinger was located.

(110) The Commission established that each merchandise, when transported to another state inside Brazil, has its own ICMS rate according to its origin. The ICMS rates in Rio Grande do Sul for gas and electricity, sourced from a national grid, were, therefore not considered relevant for these factors of production. In addition, the CMAE's evidence submitted to support the claim that the ICMS for electricity was 17%, indicated that in 2024 this rate did not cover electricity for industrial use ([29]). The Commission, therefore, used an average ICMS rate for Brazil as a whole, of 17,5% for both electricity and gas, which was considered accurate. The claim was rejected.

(111) On this basis, the Commission set the price of electricity for industrial use at 0,89 CNY/kWh and that price of gas for industrial use at 0,452 CNY/kWh in the representative country.

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

(112) The CCCME re-submitted the claim that 'present value adjustment', removed from the financial expenses of Madal Palfinger since it cannot be considered as incurred in the ordinary course of business, should be removed from financial income, too. The CCCME considered this asymmetrical treatment erroneous. The Commission accepted the claim.

(113) Dingli re-submitted the claim that since the export price of Chinese producers was established at ex-works level, considering that the Commission has readily available data regarding shipping costs, shipping insurance and commissions, these should be removed from the SG&A of Madal Palfinger to ensure that the constructed normal value would be correspondingly established at ex-works level. Dingli submitted that the obligation to compare prices at ex-works level stands irrespective of the Commission's claim in recital (245) of the provisional Regulation that 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.

([28]) ICMS is the abbreviation for *Imposto Sobre Operações Relativas à Circulação de Mercadorias e Serviços de Transporte Interestadual de Intermunicipal e de Comunicações*. It is a tax on sales and services and applies to the movement of goods, transportation, communication services and other general supplying of goods. It is paid by private individuals and legal entities who commercialise any goods; by those who import products; those who acquire goods seized by customs and those who acquire petroleum products from abroad.

([29]) ICMS RS 2024 - Tabela atualizada - Tax Group - Energia elétrica (**exceto** para consumo em iluminação de vias públicas, i**ndustrial**, rural e, até 50 KW por mês, residencial), https://www.taxgroup.com.br/intelligence/icms-rs-2024-tabela-atualizada/

(114) Following this claim, the Commission identified in Note 17 in the 2023 financial statement of Madal Palfinger specific values for freight costs and commissions ([30]). In order to arrive to an ex-works level for the normal value, the Commission subtracted the cost of freight and commissions from the selling expense used for the SG&A calculation.

(115) Following definitive disclosure, the CMAE claimed that there should be no deduction for transport and commission costs from the selling expenses used for determining the SG&A costs when constructing the normal value.

(116) The Commission did not find that the claim was substantiated and did not change the conclusion in recital (113). The selling expenses of Madal Palfinger included an amount covering freight and commission expenses that needed to be deducted to ensure that an ex-works export price was compared with an ex-works constructed normal value. The claim was rejected.

(117) Following definitive disclosure, the CMAE claimed that if the Commission decided to exclude transportations costs for inputs, it must also adjust the cost of goods sold for the calculation of SG&A by subtracting from the "Cost of goods and services sold", reported by Madal Palfinger, the amount of cost of transportation for purchase of raw material and inputs of the exporting producers.

(118) The claim was rejected because, as explained in recital (115), the Commission compared the constructed normal value to the export price on an ex works level. When constructing the ex works normal value, since this must show costs at the factory gate, transport related costs of the investigated product cannot be taken into account. Moreover, the CMAE did not provide supporting evidence that the transportation costs also related to inputs. As a matter of fact, transport costs of the raw material used in the manufacture of the investigated product is a genuine cost item that must be considered when constructing the normal value and is normally associated with the cost of the inputs and not reported separately.

(119) Following definitive disclosure, the CMAE claimed that since the financial accounts of Madal Palfinger did not allow for distinguishing between domestic and export sales, cost for transportation and commission should not be deducted from the SG&A.

(120) The Commission rejected the claim because the normal value had to be established at ex-works level, so these costs had to be deducted in order to establish SG&A and profit in the representative country, regardless of the destination of the goods sold.

(121) The CCCME submitted that the Commission should not use a calculated percentage of the consumables on the total cost of raw materials and a percentage of the manufacturing overheads over the costs of manufacturing actually incurred by Chinese exporting producers to extrapolate the undistorted value of consumables and overheads. The CCCME further claimed that the Commission erred by expressing the actual transport cost of Chinese exporting producers for the supply of raw materials as a percentage of the actual cost of each raw materials and then applying the same percentage to the undistorted cost of the same raw material in order to obtain the undistorted transport cost. The CCCME questioned the outcome of the application of this method by arguing that it inevitably leads to a distorted benchmark, since it is expressed as a percentage of an allegedly distorted cost of raw materials or direct costs. The Commission should either identify the benchmark of the consumables, manufacturing overheads and transport cost separately from other input raw materials or accept Chinese exporting producers' actual cost for consumables, manufacturing overheads and transport cost.

(122) The CCCME questioned the Commission's argument in recital (237) of the provisional Regulation that adding a percentage for manufacturing overheads to the undistorted cost of manufacturing calculated based on the share of overheads expressed in the cost of manufacturing of cooperating exporting producers leads to more precise results than taking the value of overheads from the financial statements of Madal Palfinger. CCCME added that the same can be said for SG&A and profit and the Commission should also calculate the undistorted amount of SG&A and profit of sampled exporting producers in the same way, instead of relying on the financial data of Madal Palfinger.

([30]) See footnote 26.

(123) The Commission noted in recital (82) that cost items of a negligible value, as reported by exporting producers, were grouped into consumables. Overheads were expressed as a percentage of the value reported by exporting producers for all direct costs. The transport costs were expressed as a percentage of the reported raw material cost.

(124) The Commission rejected the proposal to use the cost reported by the exporting producers for consumables, manufacturing overheads and transport because under Article 2.(6a)(a) of the basic Regulation ([31]) domestic costs can only be used the extent that they are positively established not to be distorted. This has not been established in this case.

(125) The CCCME's claim did not contain any valid argument substantiating why the Commission should deviate from its established practice to source the financial data from the producers identified in the representative country. Given the fact that the exporting producers have been operating in a distorted economic environment, the percentage of their SG&A and profit cannot be considered as reflecting normal operational conditions. On this basis the claim was rejected.

3.3. **Calculation**

3.3.1. *Normal value*

(126) 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 ([32]), as described in recitals (247)-(251) of the provisional Regulation.

(127) To the costs of production established as described in the previous recitals, the Commission applied the SG&A and profit of Madal Palfinger.

(128) The SG&A costs, expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production, amounted to 20,37 %. Profit, expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 7,62 %. 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.

(129) In recital (26) of the provisional Regulation, the Commission provisionally decided to partially apply facts available to the construction of the normal value of JLG as during the verification visit the Commission was not able to verify that the data submitted in the questionnaire reply derived from the company's accounting system. Following additional explanations provided by JLG and a further verification of its accounts on spot, the Commission ascertained that the information initially submitted in JLG's questionnaire reply derived directly from the accounting system of the company. In light of this further examination, the Commission did not apply facts available.

(130) For Sinoboom, as explained in recital (25) of the provisional Regulation, during the verification visit an issue emerged related to the reporting of self-produced and purchased structural parts. The Commission concluded that the data related to costs submitted by Sinoboom was not an accurate reflection of the costs actually incurred.

(131) The Commission confirmed its provisional conclusions in recital (25) and (27) of the provisional Regulation on the partial application of Article 18 of the basic Regulation ([33]) to certain data that could not be verified in Sinoboom's questionnaire reply. The methodology used was set out in recital (267) of the provisional Regulation.

3.3.2. *Export price*

(132) The details of the calculation of the export price were set out in recital (252) of the provisional Regulation. The Commission provided specific details of this calculation in the company specific disclosure after the imposition of provisional duties. No interested parties raised any issue in this respect. Thus, the provisional findings in recital (252) of the provisional Regulation were confirmed.

([31]) See footnote 1.
([32]) Idem.
([33]) Idem.

(133) Following definitive disclosure, Dingli claimed that, based on a transfer pricing report submitted as an annex to Magni Germany's questionnaire reply ([34]), the profit level reported by Magni Germany reflected arm's length transactions, therefore, the profit margin reported by Magni Germany should be used when constructing the export price.

(134) The Commission rejected the claim, as the supporting transfer pricing report covered the year 2021 and not the IP. In addition, the report was based on information shared by Magni management and was not verified. Furthermore, Article 2(9) requires the construction of the export price on the basis of the price at which the imported products are first resold to an independent buyer. In this case, the price must be adjusted back to the Union frontier by deducting the profit of an unrelated importer. In the case at hand, Magni Germany did not qualify as an unrelated importer.

(135) Following definitive disclosure, Dingli claimed that a lower profit margin than 5% should be applied when Magni Italy resold to Magni Germany, because the former was not involved in customs clearing, warehousing and the transportation of the goods. Magni Germany performed these functions itself.

(136) The Commission rejected the claim on the grounds that there was no evidence provided that would allow for a differentiation of the profit to be deducted based on the actual functions performed by the related importer. On this basis, the Commission considered that a 5% profit was a reasonable estimate based on the margin of unrelated importers used in similar cases.

(137) Following definitive disclosure, Dingli claimed that, for resales by Magni Italy to unrelated customers whereby it was the customer that carried out the customs clearance, the Commission should rely on the sales price between Magni Italy and the customer for the establishment of the CIF price.

(138) In the absence of supporting evidence concerning the CIF value declared by the unrelated customers of Magni Italy, the Commission rejected this claim.

(139) Following definitive disclosure, Dingli claimed that the CIF value to be used for transactions via Magni Germany to end users, should be based on the value declared to customs by Magni Germany. After analysis of the information on file, the Commission accepted the claim and adjusted the export price and dumping margin accordingly.

3.3.3. *Comparison*

(140) The details concerning the comparison of the normal value and the export price were set out in recitals (253) and (263) of the provisional Regulation. The Commission provided specific details of this calculation in the company specific disclosure after the imposition of provisional duties.

(141) Dingli claimed that, rather than using a 5% profit margin, the Commission should have used the reasonable profit margin for companies performing similar operations in the Dingli group. The Commission rejected the claim on the grounds that the suggested profit margin related to transactions between related parties and could not be relied on.

(142) Therefore, the provisional findings in recital (253) of the provisional Regulation were confirmed.

3.3.4. *Adjustments*

(143) The claim that the various Terex entities involved in the production and sale of MAE operate as a single economic entity ('SEE') was provisionally rejected in recital (263) of the provisional Regulation.

([34]) The report is classified as sensitive and cannot be referenced or quoted.

(144) After the publication of the provisional regulation Terex claimed that its affiliates involved in MAE sales to the EU are under common control, all production and sales of the Terex group for the EU are directed by TGG, a company Headquartered in Switzerland, and that financial risks are borne by TGG. Terex introduced a single economic entity claim for the whole group of companies consisting of Terex Changzhou, TGG and two EU-based related traders: Genie France and Terex Italia.

(145) In addition, Terex commented on the reasons set out in Recitals (258) to (262) of the provisional Regulation provisionally rejecting its single economic entity status request.

(146) At provisional stage the Commission concluded that neither Terex Changzhou and TGG, nor TGG and the two related distributors (Genie France and Terex Italia) form a single economic entity, respectively, because their contracts contain payment of a mark-up, 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".

(147) Terex claimed that Terex Changzhou's obligation and practice for refunding TGG in case of products not meeting the necessary specifications is very limited, dispute settlement by external adjudication between the different Terex entities is due to the usage of a standard contract template and there was never a recourse to it, despite of agreeing in their contracts to a market based amount, the remuneration between TGG and Terex Changzhou is a guaranteed cost-plus markup, TGG does not sell in the EU MAEs manufactured by any unrelated entity and that Terex Changzhou does not have a direct contractual relationship with the affiliated EU sales companies, Terex Italia and Genie France.

(148) The Commission considered the explanations described in recital (146) above, but found that, rather than demonstrating the existence of single economic entity between companies in the Terex group, they highlighted that Terex Changzhou, TGG, Genie France and Terex Italia are closely related companies belonging to the same group sharing several internal management and accounting protocols. This, however, has never been disputed by the Commission. These shared management and accounting protocols may very well exist between related companies in the same group without forming a single economic entity.

(149) Regarding Terex's claim that refunds are rare and recourse to dispute settlement is non-existent in the economic relationship between Terex Changzhou and TGG, the Commission noted that despite this practice the contractual framework between these entities allows for such refunds (which whilst being rare, by company's own admission do occur) and dispute settlement and points to the fact that their relationship is different from a manufacturer and its "sales department". Indeed, the relevant clauses showed that there was a lack of solidarity between the parties.

(150) Regarding the claim that instead of market prices mentioned in the contract between the entities, the economic reality during the IP showed that Terex Changzhou received a manufacturing fee for costs and markup from TGG for its products, the Commission found that a guaranteed profit and its resulting internal financial transfer between the different entities involved in sales can be a feature of a partnership short of a single economic entity. In addition, the existence of regularly re-negotiated prices in the contract between the entities, as described in recital (146), is not negated by past cost-plus markup pricing practice between them.

(151) The Commission verified and accepted the argument that TGG does not sell in the EU MAEs manufactured by any unrelated entity but noted that in addition to MAE produced by Terex Changzhou in China, TGG sells MAEs produced by related companies in Mexico, Italy, the USA and India. For the Commission, this is an indication of a very close partnership between the different related companies in the group rather than a relationship where TGG, Genie France and Terex Italia are the exclusive "sales departments" of Terex Changzhou.

(152) The claim that it is TGG rather than Terex Changzhou that has a direct contractual relationship with the affiliated EU sales companies, Terex Italia and Genie France, was unclear and unsubstantiated. On one hand, Terex claimed that all these entities form a single economic entity, on the other hand Terex is suggesting that the existing contractual relationship between TGG and Terex Italia and Genie France is of no consequence in determining the single economic entity status between them.

(153) In view of recitals (147) to (151), the claim that the various Terex entities involved in the production and sale of MAE are operating as a single economic entity was rejected.

(154) Following definitive disclosure, Terex claimed that the Commission must look beyond formalities that render related entities as legally distinct and consider the "economic reality" of the relationship when assessing a SEE claim.

(155) The Commission rejected the claim. The Commission analysed the contractual provisions between the entities and concluded to the absence of economic solidarity between them. No further information about the contractual relationship between the entities was provided. Moreover, no evidence that the relationship, as described through the contractual arrangement was inaccurate were put forward. The Commission thus concluded that the relevant contracts contained clauses that were inconsistent with the claim that the economic reality of the relationship between the related trader and the manufacturer reflected the relationship between a manufacturer and an internal sales department.

(156) Following definitive disclosure, Terex repeated claims regarding warranty and dispute settlement clauses in the contracts between members of the group, remuneration between Terex entities and sales by TGG of MAEs produced by Terex manufacturers other than Terex Changzhou. Terex also clarified its previous submission on the relationship between Terex Changzhou and Genie France and Terex Italy, respectively. At each point Terex argued that the Commission should rely on the economic reality rather than the details of the contracts when assessing their impact on the single economic entity claim.

(157) The specific claims were already addressed in recitals (148) to (151). The reality of the relationship between the different entities was characterised by the contractual provisions applicable between them. Moreover, no evidence that the relationship, as described through the contractual arrangement was inaccurate were put forward. On this basis the Commission rejected the claim.

(158) Another claim to treat several companies as a single economic entity was introduced by JLG. They claimed that JLG Industries, Inc., JLG EMEA, JLG Tianjin and the EU Sales and Service Office (SSO) affiliates ([35]) involved in sales to the EU operate as a single economic entity, because the JLG affiliates involved in MAE sales to the EU are under common control, all production and sales of the JLG group are directed by JLG Industries, Inc. from its headquarters in the US and financial risks are borne by JLG Industries, Inc.

(159) JLG Tianjin manufactures MAEs that are sold to JLG Industries (located in the USA). In case of EU sales, JLG Industries re-sells these MAEs to JLG EMEA in the Netherlands. The latter either sells to final independent customers or to the related traders: JLG Deutschland GmbH, JLG France, JLG Sverige AB, JLG Industries (Italia) and Plataformas Elevadoras (JLG Spain). The company claimed that all the entities involved in the manufacture and sale of MAEs form a single economic entity.

(160) The Commission found that the distribution agreement between JLG EMEA and JLG Industries contains provisions that indicate the absence of a single economic entity between them, for example, their contracts contain arbitration clauses, "and partes to the contract are entitled to seek all available remedies, including all legal remedies". JLG EMEA is authorized to perform all its duties as distributor for the sale of MAEs under the contract independently and using its own discretion and it will ensure that its customers are aware of the fact that it operates and sells in its own name. JLG EMEA appointment as a distributor is non-exclusive and nothing in their contract limits JLG Industries to appoint other distributors for the Union market. JLG EMEA may provide non-competing services to third parties for its own account or for the account of third parties.

([35]) JLG Sweden, JLG Spain, JLG Italy, JLG France, JLG Germany.

(161) In addition, the Commission found that the standard distribution agreement between JLG EMEA and the SSOs contains provisions indicating the absence of solidarity and, as a consequence, of the existence of a single economic entity. For example, an arbitration clause stating that the arbitration must be conducted in accordance with the Rules of Arbitration of the Netherlands Arbitration Institute, a recommended price list by JLG EMEA to be used by distributors but allowing them to charge different prices, a fix compensation percentage that distributors are entitled to for every sale, irrespective of the final price.

(162) The Commission found that the explanation about common control, direction of sales and financial risk borne by JLG Industries, Inc., demonstrated that there is a close economic partnership between the entities involved without them necessarily forming a single economic entity. The kind of command and control described by JLG can exist between related companies belonging to the same group having pre-defined responsibilities as a trader, manufacturer and distributor.

(163) JLG argued that the rebuttals of the arguments in Recitals (258) to (262) of the provisional Regulation rejecting the single economic entity claim of Terex, were not applicable to JLG.

(164) The Commission did not examine in detail the claim that the reasons for rejecting the single economic entity claim of Terex are not applicable to JLG. The arguments underpinning the rejection of JLG's claim are self-contained and company specific, as described in detail in recitals (159), (160) and (161).

(165) In view of recitals (159), (160) and (161)above, the claim that the various JLG entities involved in the production and sale of MAE operate as a single economic entity was rejected.

(166) Following definitive disclosure, JLG repeated its claim that the JLG Group was operating as a SEE. JLG insisted on the "economic reality" within the operation of the group and argued that the Commission should disregard the contract provisions between different entities of the group.

(167) The Commission rejected the claim. The contractual provisions were freely agreed by the parties. There was no justification provided by JLG for not applying them. The Commission analysed these contractual provisions between the entities and concluded to the absence of economic solidarity between them. No further information about the contractual relationship between the entities was provided. Moreover, no evidence that the relationship, as described through the contractual arrangement was inaccurate were put forward. The Commission thus concluded that the relevant contracts contained clauses inconsistent with the claim that the economic reality of the relationship between the related trader and the manufacturer reflected the relationship between a manufacturer and an internal sales department.

3.3.5. *Dumping margins*

(168) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Hunan Sinoboom Intelligent Equipment Co., Ltd.	49,3 %
Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd	66,7 %
Terex (Changzhou) Machinery Co., Ltd	48,7 %
Zhejiang Dingli Machinery Co., Ltd	20,6%
Other cooperating companies	48,1%
All other companies	66,7%

4. INJURY

4.1. Claim on a separate injury and causation analysis of MAE with electrical or hybrid and conventional engines

(169) After provisional disclosure, the CCCME reiterated that the injury and causation factors in the investigation should have been assessed separately for MAE with electrical or hybrid and conventional engines as sub-groups or submarket segments, since it argued that these MAE were not interchangeable due to their essential disparities in product characteristics, end-use and market perceptions. It further argued that failing to do so, the Commission did not ensure an objective examination of the injury elements as requested by Article 3(2) of the basic Regulation. The CCCME repeated the argument after definitive disclosure without adding any new element to support its claim.

(170) As detailed in Section 2.4.1, the Commission concluded that both categories (conventional and electrical or hybrid MAE) shared the same essential characteristics and that it was thus justified that they were both part of the product scope and assessed as the same market segment. The differences between the two categories were not as such as to justify a separate injury and causation analysis since the products were in competition. As explained in Section 2.4.1, more MAE with conventional engine could in the future be progressively replaced by electrical or hybrid MAE and used to a larger extent outside. Therefore, the area of use of these two categories of MAE was evolving, which was an additional argument against a separate assessment. Therefore, the Commission concluded that it was not justified to make a separate assessment of the injury and causation factors for the two categories of MAE.

4.2. Definition of the Union industry and Union production

(171) In the absence of any comments regarding the definition of the Union industry, recitals (273) to (275) of the provisional Regulation were confirmed.

4.3. Union consumption

(172) In the absence of any comments regarding the Union consumption, recitals (276) to (278) of the provisional Regulation were confirmed.

4.4. Imports from the country concerned

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

(173) In the absence of any comments regarding the imports from the country concerned, recitals (279) to (281) of the provisional Regulation were confirmed.

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

(174) In recitals (286) to (288) of the provisional Regulation, the Commission detailed the methodology to determine the price undercutting and it concluded that the Chinese imports undercut and suppressed the Union industry' prices.

(175) Following definitive disclosure, JLG claimed that, with regard to JLG EMEA, the methodology used by the Commission to establish the CIF value did not allow a fair comparison of JLG's EU sales prices with the prices of the EU industry. As all EU-related sales activities were only organised by JLG EMEA, the Commission should not deduct its profit and SG&A in the construction of the export price. JLG further argued that the intra-company transfer price charged by JLG Tianjin only covered manufacturing cost, plant overheads and a profit mark-up of 7% (based on costs), which was not the same as the target price of the EU industry established based on the target profit and the actual SG&A expressed as percentages of the sales prices.

(176) The Commission rejected the argument because in order to establish a reliable import price at arm's length basis, such price has to be constructed by using the resale price of the related importer to the first independent customer as a starting point. In order to carry out this reconstruction, the rules on the construction of the export price as contained in Article 2(9) of the basic Regulation are pertinent and are applied by analogy. Article 2(9) of the basic Regulation obliges the investigative authority to establish a reliable export price at the Union frontier by adjusting for all costs incurred between the importation and resale, and for profits accruing. The application by analogy of Article 2(9) of the basic Regulation allows arriving at a price that is fully comparable to the price that is used when examining sales made to unrelated customers and also comparable to the sales price of the Union industry.

(177) Following definitive disclosure, Terex claimed that, with regard to TGG, the Commission should not deduct profit and SG&A in the construction of the export price in order to allow for a fair comparison of Terex's EU sales price and the price of the EU industry. The intercompany transfer price between Terex Changzhou and TGG only covered manufacturing costs, plant overheads and a profit. This was not the same as the target price of the EU industry, established based on the target profit and the actual SG&A, that were expressed as percentages of the sales prices.

(178) The Commission rejected the argument because in order to establish a reliable import price at arm's length basis, such price has to be constructed by using the resale price of the related importer to the first independent customer as a starting point. In order to carry out this reconstruction, the rules on the construction of the export price as contained in Article 2(9) of the basic anti-dumping Regulation are pertinent and are applied by analogy. Article 2(9) of the basic Regulation obliges the investigative authority to establish a reliable export price at the Union frontier by adjusting for all costs incurred between the importation and resale, and for profits accruing. The application by analogy of Article 2(9) of the basic anti-dumping Regulation allows arriving at a price that is fully comparable to the price that is used when examining sales made to unrelated customers and also comparable to the sales price of the Union industry.

4.4.2.1. Level of trade

(179) After provisional disclosure, the complainant, the CCCME, Sinoboom and Dingli submitted that it was not clear from the provisional disclosure whether when calculating the price undercutting (and underselling), the Commission adjusted the price of the Union producers in case they sold via related entities, as it did to the price of the Chinese sampled exporting producers.

(180) The Commission clarified that the same adjustments were made for both the exporting producers in China and the Union producers, and therefore that the Commission compared the prices at the same level of trade.

4.4.2.2. Adjustment for customs duty

(181) After provisional disclosure, the complainant submitted that the Commission should not have systematically adjusted the export price by 4,5% of the customs duty because imports under TARIC code 8428.90.90.20 were not subject to a customs duty at all. It argued that the adjustment should be done only for exports subject to duties based on the data submitted by the cooperating exporting producers, and in case the information was not reported, based on post initiation data by identifying the proportion of imports subject to duties compared to imports for which the duties were zero. The Commission accepted the claim and decreased the export price accordingly.

(182) After definitive disclosure, the CCCME submitted that the Commission should rely on the actual export data of each of the sampled exporting producers rather than on import data in the post IP period. The Commission clarified that the adjustment was based on the actual data of the exporting producers in the IP, that allowed to establish whether or not the export sales were subject to the customs duty.

4.4.2.3. Product comparability

(183) After provisional disclosure, Sinoboom and the complainant submitted comments on product classification and comparability.

(184) Sinoboom referred to provisional disclosure and the fact that for the purpose of the injury margin calculations, the Commission merged PCNs which had as a consequence that the Commission compared boom lifts with significantly distinct working heights, which allegedly resulted in an overestimation of the injury margin.

(185) The Commission accepted the claim and made the comparison on a PCN-to-PCN basis and it adjusted the calculations accordingly. As a consequence, the injury margin decreased.

(186) Sinoboom further pointed out that its provisional dumping margin was higher than the margins of other exporting producers. According to Sinoboom such difference could be caused by the methodology adopted by the Commission for the price comparison and injury margin analysis. It referred to the disclosure of product control numbers ('PCN') classification and argued that the interested parties did not have enough time to comment on the PCN comparison submitted by the parties only one day before the deadline for comments on the provisional measures. It considered that there were irregularities in the PCN classification by the Union producers, and pointed to product types that were possibly misclassified or where it could not verify the correct classification based on the description of the product types.

(187) As the reaction to the comments of the CCCME the complainant at the other hand considered that the claims were unfounded since the products were either well classified or were not produced or used for the comparison.

(188) The Commission verified the alleged misclassifications and found that one of the sampled Union producers indeed had reported two types of MAE under an incorrect PCN. The Commission corrected the PCN classification accordingly.

(189) Sinoboom also claimed that some product types could have been sold by the Union producers in unrepresentative volumes which could have led to artificially high prices for these products. If this was the case the Commission should reclassify the sales at issue and include them into closest distinct PCN for which the Union producers had representative sales in the IP.

(190) The Commission verified and confirmed that the product types sold by the Union industry and compared to the same product types sold by Sinoboom did not relate to unrepresentative quantities. There was thus no need for a reclassification of the PCNs.

(191) The complainant considered there was an apparent misclassification of certain product types declared by JLG regarding industrial or rough terrain use of selected booms and regarding the working height of certain vertical masts.

(192) During the verification process of the related companies at definitive stage, the companies agreed to the reclassification of these products into the correct PCNs.

4.4.2.4. Conclusion on prices of imports and price suppression

(193) After the corrections made to the undercutting (and underselling) margin calculations, as explained above and in Section 3.3.2, the Commission established a weighted average undercutting margin of 11,9 %.

(194) In addition to the price undercutting, the underselling margins per sampled exporting producer remained significant. On this basis, the Commission maintained the conclusion in recital (288) that the Chinese imports significantly suppressed the prices of the Union industry, which had to sell at below costs during the IP.

4.5. **Economic situation of the Union industry**

(195) In the provisional Regulation (section 4.5), the Commission detailed the macroeconomic and microeconomic indicators of the Union industry in the period considered. It concluded, in recital (320) of the provisional Regulation, that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

(196) The Commission received no comments on the level of macroeconomic and microeconomic indicators. In the absence of any comments regarding the level of these indicators, recitals (289) to (316) of the provisional Regulation are confirmed.

4.5.1. *Conclusion on injury*

(197) After provisional disclosure, the CCCME, the GOC and the complainant commented on the conclusions of the Commission with regard the assessment of the injury indicators and the injury.

(198) The CCCME considered that the injury indicators showed that the Union industry of MAE was growing and that there was no positive evidence of material injury suffered by the Union industry. It referred to the growth of production by 100%, the increase of the capacity utilization by 88% and sales volumes by the Union industry by 62%. It also argued that the price increase of 16% was higher than increase in costs which was 14%. Additionally, it argued that the employment in the Union industry increased by 40%, productivity by 43%, and the closing stock in the production decreased by 35%. The CCCME reiterated similar arguments after definitive disclosure and argued that the injury indicators data disclosed to interested parties did not provide a convincing picture of material injury of the Union industry in the IP. It however did not provide new elements to support the claim.

(199) The CCCME furthermore pointed to the financial reports by Manitou that showed an important increase in profit and sales in Northern Europe and Southern Europe ([36]), and to two articles mentioning that Haulotte increased its sales ([37]). After definitive disclosure, the CCCME added that the financial statements of Manitou referred to a "*product division*" which included MAE and which, according to the statements, "*benefited fully from the effect of price increases, which contributed 13% to sales growth in 2023*". It also argued that the statements also mentioned that "*[a]ll markets and business sectors rallied extremely strongly*" ([38]).

(200) The GOC also referred to the increase in the production capacity, production volume, sales volume, number of employees, sales price and other indicators of Union producers. It argued that the Commission failed to consider the real causes of the decline in the Union's industry's profitability.

(201) The complainant, on the other hand, considered that it was normal that even an injured industry showed some amount of production and sales volume increase, since stagnation or decrease in the context of consumption going up by 122% would have made it unlikely for the industry to survive. It argued that, accordingly, the important market boom needed to be taken into consideration.

(202) The complainant also stressed that imports from China increased from 2020 to the IP by more than 226% which was more than the increase in consumption, and market share increased by 47%, which illustrated the aggressive and fast arrival of the Chinese imports on the Union market. Therefore, despite the production increase of the Union industry between 2020 and the IP, its situation remained injurious. The complainant further argued that this was because the year 2020 was influenced by the pandemic situation and that the production in 2020 was low. The subsequent production increase remained well below the consumption increase, which meant that the Union industry could not produce and sell in line with market demands. The complainant also stressed that the employment grew less than the production, due to the need to cut costs.

([36]) 20240415_URD_EN.pdf (manitou-group.com) available at https://www.manitou-group.com/wp-content/uploads/2024/06/20240415_URD_EN.pdf.

([37]) Record start for Haulotte | Vertikal.net; https://vertikal.net/en/news/story/42361/first-half-boom-for-haulotte.

([38]) Manitou Group 2023 Annual Report at https://www.manitou-group.com/wp-content/uploads/2024/06/20240415_URD_EN.pdf, page 28.

(203) The complainant also argued that the financial statements quoted by the CCCME concerned the entire business of Manitou, whereas the product concerned represented only 11,6 % of its activities in 2023. It also argued that in the article that mentioned the increased sales by Haulotte, it was also mentioned that Haulotte could not pay its debts, that it was not able to set prices at a break-even level, and that the Chinese manufacturers were the cause for Haulotte's financial and sales problems.

(204) Moreover, the Union industry stressed that the year of 2022 was an unprecedentedly dramatic year for the Union injury, and that the minor improvement in 2023 did not show that it was not injured anymore.

(205) The Commission assessed the claims of the different parties. It considered that, contrary to what was argued by the CCCME and the GOC, the fact that some of the indicators such as the production, the capacity utilization, sales volumes, the price and the employment of the Union industry showed, during the period considered, a positive trend, could not be interpreted in isolation as a sign of a growing industry in a good state. The Commission referred to the recital (318) of the provisional Regulation, where it explained that all the indicators of the Union industry were affected, as those of many other industries, by the pandemic situation in 2020. The Union industry's production, capacity utilisation, sales and employment were thus in 2020 at an exceptionally low level therefore, since the year 2020 was the reference year, showed an increase.

(206) To illustrate the above, before the pandemic, in 2019, the volume of production and production capacity of the Union industry was higher than in 2020 and at a similar level as in the IP. The production of the Union industry in 2019 amounted to 34 669 units compared to 35 402 units in the IP, and the sales of the Union industry in 2019 amounted to 27 765 units compared to 23 794 units in the IP. The latter represented a decrease by 14% between 2019 and the IP. Similarly, between 2019 and the IP, employment decreased by 7%.

(207) The Commission therefore considered that the fact that some indicators between 2020 and the IP showed an increase was not a sign of a healthy growing industry, but rather a sign of returning to pre-Covid levels, especially in a market where consumption increased, between 2020 and the IP, by 122%, from 28 481 units in 2020 to 63 086 units in the IP. In normal market conditions, the Union industry's sales would grow in line with growing consumption. However, this was not case as between 2020 and the IP, the sales only grew by 62 % compared to the increase in consumption of 122 %. Although the level of employment increased by 40% between 2020 and the IP, it was 60 % lower than the increase in production which increased, in the same period, by 100%.

(208) The Commission furthermore recalled that the Union industry suffered, between 2020 and the IP, important losses. Even though losses decreased from 2022 to the IP, the industry continued to be in a lossmaking situation, whereas in a booming market of the MAE, under normal market conditions, it should have returned to a profitable situation.

(209) The Commission also considered that the financial statements of the Manitou Group covered all activities of Manitou Group, of which MAE was only a small part, and did not relate to the sales of MAE specifically. All data for the IP relating specifically to MAE for each sampled Union producer was assessed and verified by the Commission. Therefore, this type of statements in the financial statements of Manitou was not relevant for the assessment of the economic indicators that were verified and assessed in relation to the product concerned and the IP specifically (which did not coincide with the financial year of the company). Therefore, no conclusions could be drawn from these statements as regards the product concerned. The same applied to the information reported on Haulotte Group. The Commission based its findings on verified data from both companies, reflecting the economic situation only related to the production and sales of MAE in the period considered.

(210) After definitive disclosure, the CCCME also argued that the Commission reference to indicators in 2019 only related to the macroeconomic indicators and not to microeconomic data, and that therefore, there was a clear inconsistency in the time period of the injury assessment. Therefore, it could, in its view, not be excluded that the analysis of injury indicators relating to an inconsistent period under consideration would lead to a distorted injury picture. Furthermore, the CCCME submitted that the Commission should have taken into consideration the period close to the IP because such assessment would most accurately reflect whether the Union industry suffered from material injury in the IP, and as well because dumping, undercutting and underselling were only established for the IP.

(211) However, the fact that the Commission referred to the situation of the Union industry in 2019 was not an extension of the period considered, nor did it mean that a different period for the assessment of the microeconomic and macroeconomic indicators was used. The reference to the situation in 2019 was added to support the conclusions about the situation in the IP and the period considered, in particular in view of the fact that the year of 2020 taken as the reference for the analysis was affected by the pandemic situation. The IP and the period considered, on the basis of which the conclusions were drawn, remained unchanged (see Section 1.7). The Commission thus rejected the claim.

(212) In view of the important losses incurred by the Union industry during the period considered, the significant loss of market share (around 14 percentage points), and the deterioration of other financial indicators such as cash flow, investments, and return on investments (see recital (313) of the provisional Regulation), it could not be considered that the Union industry of MAE was a healthy industry.

(213) Therefore, the Commission maintained the conclusion that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. Effects of dumped imports

(214) In recital (323) of the provisional Regulation, the Commission concluded that the material injury of the Union industry was caused by the dumped imports of the product concerned from China.

(215) After provisional disclosure, the CCCME, the GOC and the complainant submitted comments on the conclusion.

(216) The CCCME argued that if the year 2020, which was affected by the pandemic situation, would be disregarded, the market share of Chinese imports remained rather stable with a minor increase of 3 percentage points, whilst the price level increased by nearly 50%. It argued that in the same period, the Union industry indicators increased. By excluding the year 2020 as an abnormal year impacted by the pandemic, the market share of the Union industry in the remaining period considered remained rather stable, with a minor drop of 2 percentage point. At the same time, the market share of the Chinese imports was stable, and its price increased by nearly 50%.

(217) The Commission first noted that indeed, the increase in market share of the Chinese imports from 2021 to the IP was only 3 percentage points. However, in view of the considerably increased consumption in the same period, in absolute terms, these 3 percentage points increase in market share represented an increase in imports by 104 %, from 23 124 units imported in 2021 to 33 946 units imported in the IP, which was substantial. Also, the fact that, in terms of market share of Chinese imports, the main increase occurred in the beginning of the period considered and not at the end did not attenuate the causal link, but rather explained why the Union industry was loss making throughout the full period considered.

(218) In addition, when compared to the year before the pandemic, in 2019 the volume of imports from China was around 8 800 units. Therefore, from 2019 to the IP, the volume of imports from China increased by 285%, from 8 800 units imported in 2019 to 33 946 units imported in the IP, i.e. showing a very significant increase. Although the prices of Chinese imports increased indeed, these remained far below the sales prices of the Union industry.

(219) As regards the profitability, the CCCME argued that the Union industry experienced negative profit since the beginning of the period considered. It considered that the allegation that the financial situation of the Union industry was already affected by the rise in Chinese imports, which started in 2018, was not supported by any evidence and that it was thus unsubstantiated.

(220) As mentioned in recital (281) of the provisional Regulation, at the beginning of the period considered in 2020, imports from China were already significant and amounted to over 10 000 units. The data provided by the sampled Chinese exporting producers also showed a similar volume of imports in 2019. This showed clearly that the Union industry was impacted by the low-priced imports already since 2018.

(221) The CCCME also considered that the return on investment of the Union industry was volatile throughout the period considered, since it went considerably high in 2021 up to 35-40%, and then dropped to negative in 2022, before it slightly improved in the IP. It pointed out that the substantial increase in the return on investment of Union industry took place in the year when Chinese imports also increased significantly, whilst the drop of return on investment happened in the year until the IP when the market share of Chinese imports remained rather stable. The CCCME therefore held that it could not be concluded that such poor performance was caused by the increase of imports from China.

(222) The Commission considered that the fact that there was an increase in return in investments between 2020 and 2021, which occurred in the same year as the substantial increase in the Chinese imports had no bearing on the conclusion of the Commission that the dumped Chinese imports caused injury to the Union industry, because the impact of the Chinese imports would not necessarily be reflected on the return of the investments of the same year and should be looked at over a longer period of time. The Commission concluded that its development was a consequence of Chinese imports in the previous years and of the fact that the Union industry was not profitable in the same period. Overall, the return on investments dropped in the period considered by more than 400 %. Also, as mentioned in recital (313) of the provisional Regulation, since 2020, the level of investments by the Union producers decreased by 64%, which was significant.

(223) The GOC further argued that during the IP, the profitability of the Union industry improved substantially compared to 2022, rebounding by about 10 percentage points. It argued that this showed that the Chinese prices of the imports were not the cause of the decline in the profitability of the Union industry.

(224) The Commission reiterated that the fact that between 2022 and the IP, losses improved from between [(-15%) to (-10%)] to [(-5%) to (0%)] could not be considered as a sign of recovery. According to the data of the Union industry, the drop in profitability of the Union industry in 2022 was due to 25-30 % increase of costs of raw material and the fact that companies could not increase prices for already negotiated orders in. Therefore, the losses in 2022 were exceptionally high. As mentioned above, however, the fact that between 2022 and the IP, losses subsequently decreased could not be considered as a sign of recovery as the Union industry still suffered significant losses which resulted mainly from the price suppression caused by low priced Chinese imports. It thus considered the claim unsubstantiated.

5.2. **Effects of other factors**

5.2.1. *High costs of production*

(225) The CCCME considered that the increase of prices of raw materials, and other costs such as labour costs, was the cause of the injury to the Union industry.

(226) The GOC also argued that the drop in profitability of Union companies in 2022 could not be explained by prices of imported products, especially as the prices of imported products did not fluctuate drastically. The GOC argued that the Commission did not consider the negative impact of the continuously rising raw material prices during the investigation period on the profitability of Union producers and mistakenly attributed the injury to the Chinese imports.

(227) The complainant argued, on the other hand, that prices skyrocketed during the investigation period, globally and on the Union market, due to the increase of costs and that the Union industry was unable to pass the costs increase to their customers because of the Chinese exporters' pressure. However, it considered that the cost increase was not itself injurious for companies if there were to be a level playing field. The price pressure of Chinese dumped imports made it impossible for Union producers to raise prices sufficiently, to renegotiate existing contracts and to cover the cost increase. As a result, the industry was loss-making.

(228) The Commission considered in its analysis the negative impact of the continuously rising raw material prices but concluded that this increase did not attenuate the causal link. In normal market conditions, a drop in the profitability could occur in a limited period of time where the industry would not be able to raise prices to the same extent as costs increases due to existing contracts, but after some time contracts could be re-negotiated to cover at least the costs, in particular in a booming market as in this case. However, given the prices of the Chinese imports being substantially lower than the Union prices throughout the whole period considered, and the massive increase in volumes of dumped imports in the same period, the Union industry was not able to raise prices in line with the cost increase. The Commission thus considered that increase in costs could not attenuate the causal link established between dumped imports from China and the material injury suffered by the Union industry and that the injury of the Union industry was mainly caused by the increase in low-priced imports.

5.3. **Other claims**

(229) The GOC argued that since average export prices of the Union industry were lower than their sales prices in the Union market and these export sales were profitable, it showed that there was no basis for the claim that the low-priced Chinese imports forced the Union industry to sell MAE products at low prices, affecting their profitability.

(230) The Commission, however, considered that from the fact that the export prices were lower than the domestic sales prices but profitable, it could not be concluded that the low-priced Chinese imports did not affect the profitability of the Union industry. The reason of the mostly profitable export sales was the difference in product mix of sales on the export and domestic markets in the same period. In any event, as export sales were profitable, these did not attenuate the causal link between the dumped imports and the injury suffered by the Union industry.

(231) The CCCME also argued that the Union industry was not able to offer a full range of electrical MAE, in particular the electrical MAE with higher maximum height.

(232) The complainant, on the other hand, considered that the allegations that Union producers could not satisfy electric MAE demand, were unsubstantiated and false. It defended that it was not true that Chinese producers had a particular focus on electric MAE: Union producers produced and sold electric MAE in great quantities as well. For example, more than 70% of the machines sold by Haulotte between 2020 and 2022 (the most recent data publicly available) was electric. It argued that Haulotte offered a broad range of electric machines: its vertical masts, for instance, are only available in electric formats, and its scissors and articulated lifts were available both electric and with internal combustion engine.

(233) As mentioned in recital (336) of the provisional Regulation, the Commission reiterated that 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. Therefore, the Commission considered that the product mix sold by the exporting producers was comparable to the product mix sold by the Union industry on the Union market. Any alleged differences in product mix could thus not have been the cause of the injury to the Union industry. Consequently, the claim was rejected.

(234) After definitive disclosure, the CCCME reiterated that the Union industry was not competitive, because of its limited range of electrical MAE. It referred to a statement in a report of the Chinese producer Xiamen Liteng Engineering Machinery Co., Ltd, which mentioned that companies were struggling to keep pace with market demand for new machines, particularly professional and electric, and with longer delivery time, in the context the recovery from the pandemic situation. The CCCME further pointed out to the report from 2022 by Manitou, which, in the same context (recovery from Covid pandemic), mentioned supply disruptions and transport difficulties, and by Haulotte, mentioning supply chain difficulties, inflation, the delay of production and the value of inventory as a risk for the company.

(235) The Commission first noted that the statement of the Chinese producer related to a global market and not to the Union market in particular. Also, alike the quoted reports by Manitou and Haulotte, it pointed out to a period between 2020 and 2022 influenced by the impact of the pandemic situation worldwide, which however only lasted for a limited duration. As detailed above, the Union producers had, in the IP, a full range of the electrical products, and the pandemic situation had no impact on their economic situation anymore. The Commission thus rejected the claim that the economic situation of the Union industry in the IP was the result of the lack of its competitiveness.

(236) The CCCME further considered that another cause of the injury to the Union industry was that it was unable to keep up with orders, causing (long) delivery times, and a slowdown in the Union construction market. It repeated the argument after definitive disclosure, and pointed to statements in the financial reports of Manitou which mentioned a temporary suspension of orders. The Commission found the arguments unsubstantiated. To the contrary, as shown in recital (277) of the provisional Regulation, the consumption grew, between 2020 and the IP, by 122 % which showed that there was a strongly increasing demand for MAE, not affected by the alleged slowdown of the Union construction market. Also, the financial report of Manitou and articles in the press referred to by the CCCME clearly mentioned that the longer delivery times related to the period after the Covid pandemic, which was only temporary ([39]). Conclusion on causation

(237) The Commission assessed the impact of all other known factors, taking into account the comments of interested parties, and concluded that those factors did not attenuate the causal link. Therefore, the Commission confirmed the conclusions in recitals (339) to (340) of the provisional Regulation that there was 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**

(238) 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.

(239) In the present case, the complainant claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation. In recital (343) of the provisional Regulation, the Commission provisionally established that the conditions for applying Article 7(2a) of the basic Regulation are not present. The assessment of the presence of the raw material distortions is further detailed below.

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

6.1.1. *Injury margin*

(240) In the provisional Regulation (recitals (347) to (354)), the Commission detailed the methodology used to establish margins adequate to remove injury to the Union industry.

([39]) https://www.optionfinance.fr/info-financiere-en-continu/d/2024-04-26-manitou-devisse-apres-son-retour-a-la-normale.html.

(241) Following provisional disclosure, the complainant argued that since Haulotte France and Haulotte Arges in Romania both sold almost exclusively via related distributing companies, the target price should be increased by the SG&A born by these related sales entities. In addition, it claimed that no SG&A of Haulotte Arges was added to the target price.

(242) The Commission disagreed that to establish an appropriate target price, it should have added additional SG&A costs of the related distributors. When constructing the target price only SG&A of the producer is added, and not those of related entities. The SG&A of the selling entities of exporting producers were not added to the export price either and therefore, adding additional costs on the Union producers side would affect fair comparison. On the other hand, initially Haulotte Arges did not report any SG&A costs per PCN level to construct the target price, and therefore no such costs were provisionally included. Therefore, the Commission made an adjustment to increase the target price per PCN by SG&A reported by Haulotte Arges in the general part of the questionnaire reply, which was verified.

(243) After definitive disclosure, the complainant submitted that the SG&A reported by Haulotte Arges only related to transport costs and therefore, that it should not be considered. It suggested to use instead the SG&A reported by Haulotte France, which was higher.

(244) The Commission considered that the target price for Haulotte Arges should be based on the data provided and costs incurred by Haulotte Arges and not on data of another company, even though this company was part of the same group. It thus disagreed that to establish the SG&A of Haulotte Arges, data of Haulotte France should be used. In any event, even in case the amounts were to be increased to the level reported by Haulotte France, the impact of this change on the underselling margin would be immaterial.. The Commission thus rejected the claim.

(245) After provisional disclosure, the complainant also submitted that the Commission established the target profit at the level of profitability before the increase of imports from China, i.e. in 2018. It considered that this was contrary to the basic Regulation which stipulated that the level of profitability had to be at the level to cover full costs and investments, research and development and innovation and that it should allow the company to innovate, invest and grow. It considered that the level of profitability in 2018 was inappropriate, because the Union market had structurally changed between 2018 and 2023. The complainant also gave examples of several other industries, upstream and downstream, to argue that the 7% established by the Commission was too low. The complainant further argued that the industry of MAE faced in the past years historically high investments and operational costs because of the green and digital transformation such as a development of new technologies like lithium batteries and electrification of MAE. In its view, the Commission should have taken into account that these investments were needed and consider those when establishing the target price.

(246) The Commission disagreed. The target profit was based on the data given by the industry itself and it was deemed to be a profit before the industry got injured by dumped imports, and therefore, should have in a normal situation covered costs of investments, research and development and innovation. The constant evolvement of MAE types was not specific to this industry and applied to many other industries as well, hence could not justify a higher target profit, without any link to profits made in the past. The claim by the complainant was also broad and there was no evidence submitted by the companies that would have allowed the Commission to base its target profit on a different basis. The Commission thus rejected the claim.

(247) The complainant further claimed that the target profit used by the Commission was based on a turnover value of the actual sales prices of the goods – after distribution - while it was actually applied on a cost of production born by the sampled producer which did not include distribution costs. The complainant thus considered that the distribution costs should not have been included in the calculation of the target profit. The Commission accepted the claim. The corrected target profit amounted to 7,7 %.

(248) The complainant also commented on the future social and environmental costs. It considered that the amount of the future social and environmental costs added by the Commission to the target price was too low, and that the Commission should have included CO2 costs embedded in the electricity production and costs stemming from the implementation of the corporate sustainability reporting directive.

(249) The Commission reiterated that in the present investigation it took into consideration indirect CO2 costs in the energy consumption but did not consider costs for which the companies did not bring sufficient evidence about the actual amounts, such as for indirect costs embedded in the steel production or where the costs did not stem from any obligatory requirements under a Multilateral Environmental Agreement or from ILO Conventions. This was the case of the costs to produce electrical MAE and the costs related to the implementation of the corporate sustainability reporting directive. The Commission made however corrections to the clerical errors and the overall amount of the future social and environmental costs added to the target price amounted from 2,1 to 41,5 EUR/unit depending on the company.

(250) After definitive disclosure, the complainant argued that the Commission should have accepted also the costs linked to the CO2 costs embedded in steel production and reported by Manitou, because to determine these costs, the complainant used the same source of the information as to determine the CO2 in energy (French public agency in charge of environment ADEME), and because the CO2 costs in energy were accepted by the Commission.

(251) The Commission considered that the fact that ADEME reported both on the CO2 costs in energy production and in steel production did not justify the approach suggested by the complainant. While the energy was directly consumed by Manitou and its consumption could be computed, steel was a material used in the parts used in the MAE production. It could not be thus sufficiently demonstrated by the company for how much the costs accounted and whether these costs were passed through to Manitou or whether they were absorbed by the producers of the parts buying the steel.

(252) After definitive disclosure, Sinoboom submitted that there was a clerical error in one of the tables submitted at the definitive disclosure. The Commission corrected the error which however did not impact the injury margin of Sinoboom.

(253) As mentioned in recital (353) of the provisional Regulation, 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.

6.1.2. *Comparison between dumping margin and underselling margin*

(254) In accordance with Article 7(2) of the basic Regulation, the Commission first examined whether the margin of dumping provisionally established would be higher than the margin adequate to remove the injury to the Union industry. To this effect, the Commission compared the weighted average import price of the cooperating exporting producers with the target price of the Union industry. The result of these calculations is shown in the table below:

Company	Dumping margin (%)	Injury margin (%)
Hunan Sinoboom Intelligent Equipment Co., Ltd.	49,3	54,9
Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd.	66,7	22,5

Company	Dumping margin (%)	Injury margin (%)
Terex (Changzhou) Machinery Co., Ltd.	48,7	22,9
Zhejiang Dingli Machinery Co., Ltd.	20,6	47,6
Other cooperating companies	48,1	30,1
All other companies	66,7	54,9

(255) Since the underselling margin for exporting producers JLG and Terex was lower than the dumping margin, the Commission assessed whether there were distortions on raw materials with regard to the product concerned, pursuant to Article 7(2a) of the basic Regulation.

6.2. **Existence of raw material distortions under Article 7(2a) of the basic Regulation**

(256) The Commission provisionally established, in recital (375) of the provisional Regulation, that the conditions for applying Article 7(2a) of the basic Regulation were not present.

(257) The complainant, following the publication of the provisional Regulation commented that iron or steel are distorted in China, there is a significant price difference between Chinese and EU steel products and that iron and steel are the main input in MAE, representing more than 17% of the cost of production. The complainant claimed that the Commission should also consider iron and steel embedded into another input or component of the product under investigation.

(258) The Commission found that the complainant's comments extended the scope of the raw material distortion claim from hot-rolled steel, as set out in Article 4.2 of the Notice of Initiation ([40]), to iron and steel, in general.

(259) In order to assess if the conditions of Article 7(2a) of the basic Regulation were met, the Commission first identified, for each sampled exporting producer, the existence of factors of production reported under HS codes 720837, 720851, 720852, 720853 and 7208 54 (i.e. hot-rolled steel products), then compared their total value, based on Brazilian benchmarks to the verified cost of manufacturing for each company. The Commission determined that hot-rolled steel used in the production of MAE represented less than 17% of the respective cost of production of all four sampled exporting producers. No other raw material distortions were found for any factor of production representing more than 17% of the cost of production.

(260) The Commission rejected the claim that iron and steel embedded in another input or component of the product should be taken into account for the application of Article 7(2a) of the Basic Regulation ([41]), because this Article clearly states that a single raw material must account for no less than 17 % of the cost, not a general category of products.

(261) In view of the above, the Commission established that the conditions for applying Article 7(2a) of the basic Regulation were not met.

(262) Following definitive disclosure, the CMAE claimed that the Commission did not properly examine raw material distortions for iron and steel and that the Commission should also have considered hot-rolled steel products embedded in other inputs, like parts or components, when assessing the 17% threshold.

([40]) 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).

([41]) OJ L 176, 30.6.2016, p. 21, ELI: http://data.europa.eu/eli/reg/2016/1036/oj.

(263) The Commission rejected these claims. First, it assessed the products falling within Harmonized System ('HS') Chapter 72 "Iron and Steel" and Chapter 73 "Articles of Iron and Steel". In this respect, the Commission looked at the materials that were reported as inputs by the sampled exporting producers. Second, the Commission verified if these materials were subject to distortions, as listed in Article 7(2a) of the basic Regulation. Next, the Commission found that there was no evidence on the file that a raw material, including hot-rolled steel embedded in parts and components purchased by the sampled exporting producers from their suppliers represented more than 17% of the producers' cost of production, as required by Article 7(2a) of the basic Regulation.

7. UNION INTEREST

(264) After publication of the provisional measures, the complainant, the GOC, the CCCME, a user – company Construct Machines S.R.L. and a dealer/wholesaler, company Norbert Wienold GmbH, submitted comments on the Union interest.

7.1. Interest of the Union industry

(265) After provisional disclosure, the CCCME submitted that there was no indication that the Commission's imposition of anti-dumping measures would have a positive effect on the Union industry. It considered that data presented by the Commission showed that the Union industry experienced a significant growth and therefore that the industry was expanding.

(266) The Commission referred to section 4.3 above where it concluded that despite a positive development of some of the injury indicators, the Union industry was negatively impacted by Chinese dumped imports. 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.

(267) In view of the above and in the absence of any other related claim or comment, the conclusions in recitals (356) to (360) of the provisional Regulation were confirmed.

7.2. Interest of upstream suppliers

(268) In view of the above and in the absence of any other related claim or comment, the conclusions in recitals (361) to (362) were confirmed.

7.3. Interest of users, distributors and unrelated importers and traders

(269) The CCCME argued that the imposition of anti-dumping measures was not in the interest of Union importers and end users to have a broad choice of producers and also prices. It considered that the imposition of anti-dumping measures would further limit the rental companies to access full range of MAE types at reasonable cost and delivery lead time. The CCCME also argued that limiting the access to Chinese products which focuses essentially on electric powered models would jeopardize the achievement of green transition target of this industrial sector, as it argued that the Union industry was unable to fill in the gap. The CCCME repeated the argument after definitive disclosure. It further considered that in view of the lack of MAE supply on the Union market, in particular the electric models, the safety of working conditions at height was not guaranteed.

(270) The GOC considered that the measures would have a negative effect on the level of the competition on the Union market since it would cause that the Chinese competitors will leave the Union market. It also submitted that the imposition of the measures would have a negative impact on importers and downstream users and would cause that the rental companies would increase their prices and therefore pass the increase on the consumers. It also argued that the presence of the Chinese exporting producers would provide downstream industries and consumers with more choices, and better products and services. It also considered that the measures were not consistent with the Union's policies on green development and on enhancing competitiveness of industries.

(271) The complainant, on the other hand, argued that duties would not have the effect of banning Chinese MAE from the Union market, but only to remove the effects of unfair trade practices. Moreover, it considered that as shown in the complaint, the supply from third countries other than the Union and China was rich and varied.

(272) The user, company Construct Machines S.R.L. submitted that MAE substantially improved safety standards. It considered that the imposition of measures would cause that the rental prices of MAE increase which would have a negative impact on the middle size companies. The company however did not cooperate with the investigation, and it did not submit a questionnaire reply.

(273) The company Norbert Wienold GmbH, a dealer/wholesaler of MAE produced by Sinoboom considered that there was no adequate volume produced by the Union industry of standard high level telescopic/articulating Booms (12-24m working hight) and scissor lifts (6-16m working height), and that the Union industry was not competitive.

(274) Norbert Wienold GmbH further argued that the provisional anti-dumping measures on imports of MAE would have a significant impact on the performances of the dealers, small and mid-size rental companies and the end customers with almost no benefits to the Union industry. It argued that if measures were to be imposed, the prices of MAE across Europe would increase, which would affect the supply chain, such as dealers, rental companies and the end-users. The company however did not cooperate with the investigation, and it did not submit a questionnaire reply either.

(275) The only cooperating user, Kiloutou, did not submit comments on the provisional measures.

(276) The Commission considered that the claim on the alleged not adequate volume produced by the Union industry of standard high level telescopic/articulating booms (12-24m working height) and scissor lifts (6-16m working height) was not substantiated and that the company itself mentioned that both types were produced by the Union producers Manitou and Haulotte.

(277) In addition, the Commission referred to its conclusions in recital (364) to (373) of the provisional Regulation. It reiterated that although the overall price level of MAE was expected to increase, the impact on the users which were mainly the rental companies was less significant than if they were the direct consumers. Any increase of MAE's price would directly reflect in an increase of its assets, and 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.

(278) On this basis, the Commission concluded that measures would not have a disproportionate effect on rental companies and the overall benefits of the measures outweigh the potential negative impact for importers and users. The Commission further considered that since the duties are meant to restore the level playing field, they are expected to have a positive effect on the level of the competition on the Union market and 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. Therefore, the impositions of the duties would not jeopardize the achievement of green transition target of this industrial sector.

(279) After definitive disclosure, Sinoboom mentioned that certain aspects of the case, relating to the extremely broad definition of the product under investigation and the significant differences in the MAE portfolios of the Chinese exporting producers and Union producers, raised serious causation and Union interest concerns which were not addressed. It argued that the low level of participation of Union users prevented a more meaningful discussion on the expected impact of anti-dumping measures on the Union market, because Chinese suppliers offered a wider range of products notably in terms of models, working height and power generation than the Union producers, which made the Chinese companies' effective presence in the Union market essential.

(280) Sinoboom further considered that the Commission was not able to properly reach and contact rental companies potentially interested in fully participating as interested parties in the investigation, and that one of the rental companies which submitted a written submission and participated to a hearing was not mentioned in the general disclosure document. It also mentioned that the user explained that the structurally compressed margins and long-term commitment of rental companies would place them in an extremely precarious situation following the imposition of anti-dumping measures.

(281) At initiation, the Commission contacted fourteen users identified in the complaint. Except one company (Kiloutou), no user cooperated with the investigation. No other user including the company mentioned by Sinoboom submitted comments to open file within the deadlines for comments after the provisional and definitive disclosure. In its analysis of the Union interest, the Commission nevertheless considered the fact that there may be impact on the rental companies and their margins. With regard the choice of MAE types, the Commission considered that the duties are applied to restore a level playing field and not to prevent imports of MAE from the PRC.

(282) In view of the above the Commission maintained that the overall benefits of the measures outweighed the potential negative impact for importers and users and therefore, the conclusions in recitals (363) to (368) of the provisional Regulation were confirmed.

7.4. **Conclusion on the Union interest**

(283) Considering the above, the Commission confirmed the conclusions in recital (373) of the provisional Regulation that there were no compelling reasons to come to the conclusion that it was not in the Union interest to impose measures on imports of MAE originating in the PRC.

8. **DEFINITIVE ANTI-DUMPING MEASURES**

8.1. **Definitive measures**

(284) In view of the conclusions reached with regard to dumping, injury, causation, level of measures and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned.

(285) After definitive disclosure, the complainant pointed out to a clerical error in recital (233) of the General Disclosure Document, which wrongly stated the anti-dumping duty for "All other companies", since it did not correspond to the level of the lower of the injury margin and the dumping margin set for 'All other companies'. Recital (205) showed that the injury margin amounted to 54.9% and the dumping margin to 66.7%. The Commission accepted the point and adjusted the duty rate for "All other companies" accordingly.

(286) Following the above assessment, definitive anti-dumping duties, expressed on the CIF Union border price, customs duty unpaid, should be set as below in accordance with Article 7(2) of the basic Regulation:

Company	Definitive anti-dumping duty (%)
Hunan Sinoboom Intelligent Equipment Co., Ltd.	49,3
Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd.	22,5
Terex (Changzhou) Machinery Co., Ltd.	22,9

Company	Definitive anti-dumping duty (%)
Zhejiang Dingli Machinery Co., Ltd.	20,6
Other cooperating companies	30,1
All other companies	54,9

(287) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation in respect to these companies. These duty rates are thus exclusively applicable to imports of the product under investigation originating in the country concerned and produced by the named legal entities. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and should be subject to the duty rate applicable to 'all other companies'.

(288) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([42]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the Official Journal of the European Union.

(289) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the proper application of the individual anti-dumping duties. The application of individual anti-dumping duties is only applicable upon presentation of 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. Until such invoice is presented, imports should be subject to the anti-dumping duty applicable to 'all other companies'.

(290) 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 should 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 rate of duty is justified, in compliance with customs law.

(291) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular 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, an anti-circumvention investigation may be initiated, provided that the conditions for doing so are met. 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.

(292) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other imports originating in the PRC should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.

([42]) European Commission, Directorate-General for Trade, Directorate G, Wetstraat 170/Rue de la Loi, 1040, Bruxelles/Brussel, Belgique/België. Email: Trade-defence-complaints@ec.europa.eu.

(293) Exporting producers that did not export the product concerned to the Union during the investigation period should be able to request the Commission to be made subject to the anti-dumping duty rate for cooperating companies not included in the sample. The Commission should grant such request provided that three conditions are met. The new exporting producer would have to demonstrate that: (i) it did not export the product concerned to the Union during the IP; (ii) it is not related to an exporting producer that did so; and (iii) has exported the product concerned thereafter or has entered into an irrevocable contractual obligation to do so in substantial quantities.

(294) 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 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ([43]). 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.

8.2. **Definitive collection of the provisional duties**

(295) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of provisional anti-dumping duties imposed by the provisional Regulation, should be definitively collected up to the levels established under the present Regulation.

8.3. **Retroactive collection**

(296) As mentioned in section 1.2., the Commission made imports of the product under investigation subject to registration.

(297) After provisional disclosure, the complainant referred to the conclusions in the registration Regulation which in its view concluded that the Commission considered the criteria for the retroactive collection as fulfilled. It mainly considered that the increase in imports after the initiation was massive and that it did not respond to any logic of market demand. The complainant provided estimates showing an increase from 33% up to 121%, and pictures of stocks of MAE to evidence that a stockpiling takes place.

(298) The CCCME, on the other hand, considered that the analysis of imports by the complainant was incorrect, and the increase in imports after the initiation compared to the IP was not substantial. It argued that the production of MAE was based on orders tailored made for a specific customer, and that it did not thus make any practical sense for any operator to stockpile. Secondly, CCCME argued that the lead time between orders and delivery was very important for the proper assessment of data in this investigation, since the cycle from order placing, production process, to shipment until delivery in the Union normally takes between 4 and 6 months and therefore since the peak of imports occurred in January to March 2024 it was not related to the initiation of the investigation but rather to the long ordering book made well prior to the initiation.

(299) The Commission assessed the data collected during the definitive stage of the investigation, to analyse whether the criteria under Article 10(4) of the basic Regulation were met for the retroactive collection of definitive duties.

(300) The Commission assessed in particular whether there was a further substantial rise in imports in addition to the level of imports which caused injury during the investigation period, which, in the light of its timing and volume and other circumstances, was likely to seriously undermine the remedial effect of the definitive measures, as prescribed by Article 10(4)(d) of the basic Regulation.

([43]) https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31987R2658.

(301) The Commission compared, in particular, the monthly average import volume in the IP (October 2022 to September 2023) with the monthly average import volume post-IP (November 2023 to July 2024). The Commission also compared the monthly average import volume post-IP (November 2023 to July 2024) with the monthly average import volume during the IP based on the same months (November 2022 to July 2023) for both periods, to account seasonality. For the IP, the Commission used data of cooperating exporting producers ([44]) and for the post-IP, it used data in Surveillance database ([45]).

(302) The verified data of the sampled exporting producers showed that import volumes varied considerably depending on the month of the year. For instance, imports in months such as December, March and April were in the IP more than three times higher than the average imports in July to September. Therefore, to take into account these variations and to account for the impact of seasonality, the Commission did not consider appropriate to compare the monthly average of the IP based on 12 months with the monthly average post IP based on 8 months. The import volume during the period following the initiation of this investigation until the imposition of provisional measures (November 2023 to July 2024) was thus compared with the import volume of the same period during the IP (November 2022 to July 2023). On this basis, the Commission calculated that in the post IP period, imports decreased by 3% in volume. Prices of MAE remained stable throughout the two periods.

(303) On the basis of the above, the Commission concluded that after the initiation of the investigation, the volume of imports of the product concerned from China did not increase.

(304) In addition, further elements in the file support the conclusion that substantial stockpiling after the initiation did not take place. As set out in the provisional Regulation, the Union producers only produced per order and did not maintain any significant stock of finished MAE. This was because in the IP, it was estimated that between 75% to 90% of MAE were sold on the Union market to rental companies, which require customised MAE (painted in the colours of the company with a logo). Therefore, the Commission considered that stockpiling of a MAE which was not customised and was not made for a specific customer was highly unlikely as such MAE would not correspond to the market demand.

(305) Also, the lead time between orders and delivery for MAE which is normally from 4 to 6 months was considered when assessing the data - deliveries in February and March 2024 would most likely be orders that were taken before the initiation of the investigation in November 2023. The two months of February and March 2024 were also the months with highest imports; after these months, imports started decreasing. Therefore, the higher imports in these months which were most likely the result of the orders before the initiation and were not made for the purpose of stockpiling.

(306) On the basis of above the Commission considered that in view of the decrease in imports in the post IP period, the limited possibility for stockpiling due to the long lead time and the production per order, the remedial effect of the definitive measures was not seriously undermined by the evolution of imports after the IP. Therefore, the Commission concluded that the retroactive collection of the duties was not justified.

(307) After definitive disclosure, the complainant argued that there was not sufficient evidence on seasonality of the imports. It further argued that for the IP, the Commission wrongly used a less representative monthly average based on 8 months, rather than a more appropriate monthly average based on 12 months. The complainant further argued that to assess the imports in the IP, the Commission used a wrong period since the imports were compared based on its date of sale and it assessed deliveries between March 2023 and November 2023, instead of November 2022 to July 2023.

([44]) Cooperating exporting producers represented 100% of imports in the IP.

([45]) For the post IP data based on Surveillance database, for one of the three codes under which two thirds of MAE is imported, Surveillance database does not provide data in pieces (only weight and value). Therefore, imports in units under the third code was estimated based on average value per unit of the two codes for which data in units existed.

(308) The complainant also argued that the Commission did not take into account the distortive effect of the threat of the registration and of the actual registration. In its view, the Commission also overestimated a lead time, and it pointed out that the delivery from the PRC to the Union took 30 to 45 days.

(309) The complainant further defended that it demonstrated that stockpiling was taking place. It argued that the Commission wrongly assumed that since the Union producers did not produce on stock, the Chinese producers did not do so either. It also submitted that the most recent data of one of the sampled Union producers showed that a large majority of MAE sold in the Union were not customised. The complainant as well submitted that the volume of MAE imported after the registration was still substantial. Furthermore, the complainant submitted that, based on Article 9(4) of the basic Regulation, in cases where the Commission did not register the imports, the injury margin should reflect the additional injury caused by the increased imports after the initiation. Therefore, to compensate the supplementary effect resulting from the massive stockpiling, the Commission should thus reassess the injury margin to take the stockpiling into account.

(310) The Commission disagreed that it should have compared monthly average based on the 12 months period in the IP with a period of 8 months after the IP. As also acknowledged by the complainant, the volumes of imports between the different months varied significantly and, therefore, the Commission considered it more accurate to compare periods of the same lengths, rather than to compare a period of 12 months to a period of 8 months. In this context and given the important variations in volume between imports in the different months, indeed the comparison of the periods of the same lengths was to exclude any seasonality. The Commission did not agree that it had to prove a recurrent and fixed pattern to defend why it used a comparison based on an average import in periods of the same lengths.

(311) Concerning the use of the period in the IP, the Commission indeed based itself on the data of the exporting producers which mentioned exports in the Union as of the date of the invoice, being the most accurate data available for that period. The period of 8 month that the Commission used was sufficiently long to as well take into account the effect of the registration of imports, if any, which was in place only during one and half month (between 23 May 2024 to 12 July 2024). However, from that moment, the delivery of MAE took, according to parties including the complainant, between 30 to 45 days. Taking into account this limited time lag, the comparison the Commission made was based on the best available information and was considered sufficiently accurate to conclude whether or not there was a substantial increase in imports after the initiation.

(312) The Commission also considered that it could not draw conclusions about the existence of stockpiling based on anecdotical evidence in the form of picture or emails as submitted by the complainant. Rather, the Commission based itself on import statistics after the IP and all other data available on the file, including from users and importers, which did not point to stockpiling to the extent that it would undermine the remedial effects of the duties. Therefore, despite the fact that according to the complainant one of the sampled companies sold a majority of non-customised MAE, it did not affect the conclusion that any massive increase in imports did not occur.

(313) The Commission further considered that the provisions of Article 9(4) did not apply. Imports were registered, and it was concluded that there was no further substantial increase in imports after the initiation.

(314) On this basis the Commission maintained that the retroactive collection of the duties was not justified.

9. **FINAL PROVISION**

(315) In view of Article 109 of Regulation 2024/2509 ([46]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union on the first calendar day of each month.

(316) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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, consisting of 1) chassis, 2) turret or turntables, 3) platform or baskets, 4) lifting mechanism for mobile access equipment (including booms (telescopic and or articulated, with or without jibs) for telescopic boom lift, articulated boom lift or vertical mast and scissor arms for scissor lift), excluding individual components of the sections 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 rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 and produced by the companies listed below, shall be as follows:

Company	Definitive anti-dumping duty	TARIC additional code
Hunan Sinoboom Intelligent Equipment Co., Ltd.	49,3 %	89DL
Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd.	22,5 %	89DM
Terex (Changzhou) Machinery Co., Ltd.	22,9 %	89DN
Zhejiang Dingli Machinery Co., Ltd.	20,6 %	89DO
Other cooperating companies in Annex	30,1 %	See annex
All other companies	54,9 %	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 name and function, drafted as follows: '*I, the undersigned, certify that the (volume in unit we are using) 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 [country concerned]. I declare that the information provided in this invoice is complete and correct.*' Until such invoice is presented, the duty applicable to all other imports originating in the PRC shall apply.

([46]) . Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union, ELI: http://data.europa.eu/eli/reg/2024/2509/oj.

4. Where a declaration for release for free circulation is presented in respect of the product referred to in paragraph 1, irrespective of its origin, number of items of the products 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

Member States shall, on a monthly basis, inform the Commission of the net mass and the number of items released for free circulation under TARIC codes: 8427 10 10 10, 8427 20 19 10, 8428 90 90 20, 8431 20 00 60 and 8431 39 00 10.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty under 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 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

The Annex mentioned in Article 1(2) may be amended to add new exporting producers from the People's Republic of China and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample. A new exporting producer shall provide evidence that:

(a) it did not export the goods described in Article 1(1) during the period of investigation (01/10/2022 to 30/09/2023);

(b) it is not related to an exporter or producer subject to the measures imposed by this Regulation, and which could have cooperated in the original investigation; and

(c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 4

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

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

Done at Brussels, 8 January 2025.

For the Commission
The President
Ursula VON DER LEYEN