COMMISSION IMPLEMENTING REGULATION (EU) 2025/796

of 24 April 2025

imposing a definitive countervailing duty on imports of mobile access equipment originating in the People's Republic of China and amending Implementing Regulation (EU) 2025/45 imposing a definitive anti-dumping duty on imports of mobile access equipment originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union [1] ('the basic Regulation') and in particular Article 15 thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 27 March 2024, the European Commission ('the Commission') initiated an anti-subsidy 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 10 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* [2] ('the Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 13 February 2024 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 10(6) of the basic Regulation. The complaint contained evidence of subsidies and of resulting injury that was sufficient to justify the initiation of the investigation.

(3) Prior to the initiation of the anti-subsidy investigation, the Commission notified the Government of China ('GOC') [3] that it had received a properly documented complaint and invited GOC for consultations in accordance with Article 10(7) of the basic Regulation. Consultations were held on 25 March 2024. However, no mutually agreed solution was reached.

(4) On 13 November 2024, the Commission initiated a separate anti-dumping investigation of the same product originating in the PRC ('the separate anti-dumping investigation'). On 9 January 2025, the Commission imposed definitive anti-dumping duties and definitively collected provisional duties imposed on imports of the product concerned originating in the PRC ('the definitive anti-dumping Regulation') [4]. The duties range from 20,6 % to 54,9 %. The analysis of the economic situation of the Union industry of the present Regulation is *mutatis mutandis* identical to the findings in the separate anti-dumping investigation, since the definition of the Union industry, the sampled Union producers, the period considered, and the investigation period are the same in both investigations.

[1] OJ L 176, 30.6.2016, p. 55, ELI: http://data.europa.eu/eli/reg/2016/1037/oj.

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

[3] The term 'GOC' is used in this Regulation in a broad sense, including all Ministries, Departments, Agencies and Administrations at central, regional or local level.

[4] Commission Implementing Regulation (EU) 2025/45 of 8 January 2025 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mobile access equipment originating in the People's Republic of China (OJ L, 2025/45, 9.1.2025, ELI: http://data.europa.eu/eli/reg_impl/2025/45/oj).

1.2. **Registration**

(5) By Commission Implementing Regulation (EU) 2024/2725 of 24 October 2024, the Commission made imports of the product concerned subject to registration for the purpose of ensuring that, should the investigation result in findings leading to the imposition of countervailing, those duties can, if the necessary conditions are fulfilled, be levied retroactively on the registered imports in accordance with the applicable legal provisions ('the registration Regulation') ([5]).

1.3. **Interested parties**

(6) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the Chinese authorities, known importers, and users about the initiation of the investigation and invited them to participate.

(7) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(8) The Commission did not receive any comments on initiation or request for a hearing.

1.4. **Sampling**

(9) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

1.4.1. *Sampling of Union producers*

(10) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the largest representative volume of sales and of production of the like product in the Union in the investigation period, which could reasonably be investigated within the time available.

(11) This sample consisted of three Union producers which accounted for 55 % of the estimated total production in the Union and 52 % of sales of all Union producers of the like product on the Union market. By selecting the three largest Union producers and sellers in the investigation period, located in two different Member States, the Commission covered the largest representative volume of production and sales which could reasonably be investigated within the time available, in line with Article 27(1) of the basic Regulation. The Commission invited interested parties to comment on the provisional sample. No comments were received. The Commission concluded that the sample of Union producers was therefore representative of the Union industry.

1.4.2. *Sampling of importers*

(12) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in Annex 1 of the Notice of Initiation within 7 days of the date of publication of the Notice. No importer provided the information and cooperated with the investigation.

1.4.3. *Sampling of exporting producers in the PRC*

(13) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

([5]) Commission Implementing Regulation (EU) 2024/2725 of 24 October 2024 making imports of mobile access equipment originating in the People's Republic of China subject to registration (OJ L, 2024/2725, 25.10.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/2725/oj).

(14) Sixteen exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic Regulation, the Commission selected a sample of four (groups of) companies which could reasonably be investigated within the time available. The selection of the sample was based on the largest representative volume of production, sales or exports to the Union during the investigation period which can reasonably be investigated within the time available. The Commission also considered the potential eligibility of the groups of exporting producers for the subsidy schemes included in the memorandum on sufficiency of evidence ([6]), hence also looked at production and domestic sales in addition to export sales, on the basis of the replies to the sampling questionnaires.

(15) In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned were consulted on the selection of the sample. The Commission received comments in this regard from the complainant.

(16) The complainant claimed that: (i) the sample should not include any US-owned companies as they were not likely to be eligible for most of the subsidy schemes and they would have allegedly very limited access to the Chinese domestic market; (ii) the sample overrepresented privately owned Chinese companies and underrepresented publicly owned Chinese companies which are allegedly more integrated, more present on the domestic market, and more eligible for financing and grants.

(17) The Commission, after having carefully analysed the comments, considered that the sample adequately represented the exporting producers of MAEs operating in China and that it was consistent with EU and WTO laws. At the outset, the Commission recalled that Article 27 of the basic Regulation provides for a large degree of discretion in choosing the sample according to the relevant criteria listed therein. In particular, Article 27(2) clearly states that 'the final selection of parties […] shall rest with the Commission'.

(18) With regard to the specific arguments raised by the complainant, the Commission noted that the selection of the sample was based on the largest representative volume of production, sales or exports to the Union during the investigation period that could reasonably be investigated within the time available. Therefore, the Commission decided, inter alia, to have one US-owned company in the sample, as being the biggest exporting producer and to include the biggest Chinese producer in terms of production and domestic sales in China, although this company was not among the biggest exporters to the Union.

(19) As mentioned in recital (16), the eligibility to subsidy schemes was one of the elements considered by the Commission to select the sample. However, the Commission did not make this criterion the decisive one to ensure that the selection of sample was not biased.

(20) For the same reason as above the Commission did not use as a criterion of sampling the corporate status of the company. All types of the companies: foreign owned, Chinese privately owned and Chinese publicly owned were represented. Furthermore, on the basis of the sampling replies, the Commission did not find grounds for the statement that publicly owned Chinese companies are in general more integrated, more present on domestic market, and more eligible for financing and grants than private ones.

(21) In view of all the above considerations, the Commission decided to confirm its provisional sample which accounted (in number of units) for 54 % of the production, 47 % of the domestic sales, and 59 % of the estimated total export volume to the Union from the PRC in the investigation period. The Commission considered the sample representative under Article 27 of the basic Regulation.

([6]) See t24.002997.

1.4.4. *Questionnaire replies and verification visits*

(22) The Commission sent questionnaires to the GOC, the four groups of sampled exporting producers, the three sampled Union producers, the complainant, the known importers and to users. The questionnaires for the companies were also made available online on the day of initiation.

(23) The Commission received questionnaire replies from the GOC, the four groups of sampled exporting producers, one group of exporting producers requesting individual examination, the three sampled Union producers and the complainant.

(24) The Commission sought and verified all the information deemed necessary for a determination of subsidisation, resulting injury and Union interest. Verification visits pursuant to Article 26 of the basic Regulation were carried out at the premises of the following parties:

Union producers and its association:

— Haulotte Arges (Romania)

— Haulotte Group (France)

— Manitou (France)

— Coalition to Restore a Level Playing Field in the EU Mobile Access Equipment Sector

Exporting producers in the PRC:

— Dingli Group

  — Shanghai Dingce Financial Leasing Co., Ltd., Shanghai, China

  — Zhejiang Dingli Machinery Co., Ltd., Hangzhou, China

— JLG Group

  — Oshkosh JLG (Tianjin) Equipment Co., Ltd., Tianjin, China

— Sinoboom Group

  — Hunan Sinoboom Intelligent Machinery Co., Ltd., Changsha, China

  — Hunan Sinoboom Machinery Equipment Co., Ltd., Changsha, China

  — Hunan Xiaobang Machinery Equipment Co., Ltd., Changsha, China

— Zoomlion Group

  — Changde Zoomlion Hydraulic Co., Ltd., Changde, China

  — Hunan Teli Hydraulic Co., Ltd., Changde, China

  — Hunan Zoomlion Intelligent Technology Co., Ltd., Changsha, China

  — Zoomlion Heavy Industry Science and Technology Co., Ltd., Changsha, China

  — Zoomlion Intelligent Access Machinery Co., Ltd., Changsha, China

1.4.5. *Individual examination*

(25) Terex (Changzhou) Machinery Co., Ltd., an exporting producer in the PRC submitted a request for individual examination under Article 27(3) of the basic Regulation. Subsequently, it also submitted a questionnaire reply, together with its related companies in the PRC.

(26) Taking into account the number of related companies in the Terex group, which would also have to be verified, and the number of companies already covered by the sample, the Commission concluded that it would be unduly burdensome for the timely conclusion of the proceeding to accept the individual examination request. Thus, the request was rejected.

(27) The Terex group challenged the Commission decision in this regard during the hearing requested following the definitive disclosure. However, the Terex group did not present any element that would justify the examination of its individual examination request without challenging the timely conclusion of the investigation. Furthermore, no post hearing presentation or written submission was presented afterwards. The Commission conclusion as to the number of companies of the Terex group potentially involved in the individual examination procedure, rendering the analysis of the request unduly burdensome for a timely conclusion of the investigation, was thus upheld.

1.5. **Investigation period and period considered**

(28) The investigation of subsidisation 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').

1.6. **Non-imposition of provisional measures**

(29) Pursuant to Article 12(1) of the basic Regulation, the deadline for imposition of the provisional measures was 26 December 2024. On 2 December 2024, in accordance with Article 29(a) of the basic Regulation, the Commission informed the interested parties of its intention not to impose provisional measures.

1.7. **Subsequent procedure**

(30) The Commission continued to seek and verify all the information it deemed necessary for its final findings.

(31) When reaching its definitive findings, the Commission considered the comments submitted by interested parties.

(32) On 4 March 2025, the Commission informed all the interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive countervailing duty on imports of mobile access equipment originating in the PRC ('definitive disclosure'). All parties were granted a period within which they could make comments on the definitive disclosure.

(33) Following comments received from Zoomlion Group on the definitive disclosure, the Commission adjusted the calculation of the subsidy rate for this group. The updated calculations were disclosed to Zoomlion Group ('additional disclosure'), which was granted time to comment.

1.7.1. *Comments relating to procedural issues*

(34) Following definitive disclosure, comments were received from the GOC, the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME'), Zoomlion Group and CMAE. The Commission held hearings with the CCCME, CMAE and Terex (Changzou) Machinery Co., Ltd. No interested party requested hearing with the Hearing Officer.

(35) In its comments after definitive disclosure, the CCCME raised certain procedural issues concerning lack of disclosure by the Commission of the calculations of external benchmarks to the interested parties. The CCCME also argued that its preliminary comments submitted on 2 December 2024 were not addressed in the definitive disclosure.

(36) The Commission rejected these claims. External benchmarks and detailed calculations of the subsidy amounts were disclosed to the sampled Chinese exporting producers, which are also members of the CCCME. For the sake of clarity, on 17 March 2025 these benchmarks were also added to the open file.

(37) The comments submitted by the CCCME on 2 December were submitted after the deadline provided in the Notice of initiation. The CCCME was informed that it could still re-submit its comments after definitive disclosure, which it did. Such comments are addressed in this Regulation.

1.7.2. *Comments relating to product scope and injury analysis*

(38) Following the definitive disclosure, the CCCME made similar comments to those already made in relation to the final findings established by the Commission in the separate anti-dumping investigation, concerning the product scope, the injury assessment, the causal link and the Union interest.

(39) As indicated in Section 1.1. above, the analysis of the economic situation of the Union industry of the present Regulation is *mutatis mutandis* identical to the findings in the separate anti-dumping investigation, since the definition of the Union industry, the sampled Union producers, the period considered, and the investigation period are the same in both investigations. Also, the analysis of the product scope, the causal link and the Union interest has remained unchanged. Therefore, the Commission referred for these comments of the CCCME to Sections 2.4, 5.2.3 of 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 ([7]), and to Sections 2.4, 4.1, 4.5 and 5 of the definitive anti-dumping Regulation, where these comments were addressed in detail.

2. PRODUCT UNDER INVESTIGATION

2.1. Product under investigation

(40) The product under investigation is mobile access equipment ('MAE') designed for the lifting of persons, self-propelled, with a maximum working height of 6 metres 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).

(41) 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.

(42) 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

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

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

2.3. **Like product**

(44) The investigation showed that the following products have the same basic physical and technical characteristics as well as the same basic uses:

— the product concerned;

— the product produced and sold on the domestic market of the PRC; and

— the product under investigation produced and sold in the Union by the Union industry.

The Commission decided that those products are therefore like products within the meaning of Article 2(c) of the basic Regulation.

3. **SUBSIDY**

3.1. **Introduction: Presentation of Government plans, projects and other documents**

(45) Before analysing the alleged subsidisation in the form of subsidies or subsidy programmes, the Commission assessed government plans, projects, and other documents, which were relevant for the analysis of the investigated subsidy programmes.

(46) As a preliminary remark, the Commission pointed out that China's overall economic setup is characterised by a particularly strong role of the State, with the State authorities being in turn controlled by the Chinese Communist Party ('CCP'), the ruling political entity of the country. As a result, businesses in China operate in a specific environment which – unlike the Western economies where market forces represent the dominant organizing principle – features numerous mechanisms that provide the GOC with substantial degree of control over any aspect of the economic activity in the country. This tight control prevents economic operators from acting as rational market operators seeking to maximise profits, and in fact forces them to act as an arm of the government in implementing its policies and plans.

(47) The following features are most significant in transmitting the GOC policy decisions into the day-to day business conduct of economic operators: *(i)* doctrine of socialist market economy; *(ii)* leadership of the CCP; *(iii)* system of industrial planning; *(iv)* financial system.

(48) The socialist market economy doctrine, embodied in the Chinese Constitution ([8]), grants the State an inherent and all-encompassing control over the economy, which goes way beyond the traditional standards of setting a regulatory framework within which market players are free to operate. In particular, according to Article 6 of the Constitution: *'The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production* […]. *In the primary stage of socialism, the State upholds the basic economic system in which the public ownership is dominant and diverse forms of ownership develop side by side and keeps to the distribution system in which distribution according to work is dominant and diverse modes of distribution coexist.'* Moreover, pursuant to Article 15 of the Constitution: *'The State practices socialist market economy. The State strengthens economic legislation, improves macro-regulation and control. The State prohibits in accordance with law any organization or individual from disturbing the socio-economic order.'* Moreover, Article 11 of the Constitution assigns to the State an interventionist role that goes beyond protecting the rights and interests of the non-public sectors, in that the State shall *'encourages, supports and guides the development of the non-public sectors of the economy and, in accordance with law, exercises supervision and control over the non-public sectors of the economy.'*

([8]) Constitution of the PRC, adopted on 4 December 1982, as amended; available at: http://en.moj.gov.cn/2021-06/22/c_634901.htm.

(49) These constitutional fundamentals are reflected in all relevant pieces of legislation ([9]) which emphasize the socialist market economy as the leading principle on which the Chinese economy is based. Moreover, the State, under the leadership of the CCP, indeed makes extensive use of a variety of instruments – both incentivizing and restricting – to guide the economy towards socialist modernization, i.e. towards objectives (including industrial policy objectives) set by the GOC.

(50) The leadership of the CCP – while formally enshrined in the country's Constitution ([10]), as well as in relevant secondary legislation and in the Constitution of the Party ([11]) itself – takes various forms in practice; in particular, as separation of powers does not exist in China and the Party exercises full control over the legislative ([12]), executive ([13]), as well as judicial ([14]) branches of the State apparatus; moreover, the Party oversees crucial areas of the economy, including the financial sector and industrial sectors considered strategic, notably through ownership and/or by appointing and rotating key personnel; in addition, setting up Party cells is mandatory in all enterprises with more than a three members of the Party ([15]), state-owned and private alike, and Party structures within undertakings claim frequently the right to participate in operational decision-making of companies. All these controlling mechanisms provide the CCP with a tight grip over the country's economy and allow the Party to formulate and implement its economic policies in line with its strategic considerations and priorities.

(51) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist at all levels of government and cover all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being allocated to sectors designated by the government as strategic or otherwise politically important, rather than being allocated in line with market forces ([16]).

([9]) See for example Articles 1 and 206 of the Civil Code of the PRC, according to which: '*This Law is formulated* […] *for the purposes of protecting the lawful rights and interests of the persons of the civil developing socialism with Chinese characteristics, and carrying forward the core socialist values*' and '[t]*he State upholds and improves the fundamental socialist economic systems, such as the ownership system under which diverse forms of ownership co-develop with public ownership as the mainstay, the distribution system under which multiple forms of distribution co-exist with distribution according to work as the mainstay, as well as the system of socialist market economy. The State consolidates and develops the public sector of the economy, and encourages, supports, and guides the development of the non-public sector of the economy. The State implements a socialist market economy* […]'; available at: https://www.trans-lex.org/601705/_/civil-code-of-the-peoples-republic-of-china-/. Similarly, according to Article 1 of the Company Law of the PRC: '*The Company Law of the People's Republic of China* […] *has been enacted in order to standardize the organization and activities of companies, protect the lawful rights and interests of companies, shareholders and creditors, safeguard the social and economic order and promote the development of the socialist market economy*'; available at: http://mg.mofcom.gov.cn/article/policy/201910/20191002905610.shtml.

([10]) See Article 1 of the Constitution: '*The socialist system is the fundamental system of the People's Republic of China. Leadership by the Communist Party of China is the defining feature of socialism with Chinese characteristics. It is prohibited for any organization or individual to damage the socialist system.*'

([11]) See the General Program of the CCP Constitution, according to which: '*Leadership of the Communist Party of China is the most essential attribute of socialism with Chinese characteristics, and the greatest strength of this system. The Party is the highest force for political leadership. The Party exercises overall leadership over all areas of endeavour in every part of the country*'; available at: https://english.news.cn/20221026/d7fff914d44f4100b6e586372d4060a4/c.html (accessed on 3 June 2024).

([12]) Concerning the composition of the National People's Congress and its relation to the Chinese Communist Party, see for example at: https://npcobserver.com/about-npc/.

([13]) See at: https://www.gov.cn/.

([14]) See Article 12 of the Judges Law of the PRC which provides that judges must '[u]*phold* […] *the Constitution of the People's Republic of China, the leadership of the Communist Party of China, and the socialist system*'; available at: www.npc.gov.cn/englishnpc/c23934/202012/9c82d5dbefbc4ffa98f3dd815af62dfb.shtml#:~:text=Article%201%3A%20This%20Law%20is,in%20accordance%20with%20the%20law.

([15]) See Article 30 of the CCP Constitution: '*A primary-level Party organisation shall be formed in any enterprise,* […], *government organ,* […] *and any other primary-level* [organisation where people work] *where there are three or more full Party members*'.

([16]) Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 (the 'China Report of 2017') – Chapter 4, p. 41-42, 83. See also the updated Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 10 April 2024, SWD(2024) 91 final (the 'China Report') – Chapter 4, pp. 57-59, 99.

(52) To allocate resources in line with the GOC's policy priorities, instrumentalizing the financial sector is of essence for the Chinese authorities. China's financial system remains dominated by the banking sector and the State controls the banking sector (see also Section 3.6.1) through ownership (see recitals (134) to (136)), as well as through personal ties. Accordingly, the GOC, in its capacity as the majority/controlling shareholder, has the power to appoint the most important positions within the management state-owned policy banks (see recital (144)), as well as of banks partially or fully owned by the State itself or by State-held legal persons.

(53) Moreover, articles of association of major Chinese banks regularly contain a dedicated chapter on the creation of a Party committee ([17]). For example, according to the articles of association of the Industrial and Commercial Bank of China ('*ICBC*'), '*the chairman of the board of directors of the Bank and the secretary of the Party Committee shall be the same person*' ([18]). Article 53 lists the duties of the Party committee, including the monitoring of the practical implementation of Party and State decisions in the bank. The Party committee is also playing a role in the selection and evaluation of personnel, together with the board of directors. Finally, the Party committee is to be involved in the discussion of '*major operational and management issues and major issues concerning employee interests and put forth comments and suggestions*' ([19]). Moreover, according to the provisions concerning the board of directors, the Party committee has to be consulted before material issues are decided upon ([20]). The articles of association of the Agricultural Bank of China contain identical language on establishing the Party committee in Article 58 and on the Committee's involvement in the discussion of major issues in Article 161 ([21]).

(54) Beside GOC's ability to control the banking sector through ownership and organisational setup, the GOC exercises control over the sector also in view of the applicable Chinese legislation (see section 3.6.1.4 for the analysis of the relevant regulatory documents) which requires the banks to align with the country's industrial policy objectives when making financial decisions.

(55) In conclusion, all these elements show that the structure of the legal and political system in the PRC relies on a tight grip by the government on all aspects of the economy and trade, as they are centrally managed and monitored by the GOC. The economic operators are integral part of this system not as free market actors aiming to take business decisions purely driven by economic logic and profit maximisation, but rather as one of the integral actors to implement the overarching policies and their specific objectives set by the GOC at central level.

3.2. **Government plans and policies to support the MAE industry**

(56) Against this background, the Commission analysed a number of industrial policy documents which have been successively put in place since at least 2010 and which are listed below, in order to establish whether subsidies or subsidy programmes under assessment form part of the implementation of the GOC's central planning to encourage the MAE industry.

Introduction: MAE as part of the construction machinery sector

(57) MAE are an integral part of the construction machinery sector, together with other types of equipment primarily used for construction and infrastructure work such as earthmover, cranes, etc. In China, the construction machinery sector is coordinated by the China Construction Machinery Association (CCMA), with MAE activities under the CCMA's 'Decoration and Aerial Work Platform' branch. The construction machinery sector is also known as engineering machinery sector ([22]).

([17]) Articles of association of the ICBC, Chapter 6, Articles 52-53; available at: http://v.icbc.com.cn/userfiles/Resources/ICBCLTD/download/2017/gszc_en.pdf. (last checked on 29.1.2025).
([18]) *Ibid.*, Article 52.
([19]) *Ibid.*, Article 53(3).
([20]) *Ibid.*, Article 144.
([21]) ~~Articles of association of the ABC; available at: https://www.abchina.com/en/investor-relations/corporate-announcements/announcements/201811/W020181126632885896610.pdf. (last checked on 29.1.2025).~~
([22]) ~~www.cncma.org/upfile/file/20210713/162614354466103138 4.pdf.~~

(58) Furthermore, the 14th FYP Development Plan for the Construction Machinery Industry ([23]) has references to MAE under engineering machinery. The same is true for plans at provincial and municipal levels (see below under recitals (74) to (77)). On this basis, the Commission concluded that MAE is part of construction / engineering machinery sector.

Decision No 40 of the State Council on Promulgating and Implementing the 'Temporary Provisions on Promoting the Industrial Structure Adjustment'

(59) Decision No. 40 of the State Council of the People's Republic of China is a legal document issued in 2005 aiming to promote industrial structure adjustments in China by encouraging the development of high-tech industries and the elimination of outdated production capacity. The 'Guidance Catalogue for the Industrial Structure Adjustment' ('Catalogue') ([24]), which is an implementing measure of Decision No 40, sets the basis for guiding investment directions by designating industrial sectors which should benefit from privileged access to credit. It also guides the GOC to administer investment projects and to formulate and enforce policies on public finance, taxation, credit, land, import and export. The National Development and Reform Commission ('NDRC') released, and later amended, a guidance catalogue for industrial structure adjustment in February 2013 and in 2019. The Complainant and the Commission identified a reference to the 'Large construction machinery' sector, to which MAE belongs, in the Catalogue.

Made in China 2025

(60) In 2015, the GOC published its long-term comprehensive industrial strategy known as Made in China 2025. ([25]) This strategy set milestones for upgrading the country's selected manufacturing sectors by 2020 and 2025 and reiterated the GOC's intention to use in this regard improved financial support policies, including the direction of funding through state owned banks ('SOBs') to overseas expansion of the manufacturing industry, as well as for the expansion of fiscal and other taxation support. Crucially, the Made in China Guidelines state that '*funding [will be] allocated to projects that cannot get funding from the market and need central support.*' Thus, there is substantial government support to advance the development of identified sectors of the economy through the direction of resources in implementation of policy goals ([26]).

(61) Made in China 2025 also specifically identifies the construction machinery sector. It states that the GOC plans to '*accelerate improvements to product quality. Implement an action plan for improving the quality of industrial products, targeting key industries such as ... construction machinery*' ([27]). It also plans to '*promote the R&D and industrialization of products such as ... smart construction machinery*' ([28]) and encourage '*the high-end development of the value chain of industries such as [...] construction machinery[...]*' ([29]).

(62) In this regard, through the Made in China 2025 programme, the GoC supports the rapid development of the construction machinery industry, while also promoting research and development (R&D) and the industrialisation of the sector.

([23]) Seetao, 'Construction Machinery 14th Five-Year Development Plan Released', 19 July 2021, https://www.seetao.com/details/97137.html.
([24]) https://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf.
([25]) See at: https://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm; English translation available at: https://cset.georgetown.edu/wp-content/uploads/t0432_made_in_china_2025_EN.pdf.
([26]) ISDP, 'Made in China 2025', June 2018, https://isdp.eu/publication/made-china-2025/.
([27]) Notice of the State Council on the Publication of Made in China 2025 (translated), page 16 (available at: https://cset.georgetown.edu/wp-content/uploads/t0432_made_in_china_2025_EN.pdf).
([28]) Idem, page 12.
([29]) Idem, page 23.

The Chinese 14th national Five-Year Plan

(63) Given the nature of the Chinese planning system, higher level plans – such as the 12th, 13th or 14th national Five Year Plans ('FYPs') – are to be followed-up and implemented by all relevant authorities. The national plans set out explicit obligations in that respect, such as Art. LXV of the 14th national FYP ([30]), according to which the GOC '*will strengthen the organization, coordination, and supervision of the implementation of this plan and establish and improve planning and implementation monitoring and evaluation, policy assurance, and assessment and supervision mechanisms*.' Accordingly, lower-level authorities '*must create a favourable policy environment, institutional environment, and legal environment. The annual plans shall implement the development goals and key tasks proposed in this plan*.' ([31])

(64) Crucially, the GOC unequivocally commits to provide financial support, as well as support in the form of other factors of production – such as land – to projects and sectors identified in the Plan: '[w]*e will adhere to the principle of the plan setting the direction, with fiscal spending as a guarantee, finance as support, and coordination with other policies.* […] *We will persist in making public fiscal spending obey and serve public policy, enhance financial support for major national strategic tasks, strengthen the coordination of mid-term financial plans and annual budgets, government investment plans, and the implementation of this plan, and prioritize central fiscal funds for the major tasks and major engineering projects identified in this plan. We will insist that projects follow the plan and funds and factors of production follow projects, develop a list of major engineering projects based on this plan, simplify the approval procedures for the projects in the list, and ensure that the priority is given to planning site selection, land supply, and capital needs. The land needs for individual major engineering projects are guaranteed by the state in a unified manner*.' ([32])

(65) With regard to MAE and the sector to which it belongs, the plan refers to construction machinery or engineering machinery in Under Part III '*Accelerating the Development of a Modern Industrial System and Consolidating and Strengthening the Foundation of the Real Economy'*, Chapter VIII '*In-depth implementation of the strategy of manufacturing a strong country'*, Section 3 relating to '*Promoting the optimization and upgrading of the manufacturing industry*'.

The 14th Five-Year Development Plan for the Construction Machinery industry

(66) The PRC has also published a specific FYP for the construction machinery. The CCMA itself indicated that '[o]*n July 8, 2021, entrusted by the Equipment Industry Department of the Ministry of Industry and Information Technology, the China Construction Machinery Industry Association officially released the "14th Five-Year Plan for the Development of Construction Machinery Industry"*' ([33]). This Plan categorises the construction machinery sector as '*one of the important pillar industries for the construction of the national economy*.' The industry '*will earnestly implement the decisions and deployments of the Party Central Committee during the "13th Five-Year Plan" period*' and '*vigorously promote and implement supply-side structural reforms*.' This FYP confirms the construction machinery sector's objectives in the framework of the Chinese economy as a whole. The top-down direction by the Chinese state is clear when the Plan holds, for instance that the '*(…) degree of internationalization, technology and innovation capabilities, scale and total volume, quality and quality, comprehensive capabilities of the value chain, and many other aspects have been significantly improved, making great contributions to the construction of the national economy*.' The plan leaves no room for free market development, setting clear environmental and technical goals for the industry: '*[g]reat progress has been made in the adjustment of the industry structure. Significant achievements in innovation and development, rapid development of intelligent construction machinery, major technical equipment (…), further improvement in quality, performance and reliability and durability, wide application of the industrial Internet, outstanding results in green development, solid progress in standardization, and group standards should be developed in the industry*.'

([30]) See: https://www.gov.cn/xinwen/2021-03/13/content_5592681.htm. An English translation is available at: https://cset.georgetown.edu/wp-content/uploads/t0284_14th_Five_Year_Plan_EN.pdf.
([31]) See Art. LXV, Section 1 of the Plan.
([32]) See Art. LXV, Section 3 of the Plan.
([33]) www.cncma.org/article/10579 (last checked on 24.2.2025).

(67) The plan pays particular attention to innovation. The 14th FYP for Construction Machinery highlights that, during the 13th FYP (2016-2020), the construction machinery industry deeply implemented the innovation-driven development strategy. The construction machinery industry '*[c]ontinuously makes new breakthroughs in the R&D and application promotion of high-end and intelligent product core technologies. It fully meets the needs of major projects of national economic construction, and a large number of scientific research achievements have emerged. As a result, it has become an important driving force for the continuous growth of the industry.*' ([34])

(68) Finally, the plan is skewed towards high-end products – a recurring theme in the subsidisation of MAE. Under the heading 'New high-tech construction machinery innovation pilot project', the FYP highlights that the GoC '*encourage[s] enterprises to focus on high-end products.*' It also aims at the basic technologies and key common technologies in the intelligent field of high-end construction machinery. ([35]) More specifically, the plan refers to *'aerial work vehicle' and 'elevating work platform'* when addressing *'3. Focus on supporting and encouraging the development of construction machinery products and key components'*. ([36])

(69) In addition, with respect to inputs for construction machinery, the 14th FYP for the Construction Machinery notes that *'[t]here is still a certain gap, including core components of construction machinery such as high-end hydraulic components, transmission components and engines.*' It aims to improve the construction machinery sector by creating '*an industrial collaborative innovation system covering main engine equipment and key components, accelerate the breakthrough and industrialization of core components and common key technologies, and build a world-class advanced construction machinery industrial cluster.*' ([37]).

3.3. **MAE as encouraged industry**

(70) The GOC claimed that MAE is not an encouraged industry as the product is not listed in the 'Catalogue', 14th FYP for the Construction Machinery, or in the 'Made in China 2025' document.

(71) On these grounds, the GOC considered that schemes relating to preferential treatment should not be investigated due to the lack of specificity. The GOC also observed that the fact that some of the upstream and downstream industries belong to encouraged industries does not have an impact on the status of MAE industry itself and that schemes relating to the provision of inputs for less than adequate remuneration should not be investigated either.

(72) The investigation revealed, however, that MAE is a part of the construction machinery sector which itself is an encouraged industry as referred to in Decision No 40 (see recital (59), the Made in China 2025 document (see recital (61) and in the 14th FYP (see recital (65)). The 14th FYP for the Construction Machinery (see recital (69)) identifies MAE as part of the sector with sections relating to 'aerial work vehicles' and 'elevating work platforms'.

(73) There are also references to MAE being an encouraged industry in several documents at provincial and municipal level.

(74) The Zhejiang Province 14th FYP on Developing High-End Equipment Manufacturing identifies *'intelligent aerial work platforms*' as part of the engineering machinery ([38]).

([34]) The 14th Five-Year Plan for the Construction Machinery Industry, page 16.
([35]) Idem, pages 139-140.
([36]) See Appendix to 14 FYP for Construction machinery.
([37]) Idem pages 139-140.
([38]) https://zjjcmspublic.oss-cn-hangzhou-zwynet-d01-a.internet.cloud.zj.gov.cn/jcms_files/jcms1/web1585/site/attach/0/157823f5651e42ea85038c86b74becca.pdf.

(75) The Construction Plan for industrial transformation and upgrading demonstration zone in Xuzhou, Jiangsu 2019-2025 ([39]) envisages building of '*a world-class equipment manufacturing industry centre*' and '*focus on the development of engineering machinery industry with lifting*'. Development of Xuzhou cluster is confirmed also by press releases ([40]). According to the Article, the Xuzhou engineering machinery cluster, is one of the six international advanced manufacturing clusters that Jiangsu province has focused on building during the 14th Five-Year Plan, while Xuzhou Municipal Party Committee and Municipal Government established construction machinery as the city's 'No. 1 industry' and successively compiled the 'Xuzhou Construction Machinery Industry Development Plan (2021-2030)' and 'Xuzhou Construction Machinery Industry Cluster Innovation Development Action Plan (2022-2025)' to '*promote the innovative development of the city's construction machinery industry, continue to expand the scale of the industry, comprehensively enhance the competitiveness and influence of the industry, and set a new goal of building the Xuzhou construction machinery industry cluster into a world-class advanced manufacturing cluster*'.

(76) As far as Hunan province is concerned, Changsha Municipality work report 2024 ([41]) envisages implementation of the construction machinery industry cluster promotion action, and promotion of the construction of projects such as Zoomlion Smart Industrial City, Sunny Science and Technology City, and Xingbang Intelligent International Smart Manufacturing City. Hunan province support for MAE industry is also confirmed by press releases: '*The improvement of stability and smoothness is a microcosm of the systematic transformation and upgrading of aerial work platform manufacturers in Hunan. At present, Hunan is focusing on this advantageous industry, strengthening the reconstruction of the industrial base and the research and development of major technical equipment. Many aerial work platform companies are working towards the development direction of lightweight products, large loads, low energy consumption, precise and intelligent control, and have made certain breakthroughs*' ([42]).

(77) Furthermore, Zoomlion signed a strategic cooperation agreement with the Xiangtan Municipal Government, relying on Xiangtan's advantages in special steel, new materials and other fields, to jointly build Zoomlion's supporting industrial park. ([43]) The second Hunan producer of MAE benefitted from the financial support of SOE Hunan Chasing Financial Holding ([44]). Both Zoomlion and Sinoboom Groups are sampled exporting producers in this investigation.

(78) The investigation revealed that the PRC provides key support to high and new technology enterprises, a sector that encompasses MAE. As further explained in Sections 3.10.1 and 3.10.2, all sampled exporting producers held a certificate for new and high technology enterprise confirming that MAE exporting producers belong to an encouraged industry.

(79) Finally, as indicated in recital (57), CCMA has in its structure a separate branch dedicated to MAE.

(80) Based on the above the Commission concluded that MAE, being part of the construction machinery sector, is an encouraged industry.

(81) Following definitive disclosure, CCCME claimed that the policy documents and plans described by the Commission in Sections 3.2 and 3.3 were overly broad and referred to the construction machinery sector, '… *therefore lacking the necessary specificity to demonstrate concrete state intervention in the MAE industry*'.

([39]) https://www.ndrc.gov.cn/fzggw/jgsj/zxs/sjdt/202004/P020200401627898788135.pdf.
([40]) Xuzhou Engineering Machinery Cluster: Consolidate the 'No. 1 Industry' and Call for the 'China Engineering Machinery Capital' (https://www.js.gov.cn/art/2022/11/14/art_63909_10663820.html).
([41]) https://hnfzyjy.hnu.edu.cn/info/1109/6191.htm.
([42]) http://cpc.people.com.cn/n1/2024/0529/c64387-40245669.html.
([43]) http://www.yuelu.gov.cn/rdzt/1757360/qsh/plzl/202203/t20220323_10509367.html.
([44]) https://stock.hnchasing.com/main/aboutUs/jtyw/detail/1600404406236819458.html.

(82) Also, the GOC reiterated its argument that the fact MAE is a part of the construction machinery sector does not automatically imply that MAE products are encouraged, even if construction machinery sector is listed as an encouraged industry.

(83) The Commission disagreed. It has been demonstrated that MAE is a part of construction machinery sector and thus it is a part of the encouraged industry. Furthermore, several documents on provincial and municipal level quoted in recitals (74) to (77) have direct references to '*aerial work platforms*' or '*engineering machinery with lifting*'. Provincial and municipal plans are considered prolongations of national plans which direct their implementation to subcentral level. Furthermore, MAE producers benefit from Enterprise Income Tax ('EIT') reduction for High and New Technology Enterprises as described in Section 3.3.1 below. If these companies are eligible for this reduction, they are considered to be active in the High-tech Fields supported by the State.

3.4. **Partial non-cooperation and use of facts available**

3.4.1. *Application of the provisions of Article 28(1) of the basic Regulation in relation to the GOC*

(84) Although the GOC responded to certain information requests from the Commission during the investigation, there were notable instances of low cooperation. Specifically, in its reply to the government questionnaire, the GOC failed to provide essential information related to the preparation, monitoring, and implementation of various schemes. All these critical elements were meticulously documented in the Article 28 letter sent to the GOC. The GOC responded with comments, which the Commission addressed in the sections below.

3.4.2. *Application of the provisions of Article 28(1) of the basic Regulation in relation to preferential lending*

(85) In order to obtain the necessary information from the financial institutions in China effectively and for administrative convenience, the Commission requested the GOC to forward specific questionnaires to any financial institution that had provided loans or export credits to the sampled companies.

(86) The GOC considered that the Commission's request to the GOC to forward the specific questionnaire violated Articles 12.1 and 12.9 of the SCM Agreement. It considered that the obligation to conduct the investigation and collect information from financial institutions lies with the investigating authority and it cannot request the GOC to forward the questionnaires to financial institutions on a presumption that these entities are public bodies. It argued that this presumptive approach is inconsistent with Article 1.1(a)(1) of the SCM Agreement. The GOC also argued that the Commission already had access to the list of commercial banks of the sampled exporting producers and it could have sent the questionnaires directly to the financial institutions at stake.

(87) The GOC further stated that the financial institutions were not properly notified of the information required of them, were not given 30 days to provide the requested information and were also not provided ample opportunity to provide the relevant information in writing within the meaning of Article 12.1 of the SCM Agreement. Besides, the GOC also considered that staff members of those commercial banks are not allowed to disclose state secrets or commercial secrets that they have become aware of in the course of their employment according to Article 53 of the Commercial Banks Law, and therefore cannot respond to the questionnaire.

(88) The Commission disagreed with this view. First, it is the Commission's understanding that the information requested from State-owned entities is available to the GOC for all entities where the GOC is the main or major shareholder. In addition, whereas the Commission did not assume in any way that the entities are public bodies, it considered that the GOC also has the necessary authority to interact with the financial institutions even when they are not State-owned, since they all fall under the jurisdiction of the National Financial Regulatory Administration ('NFRA'), which replaced the China Banking and Insurance Regulatory Commission ('CBIRC') ([45]) in 2023. In this regard, the fact that the Commission could have contacted the financial institutions concerned directly is irrelevant. The form and modalities to collect the necessary information remain within the discretion of the investigating authority ([46]). The Commission also noted that the GOC had forwarded the questionnaire to certain banks in previous investigations ([47]) without questioning the approach taken by the Commission. Furthermore, as far as the information requested and deadline to submit a questionnaire reply is concerned, the Commission did not receive any request for clarification or a deadline extension request from any financial institution.

(89) The Commission did not address its questionnaire to the staff of the financial institutions but rather to the institutions themselves. In any case, the fact that certain information may be considered as State or commercial secret is irrelevant in the framework of an anti-subsidy proceeding given the confidentiality treatment given to any submitted information considered confidential. Furthermore, the sampled producers were requested to provide a bank authorization granting express permission to the representatives of the Commission to review all documents ([48]) pertaining to the loans provided by individual financial institutions. Some of the sampled groups provided the requested authorisation for certain types of loans.

(90) In the absence of such information, the Commission considered that it had not received crucial information relevant to this aspect of the investigation. Therefore, the Commission informed the GOC that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through preferential financing. Specifically, the Commission informed the GOC that it had not received any reply from any of the Chinese banks that had provided preferential lending to the sampled producers. On this basis, the Commission could not confirm the claims made by the GOC relating, inter alia, to credit worthiness and the provision of loans or other financing instruments from which the sampled producers had benefitted. Furthermore, the GOC failed to provide information concerning the shareholding of the banks communicated by sampled producers as well as failed to demonstrate and substantiate the formation mechanism of the loan prime rate as explained in its questionnaire reply.

(91) On 21 January 2025, the GOC submitted comments concerning the Commission's letter dated 15 January 2025 indicating its intention to apply facts available in accordance with Article 28 of the basic Regulation ('Article 28 Letter').

(92) In response to the request to forward Appendix A to the financial institutions, the GOC claimed that the Commission should directly address its information requests to the relevant entities. Furthermore, the GOC claimed that financial institutions are independent economic entities, not affiliated with the GOC. Furthermore, the GOC claimed that Appendix A requests confidential and business-sensitive information.

([45]) The NFRA replaced the China Banking and Insurance Regulatory Commission ('CBIRC') in 2023.
([46]) Panel Report, *China – Broiler Products (Article 21.5 – US)*, paras. 7.229-7.231. WT/DS427.
([47]) See http://data.europa.eu/eli/reg_impl/2013/1239/oj, recital (139) in OJ L 325, 5.12.2013, pp. 88 (Solar panels case) and http://data.europa.eu/eli/reg_impl/2018/1690/oj, recital (48) in OJ L, 283, 12.11.2018, pp. 7 (Tyres case).
([48]) Such as, but not limited to: loan agreements, loan applications, internal assessment of the bank on the loan application, loan approval documents.

(93) The Commission disagreed with this view. First, it is the Commission's understanding that the information requested from state-owned entities (be it companies or public/financial institutions) is available to the GOC for all entities where the GOC is the main or major shareholder. Indeed, according to the Law of the People's Republic of China on State-Owned Assets of Enterprises ([49]), State-owned assets supervision and administration agencies established by the State-owned Assets Supervision and Administration Commission of the State Council and local people's governments perform the duties and responsibilities of the capital contributor of a State-invested enterprise on behalf of the government. Such agencies are thus entitled to receive returns on assets, to participate in major decision-making and to select managerial personnel of State-invested enterprises. Furthermore, according to Article 17 of the above-mentioned Law on State-owned Assets, State-invested enterprises shall accept administration and supervision by governments and relevant governmental departments and agencies, accept public supervision, and be responsible to capital contributors.

(94) In addition, the GOC also has the necessary authority to interact with the financial institutions even when they are not State-owned, since they all fall under the jurisdiction of the Chinese banking regulatory authority. For example, according to Articles 33 and 36 of the Banking Supervision Law ([50]), the NFRA has the authority to require all financial institutions established in the PRC to submit information, such as financial statements, statistical reports and information concerning business operations and management. The NFRA can also instruct financial institutions to disclose information to the public.

(95) Furthermore, the Commission requested the GOC merely to forward the specific questionnaires (Appendix A) to the relevant financial institutions and provide the Commission with the proof that the GOC transferred the above-mentioned specific questionnaires. Appendices contained information for the financial institutions in question regarding submission deadlines and methods of submission as well as treatment of non-confidential data. The GOC of China simply failed to forward these questionnaires.

(96) In parallel, the Commission requested the GOC to demonstrate the system and applicable mechanism leading to the formation of the loan prime rate ('LPR') in order to assess the quality and transparency of the rate used by Chinese financial institutions to grant loans to the MAE sector. The GOC refused to demonstrate such mechanism. The GOC claimed to have explained the Loan Prime Rate formation mechanism.

(97) The Commission considered the comments to be ill-founded. The Commission repeatedly asked specific clear and relevant questions to which the GOC refused to supply pertinent information. The GOC did not provide evidence of or demonstrate the LPR formation mechanism neither in its questionnaire reply nor during the on the spot verification, preventing confirmation of how it is established.

(98) In the absence of the requested information, the Commission considered that it had not received crucial information relevant to this aspect of the investigation. Therefore, the Commission concluded that it had to rely on facts available for its findings concerning preferential financing.

(99) Following definitive disclosure, the CCCME reiterated the position of the GOC that the application of Article 28 of basic Regulation shall not be derived from the GOC's refusal to collect the information requested by the Commission, which shall be sought by the Commission on its own from other parties of the investigation. However, this general statement did not challenge the Commission's specific observations made in recitals (93) to (95). Therefore, the decision to rely on facts available with regard to preferential financing was upheld.

([49]) Law of the People's Republic of China on State-Owned Assets of Enterprises, Decree No. 5 of the President of the People's Republic of China, 28 October 2008, article 11 & 12.

([50]) Law of the People's Republic of China on Regulation of and Supervision over the Banking Industry, Order No. 58 of the President of the People's Republic of China, 31 October 2006.

3.4.3. *Application of the provisions of Article 28(1) of the basic Regulation in relation to the grants / export credit insurance / land use rights / electricity / income support / input materials*

(100) The Commission informed the GOC in Article 28 Letter it had not received crucial information relevant to certain investigated subsidy schemes such as grants, export credit insurance, and the provision of land use. Therefore, the Commission informed the GOC that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through the above schemes.

(101) With regard to grants, the GOC failed to provide evidence that it contacted sub-central governments to request information about the grants provided to the sampled producers. Hence, it did not report any grants received by the sampled producers of MAE or provide information on their eligibility criteria or legal basis.

(102) With regard to export credit insurance, the Commission noted that Sinosure was actually the only financial institution which provided the reply to Appendix A questionnaire. However, this reply was deficient in many crucial aspects:

— Sinosure failed to provide information concerning the investment income reported in its annual report;

— Sinosure failed to provide supporting evidence concerning issues relating to its financial statement such as operating expenses, revenues, investment incomes, overall sum insured, sum insured of the machinery industry sector;

— Sinosure failed to provide information on its articles of association;

— Sinosure failed to provide information concerning sampled producers despite the existence of relevant company authorisations;

— Sinosure failed to provide supporting information concerning the independence of its credit risk assessment system.

(103) All those documents and information were also not provided by the GOC although they were requested by the Commission during the verification visit.

(104) Following definitive disclosure, the GOC claimed that the Commission had failed to prove that the information not provided was necessary information and contested the application of Article 28(1). In this regard it referred to the Panel and Appellate Body reports in US – Supercalendered paper ([51]) which concluded that the investigating authority '*first needed to establish that the information discovered was information necessary to complete a determination on subsidization of the product under investigation*' and that it '*cannot simply infer, without further clarification, that the missing information is "necessary" within the meaning of Article 12.7*'. The GOC also argued that it had supplied a lot of materials regarding the export credit insurance programme and that the information on record was enough for the purpose of investigation.

(105) The Commission notes that information is to be regarded as 'necessary' within the meaning of Article 28(1) of the basic regulation if it is such as to enable the Commission to establish appropriate findings in an anti-subsidy investigation. In this regard, the Commission considers that the information requested was necessary in this regard, especially to assess if Sinosure was acting as a public body, was under government control, was acting according to market principles or was profit making. The Commission also considered that the limited information provided by the GOC and the claims made in its questionnaire could not be verified against valid supporting evidence after the GOC refused to provide the requested underlying documents or evidence, leading to the warranted application of facts available in this regard. On this basis, these claims were rejected.

([51]) Panel Report, US – Supercalendered Paper, para. 7.175; Appellate Body Report, US – Supercalendered Paper, paras. 5.81.

(106) With regard to land use rights, the GOC failed to provide information with regard to the acquisition of land by the producers/exporters of MAE. The GOC was unable to explain how in some circumstances companies were able to receive land for free. The GOC failed to provide data concerning possible benchmarks with regard to the provision of land use rights.

(107) With regard to electricity, income support and input materials, the Commission did not receive several documents and information requested. These documents are listed in the Article 28 letter sent to the GOC ([52]). However, as mentioned in Section 3.11, the Commission could not conclude on the countervailability of these programmes.

(108) In its reply to the Commission's Article 28 Letter, the GOC objected to the application of facts available.

(109) The GOC did not comment on the failures to provide requested documents and information concerning grants and export credit insurance.

(110) On land use rights, the GOC argued that the Commission requested documents and information that did not exist.

(111) The Commission disagreed with this statement. The Commission could ascertain during the verification visit with the GOC that it is fully aware of land use right transactions and could demonstrate the price paid for land use right acquired by a sampled exporting producer. Contrary to the GOC's statement, the investigation revealed that these documents do exist and were available to the GOC. In particular, the Commission could infer this from the fact that the GOC could access the details of land use right transactions (including announcement publication and transaction price) through a web-based platform ([53]) during the verification visit whereas such information had not been provided as part of its questionnaire reply. On this ground, the Commission considered that the GOC did not act to the best of its abilities when addressing the Commissions requests for information and documents.

(112) Since the Commission received no information from the GOC concerning the elements listed above, the Commission considered that it had not received necessary information relevant to the investigation and that it had to rely on facts available for its findings concerning grants, export credit insurance and provision of land use right for less than adequate remuneration.

3.5. Subsidies and subsidy programmes for which the Commission makes findings in the current investigation

(113) On the basis of the information contained in the Memorandum on sufficiency of evidence, the Notice of Initiation and the replies to the Commission's questionnaires, the following subsidies by the GOC were investigated:

— Provision of preferential financing and directed credits by State policy banks and State-owned commercial banks (e.g. preferential loans, credit lines, preferential bonds, bank acceptance drafts, preferential export financing and insurance)

— Grant programmes

— Government provision of goods and services for less than adequate remuneration ('LTAR')

  — Government provision of land use rights for less than adequate remuneration.

  — Government provision of electricity for less than adequate remuneration.

  — Government provision of inputs (namely engines, batteries, hydraulic parts and lifting systems, tires, steel inputs) for less than adequate remuneration.

  — Government provision of shipping and logistic services for less than adequate remuneration.

([52]) T25.000833 of 15/01/2025.
([53]) www.landchina.com.

— Revenue foregone through Tax Exemption and Reduction programmes

— Enterprise Income Tax ('EIT') reduction for High and New Technology Enterprises.

— Preferential pre-tax deduction of research and development expenses.

— Accelerated depreciation of instruments and equipment used by High-Tech enterprises for High-Tech development and production.

— Dividend exemption between qualified resident enterprises.

— Income support

3.6. **Preferential financing**

3.6.1. *Financial institutions providing preferential financing*

(114) According to the information provided by the four sampled groups of exporting producers, 24 financial institutions located within the PRC had provided financing to them. Of these 24 financial institutions, 20 were State-owned. The remaining financial institutions were either privately owned or the Commission was not able to determine whether they were State-owned or privately owned. None of the financial institutions, whether fully or partially State-owned, completed the specific questionnaire despite a request made to the GOC that covered all financial institutions which had provided loans to the sampled companies.

(115) As mentioned in recital (86), the GOC did not forward the questionnaire to financial institutions and did not provide information on the ownership of the financial institutions which provided loans to the sampled companies. Therefore, the Commission was not able to determine whether the remaining four financial institutions were State-owned or privately owned.

3.6.1.1. State-owned financial institutions acting as public bodies

Legal standard

(116) The Commission ascertained whether the State-owned banks were acting as public bodies within the meaning of Articles 3 and 2(b) of the basic Regulation. According to the relevant WTO case-law ([54]), a public body is an entity that 'possesses, exercises or is vested with governmental authority'. A public body inquiry must be conducted on a case-by-case basis, having due regard to 'the core characteristics and functions of the relevant entity', that entity's 'relationship with the government', and 'the legal and economic environment prevailing in the country in which the investigated entity operates'. Depending on the specific circumstances of each case, relevant evidence may include: (i) evidence that 'an entity is, in fact, exercising governmental functions', especially where such evidence 'points to a sustained and systematic practice'; (ii) evidence regarding 'the scope and content of government policies relating to the sector in which the investigated entity operates'; and (iii) evidence that a government exercises 'meaningful control over an entity and its conduct'. When conducting a public body inquiry, an investigating authority must 'evaluate and give due consideration to all relevant characteristics of the entity' and examine all types of evidence that may be pertinent to that evaluation; in doing so, it should avoid 'focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant'.

([54]) WT/DS379/AB/R (US – Anti-dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US — Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9 - 4.10, 4.17 - 4.20 and WT/DS437/AB/R (US – Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92.

(117) In particular, WTO case law specified that ([55]): *'What matters is whether an entity is vested with authority to exercise governmental functions, rather* than *how that is achieved. There are many different ways in which government in the narrow sense could provide entities with authority. Accordingly, different types of evidence may be relevant to showing that such authority has been bestowed on a particular entity. Evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority, particularly where such evidence points to a sustained and systematic practice. It follows, in our view, that evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions. We stress, however, that, apart from an express delegation of authority in a legal instrument, the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority. Thus, for example, the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority. In some instances, however, where the evidence shows that the formal indicia of government control are manifold, and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority.'*

(118) In order to properly characterize an entity as a public body in a particular case, it may be relevant to consider *'whether the functions or conduct [of the entity] are of a kind that are ordinarily classified as governmental in the legal order of the relevant Member'* ([56]), and the classification and functions of entities within WTO Members generally. Thus, whether the functions or conduct are of a kind that are ordinarily classified as governmental in the legal order of the relevant Member may be a relevant consideration for determining whether or not a specific entity is a public body.

(119) There are many different ways in which government in the narrow sense could provide entities with authority. Accordingly, different types of evidence may be relevant to showing that such authority has been bestowed on a particular entity. Evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority, particularly where such evidence points to a sustained and systematic practice.

(120) Evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions. Indeed, government ownership of an entity, while not a decisive criterion, may serve, in conjunction with other elements, as evidence. However, the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish governmental authority. Thus, for example, the mere fact that a government is the majority shareholder of an entity in itself does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority. In some instances, however, where the evidence shows that the formal indicia of government control are manifold, and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority.

([55]) WT/DS379/AB/R (US – Anti-dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US — Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9 - 4.10, 4.17 - 4.20 and WT/DS437/AB/R (United States – Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92.

([56]) WT/DS379/AB/R (*US – Anti-dumping and Countervailing Duties on Certain Products from China*), Appellate Body Report of 11 March 2011, DS 379, paragraph 297.

(121) The central focus of a public body inquiry is not whether the conduct that is alleged to give rise to a financial contribution is logically connected to an identified 'government function'. In this respect, the legal standard for public body determinations under Article 1.1(a)(1) of the SCM Agreement does not prescribe a connection of a particular degree or nature that must necessarily be established between an identified government function and the particular financial contribution at issue. Rather, the relevant inquiry hinges on the entity engaging in that conduct, its core characteristics, and its relationship with government. This focus on the entity, as opposed to the conduct alleged to give rise to a financial contribution, comports with the fact that a 'government' (in the narrow sense) and a 'public body' share a 'degree of commonality or overlap in their essential characteristics' – i.e. they are both 'governmental' in nature.

(122) The nature of an entity's conduct or practice may certainly constitute evidence relevant to a public body inquiry. Indeed, the conduct of an entity – particularly when it points to a 'sustained and systematic practice' – is one of the various types of evidence that, depending on the circumstances of each investigation, may shed light on the core characteristics of an entity and its relationship with government in the narrow sense. However, the assessment of such evidence is aimed at answering the central question of whether the entity itself possesses the core characteristics and functions that would qualify it as a public body. For instance, relevant for the assessment as to whether an entity is a public body in the context of Chinese State-owned commercial banks ('SOCBs') in DS379 included information showing that: (i) '[t]he chief executives of the head offices of the SOCBs are government appointed and the [CCP] retains significant influence in their choice'; and (ii) SOCBs 'still lack adequate risk management and analytical skills'. This evidence was not limited to SOCBs' lending activity *per se*, but rather spoke to their organizational features, chains of decision-making authority, and overall relationship with the GOC. Thus, the WTO Appellate body ('AB') in DS379 noted that, while the United States Department of Commerce ('USDOC') did take into account evidence relating to the conduct of SOCBs ['making loans'], it did so within the framework of its inquiry into the core characteristics of those entities and their relationship with the GOC. These SOCBs exercised governmental functions on behalf of the Chinese Government.

(123) Moreover, the AB has also given importance to the fact that the government in question failed to cooperate during the investigation. Indeed, in DS379, the AB confirmed the USDOC's determination that the SOCBs in the CFS Paper investigation constituted 'public bodies' on the following considerations: (i) near complete state-ownership of the banking sector in China; (ii) Article 34 of the Commercial Banking Law, which states that banks are required to '*carry out their loan business upon the needs of [the] national economy and the social development and under the guidance of State industrial policies*'; (iii) record evidence indicating that SOCBs still lack adequate risk management and analytical skills; and (iv) the fact that '*during [that] investigation the [USDOC] did not receive the evidence necessary to document in a comprehensive manner the process by which loans were requested, granted and evaluated to the paper industry*' ([57]).

(124) In order to determine whether State-owned banks possess, exercise or are vested with governmental authority, the Commission paid due regard to the core characteristics and functions of the banks, their relationship with the government, and the legal and economic environment prevailing in the country in which the investigated entity operates. In this respect, the Commission sought information about State ownership as well as formal indicia of government control in the State-owned banks. It also analysed whether control had been exercised in a meaningful way in view of the normative framework in place. For this purpose, the Commission had to rely on facts available due to the refusal of the GOC to forward the relevant questionnaires to financial institutions concerned and provide evidence on the decision-making process that had led to the preferential lending, as set out in Section 3.4.2.

3.6.1.2. Core characteristics and functions of State-owned banks

(125) The Chinese banking sector is dominated by State-owned Banks, based on their specific primary functions typically referred to as SOCBs or State policy banks (see recitals (52) and (113).

([57]) WT/DS379/AB/R (*US – Anti-dumping and Countervailing Duties on Certain Products from China*), Appellate Body Report of 11 March 2011, DS 379, paragraph 349.

(126) Since the State maintains control over the State-owned banks through multiple channels – beside shareholding it also ensures presence of Party structures and their influence in the financial institutions and it mandates certain types of the banks' commercial conduct by means of regulatory measures (see Section 3.6.1.4) – it is in position to make use of the financial sector's resources in pursuit of its policy objectives (see also recitals (142) to (144), including the overarching goal to '*promote the development of the socialist market economy*', as stipulated by Article 1 of the Bank Law (see Section 3.6.1.4 for a more detailed analysis of the Bank Law).

(127) Accordingly, the core functions of banking institutions, in particular their lending policies are shaped to serve policy purposes, the banks' economic performance is subordinated to the requirements of the GOC's industrial policies. The applicable legal framework and the institutional setup ensures in this respect that whenever the GOC identifies economic priorities, for example development of the MAE sector, requisite funds are channelled as a priority to corresponding projects via the financial sector. Consequently, State-owned banks effectively perform government functions, insofar as their key management personnel is required to be CCP-affiliated – and, therefore, loyal primarily to the Party – and their core business activities have to be carried out with due regard to policy objectives set by the government authorities.

3.6.1.3. Ownership, formal indicia and exercise of control by the GOC

(128) As indicated in recital (865), the GOC refused to forward the questionnaires to the banks on the grounds that this request breached the SCM Agreement by improperly requesting information from Chinese financial institutions, misclassifying them as public bodies, failing to notify them properly, and disregarding confidentiality concerns under Chinese law.

(129) In the course of the investigation, the Commission clarified its entitlement to request data from Chinese financial institutions, including state-owned entities, under the oversight of Chinese authorities, and confirmed that any confidential information will be managed in accordance with relevant confidentiality protocols. Additionally, the confidentiality requirement has been relinquished, as demonstrated by the written authorization from the sampled companies, explicitly waiving their confidentiality privileges.

(130) Consequently, and as set out in recital (128), none of the State-owned financial institutions, which provided loans to the sampled companies, replied to the specific questionnaire. The list of the banks includes: Agricultural Bank of China, Bank of Beijing ([58]), Bank of China, Bank of Communications Co. Ltd, Bank of Ningbo, China Construction Bank Corporation, China Industrial Bank Co. Ltd, China Merchants Bank, China Minsheng Bank ([59]), Export-Import Bank of China (EXIM bank), Industrial and Commercial Bank (ICBC), Ping An Bank ([60]), Shanghai Pudong Development Bank Co. Ltd, China Postal Savings Bank Co. Ltd., Bank of Changsha, Bank of Hunan, China Bohai Bank, China Development Bank, China Guangfa Bank, Commercial Bank of China, Hongkong and Shanghai Banking Corporation (HSBC), Huxia Bank, City Bank (China).

(131) The GOC did not provide information neither on the ownership of the banks, or on their governance structure, risk assessment or examples relating to specific loans to the MAE industry.

([58]) See Bank of Beijing Y2022 Annual Report (April 2023) https://pdf.valueonline.cn/web/viewer.html?v=20200509&file=https://oss.valueonline.cn/cloud-irh-bucket/public/formal/0/167278f7-743a-4dca-be0f-bb065e3f8748.pdf.

([59]) See China Minsheng Bank, Annual Report 2022; available at: https://ir.cmbc.com.cn/media/mc3d2wm2/%E4%B8%AD%E5%9B%BD%E6%B0%91%E7%94%9F%E9%93%B6%E8%A1%8C2022%E5%B9%B4%E5%B9%B4%E5%BA%A6%E6%8A%A5%E5%91%8A.pdf, p. 94.

([60]) See Ping An Bank, Homepage – Investor Relations – Major Shareholders; available at: https://group.pingan.com/investor_relations/major_shareholders.html.

(132) Therefore, the Commission decided to use facts available to determine whether those State-owned financial institutions qualify as public bodies.

(133) In a previous anti-subsidy investigation ([61]) the Commission established that the banks which had provided loans to the sampled groups of exporting producers in the investigation were partially or fully owned by the State itself or by State-held legal persons. Since the banks did not reply to the specific questionnaire, the Commission used publicly available information, such as the bank's website, annual reports, information available in bank directories or on the internet. In line with the findings of this past investigation the Commission Staff Working Document ([62]) confirmed that the State dominates the banking sector ([63]) by maintaining controlling stakes in all state-owned commercial banks, as well as by being the majority shareholder in a number of joint-stock commercial banks, either through direct investment by Central Huijin or indirectly through other state-owned legal entities. Recital (130) lists those banking entities reported by the exporting producers in which the State holds a majority shareholding and in the absence of changes since recent similar investigations ([64]), it was considered that all State-owned financial institutions that provided financing to the sampled exporting producers as partially or fully owned by the State itself or by State-held legal persons.

(134) Concerning the formal indicia of government control of State-owned banks, the Commission qualified them as 'key State-owned financial institutions'. In particular, the notice 'Interim Regulations on the Board of Supervisors in Key State-owned Financial Institutions' ([65]) states that: *'The key State-owned financial institutions mentioned in these Regulations refer to State-owned policy banks, commercial banks, financial assets management companies, securities companies, insurance companies, etc. (hereinafter referred to as State-owned financial institutions), to which the State Council dispatches boards of supervisors*'.

(135) The Board of Supervisors of the key State-owned financial institutions is appointed according to the 'Interim Regulations of Board of Supervisors of Key State-owned Financial Institutions'. Based on Articles 3 and 5 of these Interim Regulations, the Commission established that Members of the Board of Supervisors are dispatched by and accountable to the State Council, thus illustrating the institutional control of the State on the cooperating State-owned bank's business activities.

(136) Concerning SOCBs, the Commission observed that the six largest banks accounted for more than 40 % of the Chinese financial sector terms of total assets by the end of 2022 ([66]). At least two of these six SOCBs, namely ICBC and ABC, are among the financial institutions which provided loans to the sampled groups of exporting producers in the present investigation (see recital (130)). The State holds a majority share both in ICBC ([67]) and in ABC ([68]). In addition to controlling the six largest SOCBs, the State maintains significant shares in a number of other SOCBs, in which its involvement is more often indirect, e.g. through SOEs. Accounting for approximately 20 % of the total assets of the Chinese banking sector in 2021, several of these SOCBs, such as Shanghai Pudong Development Bank,

([61]) *Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China (OJ L 283, 12.11.2018, p. 1 (rec.210 and 211)).*

([62]) Updated Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 10 April 2024, SWD(2024) 91 final (the 'China Report') – Chapter 6.3 Banking Sector, pp. 137-144.

([63]) *See also Chorzempa, M. and Véron, N., Will China's impending overhaul of its financial regulatory system make a difference?, PIIE, March 2023, p. 2; available at: https://www.piie.com/sites/default/files/2023-03/pb23-1.pdf.*

([64]) *Ibidem footnote 56.*

([65]) Decree of the State Council of the People's Republic of China (No 283).

([66]) *See for example at: https://www.statista.com/statistics/434566/leading-banks-in-china-assets/.*

([67]) *See ICBC, Annual Report 2021; available at file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2022/2022-3/2022-03-31/7943541.PDF.*

([68]) *See ABC, Annual Report 2021; available at:* https://www.abchina.com/en/investor-relations/performance-reports/annual-reports/202204/P020220427580795705015.pdf.

China Everbright Bank, Ping An Bank, China Minsheng Bank, are among the financial institutions which provided loans to the sampled groups of exporting producers in the present investigation (see recital (130) for a full list), with a varying degree of State shareholding, ranging from some 3 % in the case of China Minsheng Bank ([69]) to more than 80 % for China Everbright Bank ([70]).

(137) The Commission also found that State-owned financial institutions have changed their Articles of Associations in 2017 to increase the role of the CCP at the highest decision-making level of the banks ([71]).

(138) These new Articles of Association stipulate that:

— The Chairman of the Board of Directors shall be the same person as the Secretary of the Party Committee;

— The CCP's role is to ensure and supervise the Bank's implementation of policies and guidelines of the CCP and the State; as well as to play a leadership and gate keeping role in the appointment of personnel (including senior management); and

— The opinions of the Party Committee shall be heard by the Board of Directors for any major decisions to be taken.

(139) Recital (53) provides specific examples of these changes to the Articles of Associations with respect to ICBC and ABC.

3.6.1.4. Meaningful control by the GOC

(140) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of state-owned financial institutions, with respect to their lending and assessment of risk policies, where they provided loans to the MAE industry. The following regulatory documents have been taken into account in this respect:

(1) Article 34 of the Law of the PRC on Commercial Banks ('Bank law')

(2) Article 15 of the General Rules on Loans (implemented by the People's Bank of China)

(3) Decision No 40

(4) Implementing Measures of the CBIRC for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBIRC [2017] No 1)

(5) Implementing Measures of the CBIRC for Administrative Licensing Matters relating to Foreign-funded Banks (Order of the CBIRC [2015] No 4)

(6) Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBIRC [2013] No 3)

(7) Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022) (CBIRC, 28 August 2020)

(8) Notice on the Commercial banks performance evaluation method (CBIRC, 15 December 2020)

(9) Notice on the Supervision regulations concerning the behaviour of large shareholders of bank and insurance institutions (CBIRC, [2021] No 43).

([69]) See China Minsheng Bank, Annual Report 2022; available at: https://ir.cmbc.com.cn/media/mc3d2wm2/%E4%B8%AD%E5%9B%BD%E6%B0%91%E7%94%9F%E9%93%B6%E8%A1%8C2022%E5%B9%B4%E5%B9%B4%E5%BA%A6%E6%8A%A5%E5%91%8A.pdf, p. 94.

([70]) See China Everbright Bank, 2021 Semi-Annual Report; available at: https://vip.stock.finance.sina.com.cn/corp/view/vCB_AllBulletinDetail.php?stockid=601818&id=7512500.

([71]) https://www.reuters.com/article/us-china-banks-party-idUSKBN1JN0XN.

(141) Reviewing these regulatory documents, the Commission found that financial institutions in the PRC operate within a legal framework that directs them to align with the GOC's industrial policy objectives, that include the development of the MAE sector. Recognised as part of the construction machinery industry, MAE is highlighted in key national and regional plans, including Made in China 2025, the 14th Five-Year Plan for Construction Machinery, and various provincial and municipal development strategies in Zhejiang, Jiangsu, and Hunan. These policies promote financial support, R&D incentives, and industrial clustering, encouraging financial institutions to prioritize funding for companies in this sector.

(142) At the general level, Article 34 of the Bank law, which applies to all financial institutions operating in China, provides that *'commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State'. Although Article 4 of the Bank Law states that, 'commercial banks shall, pursuant to law, conduct business operations without interference from any unit or individual. Commercial banks shall independently assume civil liability with their entire legal person property'*, the investigation showed that Article 4 of the Bank law is applied subject to Article 34 of the Bank law, i.e. where the State establishes a public policy the banks implement it and follow State instructions.

(143) In addition, Article 15 of the General Rules on Loans provides that *'In accordance with the State's* policy, *relevant departments may subsidize interests on loans, with a view to promoting the growth of certain industries and economic development in some areas*'.

(144) Similarly, Decision No 40 instructs all financial institutions to provide credit support specifically to 'encouraged' projects. As already explained in Section 3.3 and more specifically in recitals (72)-(80), projects of the MAE industry belong to the 'encouraged' category. Decision No 40 hence confirms the previous finding with respect to the Bank law that banks exercise governmental authority in the form of preferential credit operations. The Commission also found that the NFRA has far-reaching approval authority over all aspects of the management of all financial institutions established in the PRC (including privately owned and foreign owned financial institutions), such as ([72]):

— approval of the appointment of all managers of the financial institutions, both at the level of headquarters and at the level of local branches. Approval of the NFRA is required for the recruitment of all levels of management, from the most senior positions down to branch managers, and even includes managers appointed in overseas branches as well as managers responsible for support functions (e.g. the IT managers); and

— a very long list of administrative approvals, including approvals for setting up branches, for starting new business lines or selling new products, for changing the Articles of Association of the bank, for selling more than 5 % of their shares, for capital increases, for changes of domicile, for changes of organizational form, etc.

(145) The Bank law is legally binding. The mandatory nature of the Five-Year Plans and of Decision No 40 has been established above in Section 3.6.1.4. The mandatory nature of the NFRA regulatory documents derives from its powers as the banking regulatory authority. The mandatory nature of other documents is demonstrated by the supervision and evaluation clauses, which they contain.

(146) Decision No 40 of the State Council instructs all financial institutions to provide credit support only to investment projects pertaining to the encouraged category and promises the implementation of '*other preferential policies for projects pertaining to the encouraged industries category*'. On this basis, banks are required to provide credit support to the MAE industry as an encouraged industry.

([72]) According to the Implementing Measures of the CBIRC for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBIRC [2017] No 1), the Implementing Measures of the CBIRC for Administrative Licensing Matters relating to Foreign funded Banks (Order of the CBIRC [2015] No 4) and the Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBIRC [2013] No 3). After the CBIRC was replaced with the NFRA, the Implementing measures were not amended.

(147) Furthermore, even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. In fact, one of the State's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues in companies. In this respect, the Three Year Action Plan of the CBIRC for the years 2020 to 2022 instructs to '*further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector*'. Moreover, the Plan's Section II aims at promoting the organic integration of the Party's leadership into corporate governance: '*we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based […] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management*.'

(148) Also, the GOC has recently stipulated that even shareholders of financial institutions need to facilitate the exercise of the GOCs control via the institution's corporate governance framework, as follows: '*Large shareholders of bank and insurance institutions shall support bank and insurance institutions in establishing an independent and sound corporate governance structure with effective checks and balances, and encourage and support banks and insurance institutions to ensure the organic integration of Party leadership with corporate governance*' ([73]).

(149) Finally, the performance evaluation criteria of the NFRA for commercial banks now, notably, take into account how financial institutions '*serve the national development objectives and the real economy*', and in particular how they '*serve strategic and emerging industries*' ([74]).

(150) Therefore, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors of the cooperating State-owned bank, who are appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on this normative framework in order to exercise control in a meaningful way over the conduct of the cooperating State-owned bank whenever it was providing loans to the MAE industry. The core functions of the State-owned bank relate to the specific tasks assigned by the GOC through this normative framework, leading to becoming the GOC's tool to perform governmental functions.

(151) In the course of the investigation, the GOC referred to the NPC's interpretation of the Bank law and Article 4, of the Bank law claiming that commercial banks in China were operating as independent legal entities that '*make their own decisions*', '*without interference from any unit or individual*' and that '*no entity or individual may coerce a commercial bank into granting loans or providing a guarantee*'.

(152) As explained in recital (145), the Commission considered that the Chinese Bank law and Decision No. 40 are of a mandatory nature. Furthermore, the findings of this investigation as well as the Commission's findings in previous investigations concerning the same subsidy programme ([75]) did not support the claim that banks do not take government policy and plans into account when making lending decisions. For example, the Commission found that the four groups of sampled exporting producers benefited from preferential lending at below-market interest rates.

(153) The investigation also determined that Article 4 applies only to the extent that it aligns with Article 33. This means that while banks may operate under their general legal framework, they must comply with state policies when directed. In fact, while Articles 4 of the Bank Law is part of Chapter I, which sets the general provisions, Article 33 is part of Chapter IV, which establishes the basic rules governing loans. The wording of Article 33: '*commercial banks carry out their loan business upon the needs of national economy* and *the social development and under the guidance of the State industrial policies*', demonstrates that this provision is not of a guiding nature but has rather a mandatory character and provides a clear instruction to banks to take into account the State industrial policies when carrying out their loan business. The Commission also noted that the Decision No. 40 of the State Council instructs all financial institutions to provide credit support only to encouraged projects and promises the implementation of '*other*

([73]) ~~Article 13 of the Notice on the Supervision regulations concerning the behaviour of large shareholders of bank and insurance institutions (CBIRC, [2021] No 43).~~

([74]) ~~See CBIRC's Notice on the Commercial banks performance evaluation method, issued on 15 December 2020. http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm.~~

([75]) ~~See for example the HRF, Tyres and E-bikes cases.~~

preferential policies for projects pertaining to the encouraged industries category's'. While Article 17 of the same Decision requires banks to respect credit principles, the Commission established that banks were not respecting credit principles during the investigation. The Commission requested supporting documents showing that the financial institutions were respecting such principles. The GOC and the financial institutions did not provide such information. As a result, the Commission had to make such assessment on the basis of facts available. Such facts showed that loans were provided to the exporting producers irrespective of their financial situation and creditworthiness. This finding is not new and was already made in previous investigations ([76]) where the Commission previously demonstrated that Article 17 does not effectively translate into a credit principle for encouraged industries. During the current investigation, the Commission could not establish compliance due to a lack of cooperation, further reinforcing concerns about transparency and adherence to proper credit assessment procedures.

(154) Finally, as noted in recitals (137) and (138) above, the fact that all the bank's major operational and management issues are reviewed by the Party, which is thoroughly embedded in the corporate governance structure of the banks, and the fact that the performance of the banks is evaluated in line with their efforts to serve strategic and emerging enterprises such as the MAE industry, also shows the tight and binding nature of the regulatory framework over the operations of the financial institutions.

(155) In the absence of cooperation and concrete evidence of creditworthiness assessments, the Commission therefore examined the overall legal environment as set out above in recitals (142) to (150), in combination with the behaviour of the cooperating State-owned bank regarding loans provided to the sampled companies. This behaviour contrasted with its official stance as in practice State-owned banks were not acting based on thorough market-based risk assessments.

(156) In the course of the investigation, the Commission found that loans were provided to the sampled groups of exporting producers at interest rates below or close to the Loan Prime Rate ('LPR'), as announced by the National Interbank Funding Center (NIFC). The LPR was introduced on 20 August 2019, and replaces the previous PBOC's central bank benchmark rate ([77]). The provision of financing at rates below or close to the country's risk-free interest rate on the interbank market clearly shows that risk was not adequately taken into consideration. In the absence of cooperation by the GOC and the financial institutions, the Commission had to use facts available and thus concluded that the loans were granted regardless of the companies' real financial and credit risk situation, as established in Section 3.6.3 below. Hence, the loans were provided below market rates when compared to the rate corresponding to the risk profile of the sampled exporting producers.

([76]) *See Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17) ('HRF case'), Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1) ('Tyres case'), Commission Implementing Regulation (EU) 2021/2287 imposing definitive countervailing duties on imports of aluminium converter foil originating in the People's Republic of China (OJ L 458, 22.12.2021, p. 344) ('ACF case'), and Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 189, 15.6.2020, p. 33) ('GFF case'), Commission Implementing Regulation (EU) 2022/72 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China (OJ L 12, 19.1.2022, p. 34) ('OFC case'), Commission Implementing Regulation (EU) 2024/1866 of 3 July 2024 imposing a provisional countervailing duty on imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China, OJ L, 4.7.2024 ('BEV case').*

([77]) http://www.pbc.gov.cn/zhengcehuobisi/125207/125213/125440/3876551/de24575c/index2.html.

(157) On that basis, the Commission concluded that the GOC has created a normative framework with respect to lending to encouraged industries that had to be adhered to by the managers and supervisors of the bank, which are appointed by the GOC and accountable to the GOC. This normative framework did not leave any margin of manoeuvre to the managers and supervisors of the bank as to whether to follow this framework or not with respect to the sampled exporting producers, thus putting the management of that bank in a position of dependence.

(158) Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of the cooperating State-owned bank whenever it was providing loans to the MAE industry.

(159) In the absence of concrete evidence of credit risk assessments, the Commission examined the overall legal environment applicable to lending to encouraged industries such as the MAE industry in combination with the behaviour of the cooperating State-owned bank and established that the bank was not acting based on thorough market-based credit risk assessments.

(160) Furthermore, as explained in recital (152), loans were provided to the sampled groups of exporting producers at interest rates below or close to the Loan Prime Rate regardless of their financial and credit risk situation. Therefore, considering the risk profile of the sampled exporting producers described in Section 3.6.4.3 below and that, according to the risk analysis performed by the Commission, certain sampled exporting producers should have received a BB and others B credit rating and should thus have paid interest rates significantly above the risk-free rate, the Commission concluded that the loans at issue were provided below market rates.

(161) The Commission therefore concluded that the GOC has exercised meaningful control over the conduct of the cooperating State-owned bank with respect to its lending policies and assessment of risk concerning the MAE industry.

(162) Following definitive disclosure, the GOC reiterated its claim that Article 4 of the Commercial bank law is not subordinate to Article 34 and that Article 34 must not contradict the provision of Article 4 regarding the independence of banks. It also claimed that the Bank law does not impose any punitive consequences for banks that fail to comply with Article 34. In addition, the GOC claimed that Article 15 of the General Rules on Loans could not serve as a basis to claim that the GOC requires commercial banks to provide preferential loans pointing to a review of the General Rules on loans. The GOC also added that Decision No 40 does not apply to the MAE industry as only encouraged projects as detailed in the Catalogue can be considered encouraged.

(163) The Commission referred, once again, to the AB report as provided in recital (123) which confirmed that banks are required to '*carry out their loan business upon the needs of [the] national economy and the social development and under the guidance of State industrial policies*' and noted that the alleged absence of punitive consequences was irrelevant considering that the Chinese banking sector is mostly State-owned, that commercial banking decisions must be overseen by the CCP and remain in line with national policies, issues not disputed by any interested party. As far as Article 15 of General rules on loan is concerned, the Commission noted that the GOC did not provide evidence of such review and that the law itself had not been amended or repealed whereby this Article still applied, as indicated in its comment to the definitive disclosure by the GOC itself. The Commission also referred to recital (59) where it had concluded that the MAE sector was part of the 'Large construction machinery' sector listed in the Catalogue, which confirmed MAE was an encouraged sector. Based on the above, these claims were rejected.

3.6.1.5. Conclusion on all State-owned financial institutions

(164) The Commission established that the State-owned banks implemented the legal framework set out above in the exercise of governmental functions with respect to the MAE sector. Therefore, it was acting as public body in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law.

(165) In addition, even if the State-owned financial institutions were not to be considered as public bodies, the Commission established on the basis of the same information that they would be considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation for the same reasons, as set out in Section 3.6.2 below. Thus, their conduct would be attributed to the GOC in any event.

3.6.2. *Private financial institutions entrusted or directed by the GOC*

(166) The Commission established in the case at hand that the following banks and private financial institutions operating in China had provided loans to the sampled groups of exporting producers in the investigation at hand, Citibank (China) Co., Ltd., China Bohai bank, China Mingsheng bank and HSBS bank.

(167) As in previous investigations ([78]), in line with the corresponding analysis provided in recitals (140) to (161) it was considered that these banks and private financial institutions have been operating under the supervision of the NFRA (replacing the CBRC) and have been entrusted or directed by the GOC. Since no information was provided indicating otherwise, the Commission maintained the same conclusion in the present investigation.

(168) The Commission analyzed whether all these financial institutions had been entrusted or directed by the GOC to grant subsidies to the MAE sector within the meaning of Article 3(1)(a)(iv) of the basic Regulation.

(169) According to the WTO Appellate Body, 'entrustment' occurs where a government gives responsibility to a private body and 'direction' refers to situations where the government exercises its authority over a private body ([79]). In both cases, the government uses a private body as a proxy to make the financial contribution, and 'in most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement' ([80]). At the same time, Article 3(1)(a)(iv) does not allow Members to impose countervailing measures to products 'whenever the government is merely exercising its general regulatory powers' ([81]) or where government intervention 'may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market' ([82]). Rather, entrustment or direction implies 'a more active role of the government than mere acts of encouragement' ([83]).

([78]) *See Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17) ('HRF case'), Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1) ('Tyres case'), Commission Implementing Regulation (EU) 2021/2287 imposing definitive countervailing duties on imports of aluminium converter foil originating in the People's Republic of China (OJ L 458, 22.12.2021, p. 344) ('ACF case'), and Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 189, 15.6.2020, p. 33) ('GFF case'), Commission Implementing Regulation (EU) 2022/72 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China (OJ L 12, 19.1.2022, p. 34) ('OFC case'), Commission Implementing Regulation (EU) 2024/1866 of 3 July 2024 imposing a provisional countervailing duty on imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China, OJ L, 4.7.2024 ('BEV case').*

([79]) WT/DS/296 (DS296 United States – Countervailing duty investigation on Dynamic Random Access Memory (DRAMS) from Korea) Appellate Body Report of 21 February 2005, para. 116.

([80]) Appellate Body Report, DS 296, para. 116.

([81]) Appellate Body Report, DS 296, para. 115.

([82]) Appellate Body Report, DS 296, para. 114 agreeing with the Panel Report, DS 194, para. 8.31. on that account.

([83]) Appellate Body Report, DS 296, para. 115.

(170) The Commission noted that the normative framework concerning the industry mentioned above in recitals (142) to (147) applies to all financial institutions in the PRC, including privately owned financial institutions. To illustrate this, the Bank Law and the various orders of the NFRA (formerly CBIRC) cover all Chinese-funded and foreign-invested banks under the management of the NFRA.

(171) Furthermore, the majority of loan contracts with private financial institutions had similar conditions as the contracts with State-owned banks, and the lending rates provided by the private financial institutions were similar to the rates provided by the State-owned financial institutions. This shows that de facto preferential lending conditions are granted by those banks in accordance with the GOC's control over the banking sector.

(172) In the absence of any divergent information received from the private financial institutions, the Commission concluded that, in so far as the MAE industry is concerned, all financial institutions (including private financial institutions) operating in China under the supervision of the NFRA have been entrusted or directed by the State in the sense of Article 3(1)(a)(iv), first indent of the basic Regulation to pursue governmental policies and provide loans at preferential rates to the MAE industry ([84]), thus, functions which are no different from functions normally carried out by governments.

3.6.3. *Credit ratings*

(173) In previous anti-subsidy investigations, the Commission already determined that domestic credit ratings awarded to Chinese companies were not reliable, based on a study published by the International Monetary Fund ([85]), showing a discrepancy between international and Chinese credit ratings. Indeed, according to the IMF, over 90 % of Chinese bonds are rated from AA to AAA by local rating agencies. This is not comparable to other markets, such as the EU or the United States of America ('US'). For example, less than 2 % of firms enjoy such top-notch ratings in the US market. Chinese credit rating agencies are thus heavily skewed towards the highest end of the rating scale. They have very broad rating scales and tend to pool bonds with significantly different default risks into one broad rating category ([86]). According to the China bond market insight 2021 by Bloomberg ([87]), five Chinese local rating agencies dominate the bond market: China Chengxin, Dagong, Lianhe, Shanghai Brilliance, and Golden credit rating, and around 90 % of the bonds are rated AAA by local rating agencies. However, many of the issuers have received a lower S&P global issuer rating of A and BBB ([88]).

(174) In addition, foreign rating agencies, such as Standard and Poor's and Moody's, typically apply an uplift over the issuer's baseline credit rating based on an estimate of the firm's strategic importance to the Chinese Government and the strength of any implicit guarantee when they rate Chinese bonds issued overseas ([89]).

(175) To complement this analysis, previous cases showed that the GOC can also exercise its influence over the credit rating market ([90]).

([84]) See the cases cited in footnote 80 before.

([85]) IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

([86]) Livingston, M. Poon, W.P.H. and Zhou, L. (2017). Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry, in: Journal of Banking & Finance, p. 24.

([87]) China bond market insight 2021, https://assets.bbhub.io/professional/sites/10/China-bond-market-booklet.pdf.

([88]) China bond market insight 2021, Footnote 59, p. 31.

([89]) Price, A.H., Brightbill T.C., DeFrancesco R.E., Claeys, S.J., Teslik, A. and Neelakantan, U. (2017). China's broken promises: why it is not a market economy, Wiley Rein LLP, p. 68.

([90]) OJ L 458, 22.12.2021, recitals (210) to (214) ('Aluminium foil case'), OJ L 146, 9.6.2017 n recitals (159) to (161), ('HRF case'), OJ L 283, 12.11.2018, recitals (239) to (241) ('Tyres case'), OJ L 189, 15.6.2020 recitals (279) to (284) ('GFF case'), OJ L 12, 19.1.2022, recitals (274) to (279) ('OFC case') and OJ L 208, 4.7.2024, recitals (474) to (478) ('BEV case').

(176) According to the information provided by the GOC in previous cases, there were 14 credit rating agencies active on China's bond market, including 12 domestic rating agencies. Second, there is no free entrance on the Chinese credit rating market. It is essentially a closed market, since rating agencies need to be approved by the China Securities Regulatory Commission ('CSRC') or the PBOC before they can start operations ([91]). The PBOC announced mid-2017 that overseas credit rating agencies would be allowed to carry out credit ratings on part of the domestic bond market, under certain conditions. However, these credit rating agencies follow Chinese rating scales and are thus not exactly comparable with international ratings, as explained in recital (174).

(177) *A 2021 research by Allianz Global Investors confirms the Commission's* findings*, stating that 'China's onshore credit rating system differs from international* rating conventions. For example, onshore bonds rated AA+ would typically be rated as *"high yield" on an international scale'* ([92]).

(178) *Finally, the OECD pointed out in 2022 that '*[d]*eficiencies in the credit-rating market, including inflated ratings and weak warning systems hinder the healthy development of the bond market'* ([93]).

(179) Furthermore, the Commission has also determined ([94]) that the Chinese credit rating system cannot be considered to be solely driven by market forces and that it operates on a distorted basis.

(180) In view of the situation described in recitals (173) to (178), the Commission concluded that Chinese credit ratings do not provide a reliable estimation of the credit risk of the underlying asset. Those ratings were also distorted by the policy objectives to encourage key strategic industries, such as the MAE industry.

(181) Following definitive disclosure, the GOC claimed that the Chinese credit rating system is reliable and that the credit ratings of the companies should be re-assessed. It also argued that the Commission had arbitrarily assessed the sampled companies without the required knowledge and certificates and without a comprehensive understanding to the operation of the sampled companies. Moreover, the GOC argued that the ownership of the rating agencies operating on the Chinese market is more varied with an increasing presence of international credit rating agencies such as S&P or Moody's China Limited leading to optimizing the rating methods.

(182) The Commission considered that it did not assess the credit rating of the sampled companies in an arbitrary manner. To the contrary, the Commission acted in full transparency and relied on a range of financial indicators to determine the credit rating of the sampled companies. The Commission also considered that the evolution of the market structure in the PRC did not have an impact on the shortcomings relating to the Chinese credit rating market as described in recitals (173) to (180). On this basis, these claims were rejected.

(183) Following definitive disclosure, the CCCME claimed that the existence of 14 credit rating agencies including two overseas agencies made the Chinese credit rating market robust and independent. It added that the use of different rating categories by Chinese local rating agencies do not question the independence of the formers and the authenticity of the rating results. It also argued that the Commission's conclusion that China's credit rating market is 'closed' is based on outdated and incorrectly interpreted evidence, in particular the CCCME considered that role of the CSRC and PBOC in regulating the qualification of the credit rating institutions was necessary to ensure that such credit rating agencies have the necessary expertise and referred to the regulatory improvements recognized in the OECD report referred to in recital (178).

([91]) See footnote 71 in Commission Implementing Regulation EU) 2022/72 of 18 January 2022 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China.

([92]) Available at https://ch.allianzgi.com/-/media/allianzgi/globalagi/china-microsite/9-things-to-know/9-things-to-know-about-chinas-bond-markets.pdf.

([93]) See OECD Economic Surveys,: China, March 2022, p. 34-35; available at: https://www.oecd-ilibrary.org/docserver/b0e499cf-en.pdf.

([94]) See the Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 10 April 2024, SWD(2024) 91 final (the 'China Report') – Chapter 6, pp. 156-160.

(184) The Commission disagreed with these claims. Whereas the Commission does not dispute that certain foreign agencies are operating on the Chinese market, it considered that such foreign agencies represent only '*a tiny fraction of the ratings performed on the Chinese credit rating market*' and '*follow the same rating scales as the Chinese agencies and that they apply an uplift to their rating in terms of the companies' strategic importance to the GOC and implicit State guarantees*' ([95]), whereby they cannot be considered independent. Also, as to the allegedly outdated nature of the evidence provided by the Commission, the Commission noted that the CCCME selectively chose the oldest pieces of evidence submitted by the Commission, and ignored several references from the years 2021-2022 used in recitals (177) to (178), as well as the reference to the Commission's Staff Working Document on Significant Distortions in the Economy of the People's Republic of China, which was issued in April 2024 (see recital (179)), long after foreign credit rating agencies became active in the PRC. These references clearly show that the situation of the Chinese credit rating market has not significantly changed during the investigation period. As far as the role of the CSRC and PBOC are concerned, the Commission did not dispute the OECD's report and that the role of such entities includes the assessment of the qualifications of the credit rating agencies. However, it appeared that the PBOC's role was not limited to such assessment, but also included 'the supervision and management of credit ratings nationwide' as per Article 3 of the Interim Measures for the Administration of the Credit Rating Industry published jointly by the People's Bank of China, National Development and Reform Commission, Ministry of Finance and China Securities Regulatory Commission (Order [2019] No. 5). These claims were thus rejected.

3.6.4. *Preferential financing: loans*

3.6.4.1. Types of loans

Short-term and long-term loans

(185) The Commission established that companies in all four sampled groups used short-term and long-term loans to finance their activities. These loans were mainly used for daily operations, working capital needs, for special projects and investments. One of the sampled groups of exporting producers also used long-term export credits.

3.6.4.2. Specificity

(186) As demonstrated in recital (142) to (147) several legal documents, which specifically target companies in the MAE sector, direct the financial institutions to provide loans at preferential rates to the MAE industry. These documents demonstrate that the financial institutions only provide preferential financing to a limited number of enterprises or industries, which comply with the relevant policies of the GOC. The Commission considered that the reference to the MAE industry is sufficiently clear as this industry is identified either by its name or by a reference to the product that it manufactures or the industry group that it belongs to. Furthermore, one of the sampled exporting producers benefitted from loan provided by the China Development Bank, which supports 'projects in key sectors recognized by the State'. Therefore, the fact that the GOC supports a limited group of encouraged industries, which includes the MAE industry, makes this subsidy specific.

3.6.4.3. Calculation of the subsidy amount

(187) The Commission calculated the amount of the countervailable subsidy based on the benefit conferred on the recipients during the investigation period. According to Article 6(b) of the basic Regulation, the benefit conferred on the recipients is the difference between the amount of interest that the company has paid on the preferential loan and the amount that the company would have paid for a comparable commercial loan, which the company could have obtained on the market.

([95]) See Commission Implementing Regulation (EU) 2024/2754 of 29 October 2024 imposing a definitive countervailing duty on imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China, OJ L series 29.10.2024, recital (218).

(188) As explained in Sections 3.6.1 and 3.6.2 above, the loans provided by Chinese financial institutions reflect substantial government intervention and do not reflect rates that would normally be found in a functioning market.

(189) The sampled groups of companies differed in terms of their general financial situation. Each of them benefitted from different types of loans during the investigation period with variances in respect of maturity, collateral, guarantees and other conditions. For those two reasons, each company had an average interest rate based on its own set of loans received.

(190) The Commission assessed individually the financial situation of each sampled group of exporting producers in order to reflect these particularities. In this respect, the Commission followed the calculation methodology for preferential financing through loans established in the anti-subsidy investigation on aluminium converter foil originating in the PRC, as well as the anti-subsidy investigation on hot-rolled flat steel products originating in the PRC, the anti-subsidy investigations on tyres originating in the PRC, certain woven and/or stitched glass fibre fabrics originating in the PRC, optical fibre cables originating in the PRC and new battery electric vehicles designed for the transport of persons originating in the PRC ([96]), as explained in the recitals below. As a result, the Commission calculated the benefit from the preferential financing through loans practices for each sampled group of exporting producers on an individual basis and allocated such benefit to the product under investigation.

(1) Sinoboom group

(191) As mentioned in recitals (90), the Chinese lending financial institutions did not submit any questionnaire response that could clarify the creditworthiness assessment conducted. Hence, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the Sinoboom Group were at market level.

(192) The Sinoboom Group reported a profitable financial situation with a 12 % profit margin according to its own financial accounts for the financial year 2023.

(193) Sinoboom Group used short-term and long-term debt to finance its operations. The Commission assessed the short-term liquidity and the long-term solvency situation of the group.

(194) Regarding short-term liquidity, the group presented an average current ratio of 1,44 during the investigation period. Although the company's current assets fall within an acceptable range, it is not particularly strong. This indicates that while the company can technically meet its short-term obligations, its liquidity position is only marginally adequate. In the event of unexpected financial pressures, the company may struggle to maintain operations without liquidating assets or taking on additional debt. A more robust liquidity position would be necessary to ensure financial stability in the face of market volatility or unforeseen events.

(195) In terms of solvency, the company's debt-to-equity ratio of 1,98 shows a serious reliance on debt. The company is almost twice as reliant on borrowed funds as it is on its own equity, which points to significant financial risk. Such high leverage makes the company vulnerable to rising interest rates or economic downturns, as its ability to service debt may be strained. The reliance on debt financing increases the risk of insolvency, especially if revenue growth or profitability slows down. This leverage is a serious concern that could jeopardize the company's financial health.

([96]) OJ L 458, 22.12.2021, p. 344 (recital 237) ('Aluminium foil case') OJ L 146, 9.6.2017, p. 17, recitals (152) to (244) ('HRF case'), OJ L 283, 12.11.2018, p. 1, recital (236) ('Tyres case'), OJ L 189, 15.6.2020, p. 33, recital (300) ('GFF case'), OJ L 12, 19.1.2022, p.75, recital 294 ('OFC case') and OJ L 208,, p. 81, recital (490), 4.7.2024, ('BEV case') .

(196) The Commission considered that the overall financial situation of the group corresponds to a BB rating. According to Standard & Poor's credit rating definitions, a debtor rated 'BB', still has the capacity to meet its financial commitments under stable conditions. Nevertheless, adverse business, financial, or economic conditions may impair the debtor's capacity or willingness to meet its financial commitments. This benchmark is therefore considered appropriate to reflect the high debt levels and heavy reliance on leverage of the group.

(197) The premium expected on bonds issued by firms with this a BB rating was then applied to the PBOC Loan Benchmark Rate, or after 20 August 2019 to the Loan Prime Rate as announced by the NIFC in order to determine the market rate.

(198) That mark-up was determined by calculating the relative spread between the indices of US AA rated corporate bonds to US BB rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the PBOC Loan Benchmark Rate, or after 20 August 2019, to the Loan Prime Rate as announced by the NIFC, at the date when the loan was granted, and for the same duration as the loan in question. This was done individually for each loan and financial leasing provided to the company.

(2) Zoomlion group

(199) The Commission noted that Zoomlion Group was awarded an B rating by Fitch rating credit rating agency in 2021. The Commission concurred with this rating as it aligns with the company's financial profile as assessed based on the financial statements covering the investigation period.

(200) As the lending institutions did not provide any questionnaire response explaining the creditworthiness assessment, to establish the benefit, the Commission had to assess whether the interest rates for the loans granted to Zoomlion Group were at market level.

(201) Zoomlion Group presented itself in a generally profitable financial situation with a profit margin of around 8 % according to its own financial accounts for the year 2023. Zoomlion's profitability is reasonable but quite modest in comparison with the average of companies in the sector and may limit its ability to reinvest and manage economic fluctuations.

(202) The group used short-term and long-term debt to finance its operations. The Commission assessed the short-term liquidity and the long-term solvency situation of the company.

(203) Regarding short-term liquidity, the Commission used the current ratio. This ratio measures the company's ability to pay short-term obligations, including short-term debt.

(204) The company's current ratio was at 1,17 in the investigation period. This suggests that its liquidity is adequate but precarious, as the ratio is only slightly above the acceptable threshold. This shows also that while the company can meet its short-term liabilities with its current assets, any unexpected increase in liabilities or a slowdown in asset conversion could pose challenges. Considering this short-term liquidity indicator, the Commission concluded that the company at issue presented a fragile short-term liquidity position.

(205) The Commission based the long-term solvency risk assessment on the debt ratio. This ratio measures the company's ability to meet its long-term debt obligations. It is used by lenders and bond investors when assessing the company's creditworthiness.

(206) The debt ratio measures the amount of liabilities, in particular long-term debt. The company ratio of 1,93 reveals a heavy reliance on debt for financing, which significantly increases financial risk. High leverage means the company is exposed to difficulties in meeting debt obligations, particularly during periods of reduced revenue or rising interest rates. This reliance on debt underscores the need for a more balanced capital structure.

(207) The company's efficiency in utilizing its assets does not support a high credit rating. An asset turnover ratio of 0,3 indicates that the company generates only ¥ 0,30 in revenue for every ¥ 1 of assets, reflecting underperformance in leveraging resources. Similarly, the return on assets (ROA) of 2,77 % is low, suggesting that the company is not deriving significant value from its investments. These metrics point to inefficiencies in asset management that hinder the company's ability to generate revenue and profit.

(208) Therefore, considering the liquidity, solvency and efficiency issues described in recitals (202) to (207) the Commission considered that the company was not in a solid financial situation and presented a high risk profile for potential lenders and investors.

(209) The Commission considered that the overall financial situation of the group corresponds to a B rating, which does not qualify as 'investment grade'.

(210) Based on publicly available data on Bloomberg, the Commission used as a benchmark the premium expected on bonds issued by firms with a B rating, which was applied to the PBOC Loan Benchmark Rate, or after 20 August 2019 to the Loan Prime Rate as announced by the NIFC ([97]) in order to determine the market rate.

(211) That mark-up was determined by calculating the relative spread between the indices of US AA rated corporate bonds to US B rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the PBOC Loan Benchmark Rate, or after 20 August 2019 to the Loan Prime Rate published by the NIFC, at the date when the loan was granted ([98]) and for the same duration as the loan in question. This was done individually for each loan provided to the group of companies.

(212) As for loans denominated in foreign currencies, the same situation in respect of market distortions and the absence of valid credit ratings applies, because these loans are granted by the same Chinese financial institutions. Therefore, as found before, B rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.

(213) Following definitive disclosure, Zoomlion group claimed that the analysis of the financial ratios did not justify a lower credit rating that companies such as Dingli group and Sinoboom group. After a careful comparative analysis of the situation of the different sampled companies, the Commission confirmed its assessment on the grounds that Zoomlion group was mostly underperforming when compared with the other sampled companies.

(3) Dingli Group

(214) As set above in recital (90) the Chinese lending financial institutions did not provide any creditworthiness assessment. Therefore, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans granted to the Dingli Group were at market level.

(215) The Dingli Group reported a high profitability, and solid growth financial situation with a high profit margin (8-13 %) according to its own financial accounts for year 2023.

(216) Dingli Group used short-term and long-term debt to finance its operations. The Commission assessed the short-term liquidity and the long-term solvency situation of the group.

(217) Regarding short-term liquidity, when considering the combined situation of various Dingli entities, the company would likely benefit from a mixed liquidity position. Dingli Machinery enjoys a strong current ratio of more than 2, reflecting a solid ability to meet short-term liabilities. However, Dingli Leasing's current ratio of less than 1,2 indicates only a modest situation to face short-term obligations. The average of the two companies' current ratios would likely fall between these two figures, suggesting that while short-term financial stability is generally acceptable, the consolidated entity would need to carefully manage liquidity to avoid potential financial tensions.

([97]) See recital (453) above.
([98]) In case of fixed interest loans. For variable interest rate loans, the PBOC benchmark rate during the IP was taken.

(218) Concerning long-term debt, the group would face a high level of leverage due to Dingli Leasing's high debt-to-equity ratio of over 2,8, while Dingli Machinery's conservative ratio of less than 0,7 brings down the overall financial risk. The combined debt-to-equity ratio would likely be moderate but still on the higher end, reflecting a significant reliance on debt. This poses potential risks, especially in uncertain economic conditions.

(219) From an efficiency point of view, Dingli Machinery's asset turnover of less than 0,5 is low, indicating some inefficiencies, while Dingli Leasing's asset turnover of less 0,15 is extremely poor, showing that the company generates very little revenue per unit of assets. This highlights a combined inefficiency in utilizing assets across both businesses. The company will need to focus on optimizing operations, liquidating idle assets, or enhancing operational strategies to improve returns.

(220) The Commission considered that the overall financial situation of the group corresponds to a BB rating. According to Standard & Poor's credit rating definitions, a debtor rated 'BB', still has the capacity to meet its financial commitments under stable conditions. Nevertheless, adverse business, financial, or economic conditions may impair the debtor's capacity or willingness to meet its financial commitments. This benchmark is therefore considered appropriate to reflect the high debt levels and heavy reliance on leverage of the group.

(221) The premium expected on bonds issued by firms with this a BB rating was then applied to the PBOC Loan Benchmark Rate, or after 20 August 2019 to the Loan Prime Rate as announced by the NIFC in order to determine the market rate.

(222) That mark-up was determined by calculating the relative spread between the indices of US AA rated corporate bonds to US BB rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the PBOC Loan Benchmark Rate, or after 20 August 2019, to the Loan Prime Rate as announced by the NIFC, at the date when the loan was granted, and for the same duration as the loan in question. This was done individually for each loan and financial leasing provided to the company.

(223) As for loans denominated in foreign currencies in the PRC, the same situation in respect of market distortions and the absence of valid credit ratings applies, because these loans are granted by the same Chinese financial institutions. Therefore, as found before, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.

(4) JLG

(224) As set above in recital (90) the Chinese lending financial institutions did not provide any creditworthiness assessment. Therefore, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans granted to the JLG Group were at preferential levels.

(225) JLG reported low profitability (less than 3 %) and return on assets according to its own financial accounts for the year 2023.

(226) JLG used short-term and long-term debt to finance its operations. The Commission assessed the short-term liquidity and the long-term solvency situation of the group.

(227) Regarding short-term liquidity, the group presented an average current ratio of 1,40 during the investigation period. Although the company's current assets fall within an acceptable range, it is not particularly strong. This indicates that while the company can technically meet its short-term obligations, its liquidity position is only marginally adequate. In the event of unexpected financial pressures, the company may struggle to maintain operations without liquidating assets or taking on additional debt. A more robust liquidity position would be necessary to ensure financial stability in the face of market volatility or unforeseen events.

(228) In terms of solvency, the company's debt-to-equity ratio of 2,19 suggests a serious reliance on debt. The company is using twice as much debt as equity to finance its operations, which exposes it to significant financial risk. Such high leverage makes the company vulnerable to rising interest rates or economic downturns, as its ability to service debt may be strained. The reliance on debt financing increases the risk of insolvency, especially if revenue growth or profitability slows down. This leverage is a serious concern that could jeopardize the company's financial health.

(229) The Commission considered that the overall financial situation of the group corresponds to a B rating. A debtor rated 'B', still has the capacity to meet its financial commitments under stable conditions. Nevertheless, adverse business, financial, or economic conditions may impair the debtor's capacity or willingness to meet its financial commitments. This benchmark is therefore considered appropriate to reflect the high debt levels and heavy reliance on leverage of the group and its weak liquidity and profitability.

(230) The premium expected on bonds issued by firms with this a B rating was then applied to the PBOC Loan Benchmark Rate, or after 20 August 2019 to the Loan Prime Rate as announced by the NIFC in order to determine the market rate.

(231) That mark-up was determined by calculating the relative spread between the indices of US AA rated corporate bonds to US B rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the PBOC Loan Benchmark Rate, or after 20 August 2019, to the Loan Prime Rate as announced by the NIFC, at the date when the loan was granted, and for the same duration as the loan in question. This was done individually for each loan and financial leasing provided to the company.

3.6.4.4. Conclusion on preferential financing: loans

(232) The Commission established that all sampled groups of exporting producers benefited from preferential financing through loans during the investigation period. In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, the Commission considered preferential financing through loans a countervailable subsidy.

(233) Following definitive disclosure, the CCCME claimed that the benchmark used by the Commission to calculate the benefit and the subsidy amount was flawed. CCCME first argued that the Commission should not have resorted to an out-of-country benchmark on the grounds that the Commission did allegedly not demonstrate the absence of prevailing market terms and conditions as foreseen by Article 6(d) of the basic Regulation. Furthermore, it also claimed that the Commission failed to explain how it ensured that the spread of US corporate bonds indices sufficiently reflected the prevailing market conditions in China where the sampled MAE producers obtained their financing. Second, the GOC claimed that the Commission should have applied the absolute spread rather than the relative spread on the grounds that the absolute spread sufficiently factored in the risk exposures between the corporate bonds of different credit ratings. The CCCME also argued that the Commission failed to explain why applying the relative spread was more appropriate than applying the absolute one and how the LPR was equivalent to a AA-rating interest rate.

(234) The Commission considered that it had demonstrated that there were no prevailing market terms and conditions in the PRC whereby it could not calculate an appropriate benchmark based on the conditions applicable in the PRC. In this regard, the Commission referred to the conclusions drawn in Sections 3.6.1.4, 3.6.1.5 and 3.6.2 whereby it showed that the GOC relied on a normative framework to exercise control in a meaningful way over the state-owned and privately owned commercial banks that implement government policy when providing financing to economic operators in the PRC. Furthermore, it is recalled that none of the commercial banks that provided financing to the sampled producers cooperated with the investigation so that the Commission could not access information relating to the MAE producers or to other sectors, not encouraged by the PRC authorities.

(235) In the absence of cooperation by any Chinese financial institution, the Commission had to resort to an out-of-country benchmark. The Commission considered that the US market was of an equivalent size and offered available representative statistics as far as bonds of various credit ratings are concerned. The Commission also noted that no interested party proposed valid alternative out-of-country benchmark in this regard.

(236) As far as the use of the relative spread is concerned, the Commission first recognised that commercial banks usually use a mark-up expressed in absolute terms, and that this practice seemed mainly based on practical considerations because the interest rate is ultimately an absolute number. The absolute number was, however, the translation of a risk assessment that was based on a relative evaluation. As established in past investigations, the relative evaluation meant that the risk of default of a BB-rated company is X % more likely than the risk of default of the government or a risk-free company. The relative spread captures changes in the underlying market conditions which are not expressed when following an absolute spread ([99]). Second, interest rates reflect not only company-specific risk profiles, but also country- and currency-specific risks. The relative spread thus captures changes in the underlying market conditions, which are not expressed when following the logic of an absolute spread. Often, as in the present case, the country- and currency-specific risk varies over time, and the variations are different for different countries. As a result, the risk-free rates vary significantly over time, and are sometimes lower in the US, sometimes in China. These differences relate to factors such as observed and expected GDP growth, economic sentiment, and inflation levels. Because the risk-free rate varies over time, the same nominal absolute spread can signify a very different assessment of the risk. From an investor perspective, the relative spread is hence a better measure as it reflects the magnitude of the yield spread and the way it is affected by the base interest-rate level. Third, the relative spread is also country-neutral. For instance, where the risk-free rate in the US is lower than the risk-free rate in China, the method will lead to higher absolute mark-ups. On the other hand, where the risk-free rate in China is lower than in the US the method will lead to lower absolute mark-ups.

(237) As far the use of the LPR as a starting point is concerned, as provided in recital (156) and acknowledged by the GOC, the LPR corresponded to the most preferential lending rate offered by a commercial bank to its prime clients ([100]). On this basis the above claims, were rejected.

(238) Following definitive and additional disclosures, Zoomlion group claimed that the Commission had erroneously calculated the benefit amount relating to interests for loans and bank acceptance drafts on a 360-day basis, rather than 365 days. The Commission disregarded such claim on the grounds that the 360-day basis is a standard calculation practice as far as financial institutions are concerned ([101]). On these grounds, this claim was rejected.

(239) The subsidy rates established with regard to the preferential financing through loans during the investigation period for the sampled groups of companies amounted to:

Preferential financing: loans

Company name	Subsidy rate
Dingli Group	0,62 %
JLG Group	0,01 %
Hunan Sinoboom group	0,28 %
Zoomlion group	1,71 %

([99]) HRF Case, recital 175.

([100]) https://www.icbc.com.cn/en/column/1438058389078163465.html.

([101]) https://www.vorys.com/publication-365-360-Interest-Calculation-Latest-Developments-in-Ohio-Case-Law-Provide-Guidance-in-Interest-Calculation-Methods#:~:text=Banks%20most%20commonly%20use%20the,on%20a%2030%2Dday%20month.&text=To%20calculate%20the%20interest%20payment,365%2C%20then%20divide%20by%20360.

3.6.5. *Preferential financing: other types of financing*

3.6.5.1. Credit lines

(240) The purpose of a credit line is to establish a borrowing limit that the company can use at any time to finance its current operations thus making working capital financing flexible and immediately available when needed. The credit line agreements granted to the sampled groups refer to the various forms of financing available to the companies signing such agreements, which cover all types of short-term financing, such as short-term loans, bank acceptances, letters of credit, etc. Furthermore, according to financial literature, credit lines are also prevalent in a majority of cases in market economies. For example, they account for over 80 % of the bank financing provided to U.S. public firms ([102]). Furthermore, in Canada, where bank acceptances are a direct and unconditional liability of the accepting bank (as is the case in China), banks would normally only accept bank acceptance draws from corporate borrowers that have an established line of credit with that bank ([103]). Therefore, the Commission considered that in principle, all short-term financing of the sampled companies, such as short-term loans, bank acceptance drafts, etc., should be covered by a credit line instrument ([104]).

(241) Following definitive disclosure, CCCME claimed that the existence of a credit line was not a pre-requisite for short term borrowing. In its comments it referred to the lower bank financing rate applicable to Spanish firms.

(242) The Commission considered that the situation applicable on the Spanish market was not representative and that statistics pertaining to the US market, which is of a greater size and more comparable to the Chinese market were more appropriate. In any case, past and current investigations demonstrated that Chinese economic operators rely on such credit lines to obtain financing.

(a) Findings of the investigation

(243) The Commission established that Chinese financial institutions provided credit lines to each sampled group in connection with the provision of financing. These consisted of framework agreements, under which the bank allowed the sampled companies to use various debt instruments, such as working capital loans, bank acceptance drafts and other forms of trade financing within a certain maximum amount.

(244) As mentioned in recital (240) above, all short-term financing should be covered by a credit line. Therefore, the Commission compared the amount of the credit lines available to the cooperating companies during the investigation period with the amount of short-term financing used by these companies during the same period to establish whether all short-term financing was covered by a credit line. Where the amount of the short-term financing exceeded the credit line limit, the Commission increased the amount of the existing credit line by the amount actually used by the exporting producers beyond that credit line limit.

(b) Benefit

(245) Under normal market circumstances, credit lines would be subject to a so-called 'arrangement' or 'commitment' fee to compensate for the bank's costs and risks at the opening of a credit line, as well as to a 'renewal fee' charged on a yearly basis for renewing the validity of the credit lines ([105]). These fees cover administrative costs, such as the cost of processing the application, and performing security checks, but also the cost stemming from the prudential

([102]) https://www.bde.es/f/webbde/SES/Secciones/Publicaciones/PublicacionesSeriadas/DocumentosTrabajo/08/Fic/dt0821e.pdf.
([103]) https://www.bankofcanada.ca/wp-content/uploads/2018/06/SDP-2018-6.pdf.
([104]) See recital (346) of the CFF case and recital (530) of the BEV case (provisional Regulation).
([105]) See for example: https://en.wikipedia.org/wiki/Line_of_credit, https://users.ssc.wisc.edu/~jchoi266/Choi_Jason_JMP.pdf, https://pages.stern.nyu.edu/~sternfin/vacharya/public_html/pdfs/working-papers/ARFE_ContingentCredit_AJS.pdfARFE_ContingentCredit_AJS.pdf (nyu.edu), https://www.business.hsbc.uk/-/media/library/business-uk/pdfs/156-business-banking-price-list.pdf.

requirements imposed on banks, since the capital committed under a credit line diminishes the capital ratios of the bank, which it needs to maintain to ensure against systemic risks. However, the Commission established that all sampled group of companies benefited from credit lines provided free of charge. Therefore, a benefit was conferred to the investigated groups of companies within the meaning of Article 6(d) of the basic Regulation.

(246) Following definitive disclosure, the CCCME claimed that the arrangement and renewal fees do not always apply to large companies, such as producers of MAE, which are in a business relation with large banks. More specifically, it argued that such fees tend to be bilaterally negotiated. In this regard, the CCCME pointed to certain bank websites referring to an 'agreement' or 'discussion' of the fee to be paid. The CCCME acknowledged, however, that it could not provide evidence on the rate of such negotiated fees due to the confidentiality of credit line agreements. Therefore the Commission could not consider such claim substantiated and rejected it.

(c) Specificity

(247) As mentioned in recital (144), according to Decision No 40 financial institutions shall provide credit support to encouraged industries.

(248) The Commission considered that since credit lines are intrinsically linked to all types of short-term financing provided to the sampled companies, they should be considered as a form of a preferential financial support by financial institutions to encouraged industries such as the MAE sector. As specified in Section 3.3 above, the MAE sector is among the encouraged industries and is therefore eligible for all possible financial support.

(249) The CCCME claimed that no Chinese economic operator paid any arrangement or renewal fee and therefore considered that such scheme was not specific to the MAE sector.

(250) First, the Commission noted that the website of the Bank of China points to the charging of fees for the existence of credit lines ([106]). Second, the Commission noted that the CCCME failed to demonstrate that companies in the PRC can equally benefit from the preferential conditions observed as regards the MAE industry. Moreover, as credit lines are intrinsically linked to other types of preferential lending, such as loans, and as they are part of the credit support specifically provided to encouraged industries, the specificity analysis for loans developed in Section 3.6.4.2 was also applicable to credit lines. On this basis, this claim was rejected.

(d) Calculation of the subsidy amount

(251) In accordance with Article 6(d)(ii) of the basic Regulation, the Commission considered the benefit conferred on the recipients to be the difference between the amount that they paid as a fee for the opening or the renewal of the credit lines by Chinese financial institutions, and the amount that they would pay for a comparable commercial credit line obtained at an undistorted market rate.

(252) None of the sampled companies paid a fee for their credit line. Similarly, the Commission did not find any in-country credit line fees in previous investigations. Publicly available information seems to suggest that in some cases, credit line charges are levied for companies in China ([107]), but the level of these fees could not be found. Therefore, the Commission look for an appropriate benchmark fee outside China. The rates for the arrangement fee and for the renewal fee were thus established at 1,75 % and 1,25 % respectively by reference to publicly available data ([108]).

([106]) https://pic.bankofchina.com/bocappd/report/202403/P020240328682010029214.pdf, p. 266.
([107]) See example Bank of China: Credit Line https://www.bankofchina.com/en/cbservice/cb2/cb22/200806/t20080630_1324055.html (bankofchina.com).
([108]) https://www.metrobankonline.co.uk/business/borrowing/products/business-overdrafts/ consulted on 24.2.2025.

(253) In principle, the arrangement fee and the renewal fee are payable on a lump sum basis at the time of the opening of a new credit line or the renewal of an existing credit line respectively. However, for calculation purposes, the Commission took into account credit lines which had been opened or renewed before the investigation period, but which were available to the sampled groups during the investigation period and also the credit lines that were opened during the investigation period.

(254) Following definitive disclosure, the CCCME claimed that the arrangement or renewal fees should apply to the average unused credit line balance or outstanding balance of the credit limit on a *pro rata temporis* basis. In this regard, the CCCME referred to a bank website requesting the payment of an arrangement or renewal fee on the undisbursed amount.

(255) The Commission disagreed. The fee to be paid is not equivalent to an interest rate so that its calculation should not take the duration of the period into account. Furthermore, the Commission considered that the evidence put forward by the CCCME stemmed from different sources not pointing to a common standard behaviour by the banks whereby the claim by the CCCME was insufficiently supported by evidence and hence considered inconclusive.

(256) Following definitive disclosure, Zoomlion group observed that the calculation of the subsidy amount for this scheme in relation to the exporting producer of MAE was different than the same calculation made for the mother company. Namely, in the first case the Commission did not apportion the total fee payable to the IP, based on the days of each credit line falling with the IP.

(257) The Commission rejected this claim. The Commission considered that the arrangement fee and the renewal fee are payable on a lump sum basis as a fee at the time of the opening of a new credit line or the renewal of an existing credit line respectively, regardless of the duration of the credit line. The Commission also noted, however, that the methodology for calculating the subsidy amount for the mother company was not in line with this principle. This was corrected accordingly so that the method described above was applied to all credit lines and companies. On 21 March 2025. The corrected calculations were re-disclosed to Zoomlion group.

(258) Following the additional disclosure, Zoomlion group reiterated its claim that the duration of the credit line should be taken into account for the calculation of the benefit. It referred to recital (245) and the nature of the fees (administrative costs), and to corporate finance literature ([109]) whereby '*a commitment fee is a fee that is charged by a lender to a borrower to compensate the lender for keeping a credit line open. The fee also secures a lender's promise to provide the credit line on the agreed terms at specific dates, regardless of the conditions of the financial markets. The fee compensates the lender for the risks associated with an open credit line despite uncertain future market conditions and the lender's current inability to charge interest on the principal*', arguing that the duration of the credit line and its amount had an impact on the risk borne by the financial institution. Zoomlion group also referred to the fact that the Commission had considered credit lines opened before and during the investigation period in its subsidy calculation and claimed that the existence of these 'parallel' credit lines called for the use of the duration of the credit lines for the calculation of the subsidy amount. Zoomlion group also considered that credit lines were a financial instrument similar to term loans and bank acceptance drafts whereby the benefit could be calculated taking the duration into account.

(259) Although Zoomlion group submitted these additional comments outside the deadline foreseen in this regard; i.e. Zoomlion was not invited to provide comments on issues not concerned by the additional disclosure, the Commission considered such comments. According to recital (245) and the literature mentioned by Zoomlion group, the primary reason for financial institutions to charge a fee lies with the administrative cost, for opening or keeping open a credit line regardless of the financial conditions on a market. Such transactions bear a risk for the financial institutions but it is disconnected from the duration of the credit line which makes funds available to an economic operator on which it will normally pay interests when borrowing funds for a given duration through various credit instruments such as loans, letters of credit or bank acceptance drafts. As far as the amount subject to

([109]) https://corporatefinanceinstitute.com/resources/commercial-lending/commitment-fee/; https://content.next.westlaw.com/Glossary/PracticalLaw/I03f4dae6eee311e28578f7ccc38dcbee?transitionType=Default&contextData=(sc.Default), https://en.wikipedia.org/wiki/Line_of_credit.

the credit line is concerned, the Commission did indeed consider such amount in its calculations. As far as 'parallel' credit lines are concerned, the Commission's analysis revealed that there were no parallel or consecutive credit lines with the same financial institution whereby all credit lines, for which a benefit was calculated, could be considered as stand-alone credit lines which conferred a benefit upon Zoomlion group in distinct periods within the investigation period, regardless of when they were granted. The Commission also considered that the extreme examples described by Zoomlion group were not representative of its actual situation. The Commission also considered that credit lines are a distinct financial instrument from terms loans or bank acceptance drafts. Where credit lines are a pre-requisite or framework agreement for obtaining financing, term loans or bank acceptance drafts are the actual financing instruments. On these grounds, these claims were rejected.

(260) Zoomlion group also claimed that the fees paid upon the granting of credit lines should be deducted from the calculation of the subsidy amount. The Commission noted that accepting such a request would not change the subsidy rate since the fees paid were insignificant and did not apply to all credit lines granted.

3.6.5.2. Bank acceptance draft

(261) Bank acceptance drafts are a financial product aimed at developing a more active domestic money market by broadening credit facilities. It is a form of short-term financing that might 'reduce fund cost and enhance capital efficiency' of the drawer ([110]). In addition, as stated by the PBOC on its website, '*the bank acceptance draft can guarantee the establishment and performance of the contract between the buyer and the seller, as well as promote the capital turnover via the intervention of Bank of China's credit*' ([111]). In addition, on its website DBS Bank advertises bank acceptance drafts as a mean to '*improve working capital by deferring payments*' ([112]). The general conditions for the issuance and use of bank acceptances are set out in the Negotiable Instruments Law of the People's Republic of China ([113]).

(a) Findings of the investigation

(262) The Commission already established in previous investigations that bank acceptance drafts are largely used as a means of payment in commercial transactions as a substitute to a money order thus, facilitating the cash turnover and the working capital of the drawer ([114]).

(263) Indeed, bank acceptance drafts can only be used to settle genuine trade transactions, and the drawer must produce sufficient evidence in that respect, e.g. through purchase/sales agreement, invoice and delivery order etc. Bank acceptance drafts may be used as a standard means of payment in purchase agreements together with other means such as remittance or money order.

(264) The bank acceptance draft is drawn by the applicant (the drawer, which is also the buyer in the underlying commercial transaction) and accepted by a bank. By accepting the draft, the bank accepts to make unconditional payment of the amount of money specified in the draft to the payee/bearer on the designated date (the maturity date).

(265) In general, the bank acceptance contracts contain the list of the transactions covered by the amount of the draft with indication of the payment due date with the supplier and the maturity date of the bank acceptance draft.

([110]) See website of the People's Bank of China: https://www.boc.cn/en/cbservice/cncb6/cb61/200811/t20081112_1324239.html.
([111]) Ibid.
([112]) See website of DBS Bank: https://www.dbs.com.cn/corporate/financing/working-capital/bank-acceptance-draft-bad-issuance.
([113]) https://english.www.gov.cn/services/doingbusiness/202102/24/content_WS6035f46ec6d0719374af97ba.html.
([114]) See GFF case, recitals (359) to (370), Aluminium foil case, recitals (334) to (356), and OFC case, recitals (358) to (370).

(266) The Commission also established that bank acceptance drafts in China are issued within the framework of a bank acceptance draft agreement specifying the identity of the bank, suppliers and buyer, the obligations of the bank and the buyer and detailing the value per supplier, the payment due date agreed with the supplier and the maturity date of the bank acceptance draft.

(267) The Commission also established that credit line agreements generally list bank acceptance drafts as possible use of the finance limit along with other short-term financial instruments such as working capital loans.

(268) Depending on the conditions established by each bank, the drawer might be required to make a small deposit in a dedicated account, make a pledge and pay acceptance commission. In any event, the drawer is obliged to transfer the full amount of the bank acceptance draft to the dedicated account at the latest at the maturity date of the bank acceptance draft.

(269) Once accepted by the bank, the drawer endorses the bank acceptance draft and transfers it to the payee, who is also the supplier in the underlying commercial transaction, as a payment of the invoice. Consequently, the payment obligation of the buyer (drawer) towards the supplier (payee) is cancelled. A new payment obligation of the buyer is created towards the accepting bank for the same amount (the drawer has the obligation to pay the bank in cash before the maturity of the bank acceptance draft). This was further confirmed by the GOC during the verification visit in a previous investigation ([115]), namely that once the company pays the supplier with the bank acceptance draft, they no longer have an obligation in relation to the supplier but to the bank because the one who requested the bank acceptance draft to be issued will need to pay the bank in full on maturity date. Therefore, the issuance of a bank acceptance drafts has the effect to replace the obligation of the drawer towards its supplier by an obligation towards the bank.

(270) The maturity of bank acceptance drafts varies depending on the conditions set by each bank and can go up to 1 year.

(271) The payee (or bearer) of the bank acceptance draft has three options before the maturity:

— wait until maturity to be paid in cash the full amount of the face value of the draft by the accepting bank;

— endorse the bank acceptance draft, i.e. use it as a means of payment for its liabilities towards other parties; or

— discount the bank acceptance draft with the accepting bank or another bank and obtain the cash proceeds against the payment of a discounting rate.

(272) The issuance date of the bank acceptance draft generally corresponds to the payment due date agreed with the supplier but can also be a date prior or posterior to the payment due date. The investigation found that, as far as the sampled companies are concerned, the issuance date was generally on or before the due date of the payment with the supplier and in some cases even after the payment due date. The Commission established that the maturity of the bank acceptance drafts of the sampled companies is in most cases from 1 month up to 12 months after the payment due date of the invoice.

(273) Regarding the accounting treatment of bank acceptance drafts, they are recognised as liabilities to the bank in the accounts of the drawers, i.e. the sampled exporting producers. The Credit Reference Center of the People's Bank of China ('CRCP') recognises bank acceptance drafts as 'unsettled credit' provided by banks at the same level as loans, letters of credit or trade financing. It should also be noted that the CRCP is fed by the financial institutions, which grant various types of loans, and that such financial institutions have thus recognised bank acceptance drafts as liabilities to them. Furthermore, the bank acceptance agreements collected during the investigation provide that, should the buyer not make the full payment on the expiry date of the bank acceptance drafts, the bank would treat the amount unpaid as an overdue loan to the bank.

([115]) See GFF case, recital (381).

(274) From a cash point of view, the instrument therefore de facto grants the drawer a deferred due date of payment because the actual cash payment of the transaction amount occurs at the maturity of the bank acceptance draft and not at the moment when the drawer had to pay its supplier. In the absence of such a financial instrument, the drawer would either use its own working capital, which has a cost, or contract a short-term working capital loan with a bank in order to pay its suppliers, which also has a cost. In fact, by paying with bank acceptance drafts, the drawer uses the supplied goods or services for a period of 1 month to 1 year but without advancing any cash and without bearing any cost.

(275) As an illustration of the use of bank acceptance drafts as a substitute of short-term loans, the Commission established that some sampled companies barely had any loans, i.e. Dingli group. However, the bank acceptance drafts issued by these companies during the investigation period represented a significant part of their liabilities.

(276) Following definitive disclosure, the CCCME considered that bank acceptance drafts are not a form of short-term financing on the grounds that the MAE producers had to reimburse banks on the agreed maturity date of the bank acceptance.

(277) The Commission disagreed with the CCCME for the reasons mentioned in recitals (269) to (274). The use of a bank acceptance draft transfers the obligation to pay the supplier to the bank whereas the MAE producer has a payment obligation towards the bank as recognised in its accounting books and by the CRCP. Moreover, depending on the terms of the bank acceptance draft agreement, the original payment term to the supplier is mostly extended by several months by the bank. Eventually, with the exception of a minimal fee, such short to medium term loan is given to the MAE producers at no cost. On this ground, this claim was rejected.

(b) Benefit

(278) Under normal market circumstances ([116]), as a financial instrument, bank acceptance drafts would imply a cost of financing for the drawer. The investigation showed that all the sampled companies used bank acceptance drafts during the investigation period and only paid a commission for the acceptance service provided by the bank, which was in general 0,05 % of the face value of the draft ([117]). However, none of the sampled companies bore a cost for the financing via bank acceptance drafts by deferring the cash payment of the supply of goods and services. Therefore, the Commission considered that the investigated companies benefitted from financing in the form of bank acceptance drafts for which they did not bear any cost.

(279) Considering the above, the Commission concluded that the bank acceptance system put in place in the PRC provided all sampled exporting producers a free financing of their current operations, which conferred a countervailable benefit as described in recitals (287) to (291) below, in accordance with Article 3(1)(a)(i) and 3(2) of the basic Regulation.

(280) This is in line with previous investigations, where the Commission established ([118]) that bank acceptance drafts effectively have the same purpose and effects as short-term working capital loans, as they are used by companies to finance their current operations instead of using short-term working capital loans, and that consequently, they should bear a cost equivalent to a short-term working capital loan financing.

(c) Specificity

(281) Concerning specificity, as mentioned in recital (144) according to Decision No 40, financial institutions shall provide credit support to encouraged industries.

([116]) See for example the case of Canada: https://www.bankofcanada.ca/wp-content/uploads/2018/06/SDP-2018-6.pdfm.
([117]) In line with the rate set in the Administrative measures for payment and settlement 393/1997, issued by the PBOC.
([118]) See GFF case, recital (385), Aluminium foil case, recital (353), and OFC case, recital (373).

(282) The Commission considered that bank acceptance drafts are another form of preferential financial support by financial institutions to encouraged industries such as the MAE sector. Indeed, as specified in Section 3.3 above, the MAE sector is among the encouraged industries and is therefore eligible for all possible financial support. Moreover, similar to credit lines, bank acceptance drafts are intrinsically linked to other types of preferential lending such as loans, and as they are part of the credit support specifically provided to encouraged industries, so the public body analysis and the specificity analysis as developed in Sections 3.6.1.1 to 3.6.1.5, as well as Section 3.6.2.2 above for loans is equally applicable.

(283) Furthermore, in 2020, the CBIRC issued a notice in which it states that in order to strengthen credit support to downstream enterprises in core enterprises, banking financial institutions may provide credit support for downstream enterprises to obtain goods and pay for goods by opening bank acceptance bills, domestic letters of credit, advance financing, etc. Bank acceptance drafts, as a form of financing, are thus part of the preferential financial support system by financial institutions to encouraged industries, such as the MAE industry.

(284) No evidence was provided that any undertaking in the PRC (other than within encouraged industries) can benefit from bank acceptance drafts under the same preferential terms and conditions.

(285) Following definitive disclosure, the CCCME claimed that bank acceptance drafts were used by almost all business operators in China and hence not specific. It added that the Commission had failed to demonstrate specificity.

(286) The Commission considered that this claim was unsubstantiated. More particularly, there was no evidence submitted to demonstrate that any undertaking in the PRC (other than within encouraged industries) can benefit from bank acceptance drafts under the same preferential terms and conditions observed as regards the MAE industry. On these grounds, this claim was rejected.

(d) Calculation of the subsidy amount

(287) For the calculation of the amount of the countervailable subsidy, the Commission assessed the benefit conferred on the recipients during the investigation period.

(288) As mentioned in recital (275), the Commission found that the sampled exporting producers used bank acceptance drafts to address their needs for short-term financing without paying a remuneration.

(289) The Commission thus concluded that bank acceptance drawers should pay a remuneration for the period of financing. The Commission considered that the period of financing started on the date of the issuance of the bank acceptance draft and ended on the maturity date of the bank acceptance draft. Regarding bank acceptance drafts issued before the investigation period and bank acceptance drafts with a maturity date after the end of the investigation period, the Commission calculated the benefit only for the period of financing covered by the investigation period.

(290) In accordance with Article 6(b) of the basic Regulation, considering that bank acceptance drafts are a form of short-term financing and that they effectively have the same purpose as short-term working capital loans, the Commission considered that the benefit thus conferred on the recipients is the difference between the amount that the company had actually paid as remuneration of the financing by bank acceptance drafts and the amount that it should pay by applying a short-term financing interest rate.

(291) The Commission determined the benefit resulting from the non-payment of a short-term financing cost. The Commission considered, as established in previous investigations ([119]), that bank acceptance drafts should bear a cost equivalent to a short-term loan financing. Therefore, the Commission applied the same methodology as to short-term loans financing denominated in RMB, described in Section 3.6.4 above.

([119]) See GFF case recital (399), and Aluminium foil case, recital (356).

(292) Following definitive disclosure, the CCCME claimed that the bank acceptance drafts should not be considered as a loan for which an interest rate benchmark should be used, but rather considered as a payment guarantee in return for a fee/commission. In this regard, it referred to the New York Federal Reserve Bank website ([120]) which makes an analogy between bank acceptance drafts and bank guarantees.

(293) The Commission disagreed. Considering the nature of the bank acceptance drafts, which provide for an extended payment term through a free short-term loan, the Commission considered that the benefit should be calculated based on an undistorted interest rate benchmark. As far as the reference to the New York Federal Reserve Bank website is concerned, the Commission first noted that the referred document is outdated (1981). Also, the Chinese bank acceptance drafts system differs from that described there, in the sense that payment terms are extended through the use of bank acceptance drafts. On these grounds, this claim was rejected.

(294) Following definitive disclosure, Zoomlion group observed that the Commission had wrongly calculated a subsidy amount for bank acceptance drafts receivables. The Commission accepted this claim. The corrected calculations were re-disclosed to Zoomlion group.

(295) Furthermore, in its comments following definitive and additional disclosures, Zoomlion claimed that the benefit relating to the bank acceptance drafts should be based on the draft amount net of the guarantees provided by Zoomlion group on the grounds that the net amount reflects the actual amount of the financing. It also reiterated that the fee paid by Zoomlion group on bank acceptance drafts should be deducted from the calculation of the benefit amount.

(296) The Commission noted that the provision of a guarantee in the form of a cash deposit or other form of guarantee is common practice and that financial institutions do not calculate the interest to be charged based on the value of the loan net of the cash deposit or other guarantee provided by the lender. The Commission also noted that the fee paid by Zoomlion group did not qualify as an interest charge. It is rather an administrative fee relating to the issuance of the bank acceptance draft. On these grounds these claims were rejected.

3.6.5.3. Bonds

(297) One of the sampled groups, Zoomlion, benefited from preferential financing in the form of bonds.

(a) Legal basis/Regulatory Framework

— Law of the People's Republic of China on Securities (version 2014) ('Securities Law') ([121]);

— Administrative Measures for the Issuance and Trading of Corporate Bonds, Order of the China Securities Regulatory Commission No 113, 15 January 2015;

— Regulation on the Administration of Corporate Bonds, issued by the State Council on 18 January 2011;

— Measures of the Administration of Debt Financing Instruments of Non-financial Enterprises on the Interbank Bond Market Issued by the People's Bank of China, Order of the People's Bank of China [2008] No 12, 9 April 2008.

(298) In line with the regulatory framework, bonds cannot be issued or traded freely in China. The issuance of each bond must be approved by various governmental authorities, such as the PBOC, the NDRC or the CSRC, depending on the type of bond and the type of issuer. In addition, according to the Regulations on the Administration of Corporate Bonds, there are annual quotas for the issuance of corporate bonds.

([120]) https://www.newyorkfed.org/medialibrary/media/research/quarterly_review/1981v6/v6n2article6.pdf.
([121]) Lastly amended on 28 December 2019 by Presidential Decree No 37 with effect from 1 March 2020.

(299) Furthermore, according to Article 16 of the Securities Law applicable during the IP, a public offering of corporate bonds should satisfy the following requirements: 'the usage purpose of the proceeds shall comply with State industrial policies […]' and 'the proceeds from a public offering of corporate bonds shall be used for approved purpose(s) only'. Article 12 of the Regulations on the Administration of Corporate Bonds reiterates that the purpose of the raised funds must comply with the industrial policies of the State. The issuance of bonds under such conditions targets an encouraged industry such as the MAE industry and corresponds with the practice of financial institutions to support those industries ([122]).

(300) According to Article 16(5) of the Securities Law, 'the coupon rate of the corporate bonds shall not exceed the coupon rate stipulated by the State Council'. In addition, Article 18 of the Regulations on the Administration of Corporate Bonds provides further details by stating that, 'the interest rate offered for any corporate bonds shall not be higher than 40 % of the prevailing interest rate paid by banks to individuals for fixed-term savings deposits of the same maturity'.

(301) Furthermore, Article 18 of the Administrative Measures for the Issuance and Trading of Corporate Bonds stipulates that only certain bonds complying with strict quality criteria, such as an AAA credit rating, may be issued in a public manner to public investors or be issued in a public manner to qualified investors only at the sole discretion of the issuer. The corporate bonds that fail to meet these standards can be issued in a public manner only to qualified investors. Therefore, it results that most corporate bonds are issued to qualified investors which have been approved by the CSRC and which are Chinese institutional investors.

(302) Though the legal and regulatory framework of this alternative source of funds was clearly identified, the GOC refused to provide any information in this regard. Findings were thus based on facts available under Article 28 of the basic Regulation.

(303) Furthermore, as an encouraged industry under the 'Guiding Catalogue for Industry Restructuring', the MAE industry is entitled to credit support by financial institutions based on Decision No 40. The fact that the bonds issued by the sampled companies bear a low interest rate; i.e. an interest rate close or below the LPR, is a strong indication that financial institutions, which are the major investors in these bonds, are obliged to provide 'credit support' to these companies and take into account other considerations than commercial considerations when taking the investment or financing decision, such as government policy objectives. Indeed, an investor operating in market conditions would be more sensitive to the financial return on the investment and would most probably not invest in corporate bonds bearing very low interest rates. This is especially the case for financial institutions, as the return of these bonds is close to or lower than the rate at which they can obtain funds themselves from other financial institutions.

(304) Moreover, the conclusions reached by the Commission about the financial situation of the four groups of exporting producers in Section 3.6.4 above in terms of their liquidity and solvency profiles further indicate that investors operating in market conditions would not invest in financial instruments such as these groups' bonds, offering low financial returns, while the issuer presents high liquidity and solvency risks. Therefore, in the Commission's view only investors having motivations other than a financial return on their investment, such as compliance with the legal obligation to provide financing to companies in encouraged industries, would make such an investment.

(b) Financial institutions acting as public bodies

(305) According to the China bond market insight 2022 by Bloomberg, the bonds listed in the interbank bond market account for 88 % of the total trading volume of bonds ([123]). According to the same study, most of the investors are institutional investors, including financial institutions. In particular, commercial banks represent 57 % of the investors and policy banks represent 3 % ([124]). Therefore, investors buying bonds are mainly Chinese banks, including State-owned banks.

([122]) See OFC case, recitals (400) and (401).
([123]) https://assets.bbhub.io/professional/sites/10/China-bond-market-booklet-2022.pdf, p. 15.
([124]) Idem, p. 33.

(306) On the basis of the above, the Commission considered that there is a body of corroborating evidence, according to which a major proportion of the investors in the corporate bonds issued by the sampled companies, are financial institutions which have a legal obligation to provide credit support to MAE producers.

(307) As described in recital (299), Article 16 of the Securities Law and Article 12 of the Regulations on the Administration of Corporate Bonds require that a public offering of corporate bonds complies with the industrial policies of the State. This has the effect that bonds can only be issued for purposes that are in line with the targets of the planning of the GOC regarding encouraged industries. The institutional investors, which are, as shown in recital (305), to a large extent commercial banks and policy banks, have to follow the policy orientations laid down in Decision No 40, which read together with the Guiding Catalogue for Industry Restructuring, provides for specific treatment of certain projects within certain encouraged industries, such as the MAE industry. The beneficial treatment to all of the sampled groups resulted in the decision to invest in bonds issued with an interest rate that does not reflect market-based criteria.

(308) Furthermore, as described in Section 3.6.1 above, the financial institutions are characterised by a strong State presence, and the GOC has the possibility to exercise a meaningful influence on them. The general legal framework in which these financial institutions operate is also applicable to bonds.

(309) In recital (164) above, the Commission concluded that State-owned financial institutions are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation and that they are in any event considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation. In Section 3.6.2 above, the Commission concluded that private financial institutions are also entrusted and directed by the government.

(310) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete issuances of bonds. It therefore examined the overall legal environment as set out above in recital (298) in combination with the concrete findings of the investigation.

(c) Findings of the investigation

(311) The Commission found that the bonds were issued with an interest rate below the level that should have been expected given the companies' financial and credit risk situation, including below the risk-free reference rate published by the NIFC as referred to in recital (316) below.

(312) In practice, interest rates on bonds are influenced by the credit rating of the company, similar to loans. However, the Commission concluded in recital (180) that the local credit rating market is distorted and credit ratings are unreliable.

(313) In light of the above considerations, the Commission concluded that the Chinese financial institutions followed the policy instructions laid down in Decision No 40 and in the relevant guidelines for bonds by providing preferential financing to companies pertaining to an encouraged industry and thus acted either as public bodies within the meaning of Article 2(b) of the basic Regulation or as bodies which are entrusted or directed by the government within the meaning of Articles 3(1)(a)(iv) of the basic Regulation.

(d) Benefit

(314) By organising the issuance of a bond with an interest rate below the market rate corresponding to the actual risk profile of the issuer, as determined in recital (180) above, and by accepting to invest in such bond, the financial institutions provided a benefit to the sampled producer.

(e) Specificity

(315) The Commission considered that the preferential financing through bonds is specific within the meaning of Article 4(2)(a) of the basic Regulation as the bonds cannot be issued without approval from government authorities, and the Securities Law states that the issuance of bonds must comply with the State's industrial policies. As already mentioned in recital (80) the MAE industry is regarded as an encouraged industry in the 14th Five-Year Plan (14 FYP) for the development of the construction industry, released by the China Construction Machinery Association (CCMA) in 2021.

(f) Calculation of the subsidy amount

(316) Since bonds are in essence another type of debt instrument, in principle similar to loans, and since the calculation methodology for loans is already based on a basket of bonds, the Commission decided to follow the calculation methodology for loans as described above in Section 3.6.4. This means that the relative spread between US AA corporate bonds and US B corporate bonds with the same duration is applied to the PBOC Loan Prime Rate to establish a market-based interest rate for bonds, which is then compared with the actual interest rate paid by the company in order to determine the benefit.

(317) Following definitive disclosure, Zoomlion group observed that the Commission had included the same bond several times in the calculation of the subsidy amount for the mother company.

(318) The Commission accepted this claim and eliminated the interest benefits counted multiple times for the same bonds. The corrected calculations were re-disclosed to Zoomlion group.

(319) Following additional disclosure, Zoomlion group made further comments relating to the calculation of the benefits. Such claims were accepted and the calculation was adapted accordingly.

3.6.5.4. Conclusion on other types of preferential financing

(320) The Commission established that all sampled groups of exporting producers benefited from preferential financing in the form of credit lines, bank acceptance drafts and bonds. In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, the Commission considered these types of preferential financing a countervailable subsidy.

(321) As a result of the corrections in the calculation of the subsidy amounts related to credit lines, bank acceptance drafts and corporate bonds, explained in recitals (256) to (260), (294) to (296) and (317) to (360) respectively, the total subsidy rate for other types of preferential financing increased for Zoomlion Group from 4,96 % to 5,46 %.

(322) The subsidy rate established with regard to the preferential financing described above during the investigation period for the sampled exporting producers amounted to:

Preferential financing: other types of financing

Company name	Subsidy rate
Dingli Group	3,08 %
JLG Group	0,35 % 35 %

Company name	Subsidy rate
Sinoboom Group	0,96 %
Zoomlion Group	5,46 %

3.7. **Preferential insurance: export credit insurance**

(323) The complainant alleged that Sinosure provided preferential export credit insurance, on a concessional basis to encouraged industries, such as the MAE industry. On its general website, Sinosure states that it promotes Chinese exports of goods, especially the exporting of high-tech products. According to a study undertaken by the Organisation for Economic Co-operation and Development ('OECD'), the Chinese high-tech industry, of which the MAE industry is part, received 21 % of the total export credit insurance provided by Sinosure ([125]). Furthermore, Sinosure has taken an active role in fulfilling the 'Made in China 2025' initiative, guiding enterprises to use national credit resources, carrying out scientific and technological innovation and technological upgrading, and helping 'going out' enterprises become more competitive in the global market ([126]).

(a) *Legal basis*

(1) Notice on the Implementation of the Strategy of Promoting Trade through Science and Technology by Utilising Export Credit Insurance (Shang Ji Fa [2004] No 368), issued jointly by MMAEOM and Sinosure.

(2) 840 plans included in the Notice by the State Council of 27 May 2009.

(3) Notice on Cultivation and Development of the State Council on Accelerating Emerging Industries of Strategic Decision (GuoFa [2010] No 32 of 18 October 2010), issued by the State Council and its Implementing Guidelines (GuoFa [2011] No 310 of 21 October 2011).

(4) Notice on the issuance of the 2006 edition of China's High-tech Products Export Catalogue No 16 of the National Science and Technology Department (2006).

(5) The 14th Five-Year Plan (14 FYP) for the development of the construction industry ([127]).

(6) Zhejiang Province 14 FYP on Developing High-End Equipment Manufacturing ([128]).

(b) *Findings of the investigation*

(324) The sampled groups of companies had outstanding export insurance agreements with Sinosure during the investigation period.

(325) As mentioned in recital (102) above, Sinosure failed to provide information concerning the investment income reported in its annual report, evidence concerning issues relating to its financial statement such as operating expenses, revenues, investment incomes, overall sum insured, sum insured of the machinery industry sector; information on its articles of association, information concerning sampled producers despite the existence of relevant company authorizations and supporting information concerning the independence of its credit risk assessment system.

(326) Therefore, the Commission had to complement the information provided by facts available.

([125]) OECD Study on Chinese export credit policies and programmes, page 7, para 32, available at https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG(2015)3&doclanguage=en, last accessed on 18 August 2021.

([126]) See Sinosure website, Company profile, Supporting 'Made in China', https://www.sinosure.com.cn/en/Resbonsiblity/smic/index.shtml, last accessed on 17 August 2021.

([127]) See footnote 30, 14 FYP Construction Machinery EN, p 179, under points 4 and 5.

([128]) https://zjjcmspublic.oss-cn-hangzhou-zwynet-d01a.internet.cloud.zj.gov.cn/jcms_files/jcms1/web1585/site/attach/0/157823f5651e42ea85038c86b74becca.pdf, Section IV.1 Key tasks.

(327) According to information provided in previous anti-subsidy investigations ([129]) and according to Sinosure's website ([130]), Sinosure is a State-owned policy-oriented insurance company established and supported by the State to support the PRC's foreign economic and trade development and cooperation. The company is 100 % owned by the State. It has a board of directors and a board of supervisors. The Government has the power to appoint and dismiss the company's senior managers. Based on this information, the Commission concluded that there are formal indicia of government control with respect to Sinosure.

(328) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of Sinosure with respect to the MAE industry.

(329) According to the Notice on the issuance of the 2006 edition of China's High-tech Products Export Catalogue No 16, *'products included in the 2006 edition of the Export Catalogue may enjoy preferential policies granted by the State for the export of high-tech products'*. The Export Catalogue of High-Tech Products specifically mentions construction machineries ([131])

(330) The 14th Five-Year Plan (14 FYP) for the development of the construction industry, released by the China Construction Machinery Association (CCMA) in 2021 explicitly listed in the annex of this plan, MAE as an encouraged category of industry products. Specifically, aerial work machinery and emergency equipment are mentioned under this classification on page 3 of the annex. This inclusion underscores the strategic emphasis on promoting advanced construction machinery and highlights the growing importance of MAE within the industry.

(331) Furthermore, according to the Notice on the Implementation of the Strategy of Promoting Trade through Science and Technology by Utilising Export Credit Insurance ([132]), Sinosure should increase its support for key industries and products by strengthening its overall support for the export of high and new technology products, including 'information and communications' products. It should treat high and new technology industries, such as the MAE industry, listed in the China's High-tech Products Export Catalogue, as its business focus and provide comprehensive support in terms of underwriting procedures, approval with limits, claims processing speed and rate flexibility. With regard to rate flexibility, it should give products the maximum premium rate discount within the floating range provided by the credit insurance company. Furthermore, the Annual Report of Sinosure for 2022 ([133]) states that 'Special support measures for the [] engineering machinery sectors were formulated.'. The Annual Report of Sinosure for 2023 ([134]) also provides that: 'The Board of Supervisors played the advising role by conducting dedicated researches on [], business demand of engineering machinery sector'.

(332) On this basis, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on such normative framework to exercise control in a meaningful way over the conduct of Sinosure.

(333) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete insurance agreements. During the verification visit, the GOC maintained that in practice Sinosure's premiums were market-oriented and based on risk assessment principles. However, no specific examples with respect to the MAE industry or the sampled companies were provided even though the sampled groups had provided relevant authorizations allowing access to relevant documentation.

([129]) See Tyres case cited in footnote 5, recital 429.
([130]) https://www.sinosure.com.cn/en/Sinosure/Profile/index.shtml, last accessed on 18 August 2021.
([131]) China's High-tech Products Export Catalogue, e.g. No 775, 780, 781, 1035, 1098, 1100, 1104, 1107 and 1109.
([132]) http://www.mMAEom.gov.cn/aarticle/b/g/200411/20041100300040.html, last accessed on 12 August 2021.
([133]) Sinosure Annual Report 2022, p. 10, www.sinosure.com.cn/images/xwzx/ndbd/2022/07/01/614A436D74F31027D0FF4290DBC964F8.pdf.
([134]) Sinosure Annual Report 2023, p. 19, www.sinosure.com.cn/images/xwzx/ndbd/2024/07/09/961D4764432B71CF10660C000F29D9F9.pdf.

(334) In the absence of concrete evidence, the Commission therefore examined the concrete behaviour of Sinosure about the insurance provided to the sampled companies. This behaviour contrasted with their official stance, as they were not acting based on market principles.

(335) After comparing the total claims paid with the total insured amounts, based on the data in the Sinosure's Annual Report for 2023 ([135]), the Commission concluded that on average Sinosure would need to charge 0,29 % of the insured amount as a premium to cover the cost of the claims (without even taking into account overhead expenses).

(336) In addition, the Commission noted that Sinosure had booked a net loss from its operating activities in 2022 and 2023; i.e. the provision of export credit insurance, and that it would be loss making overall if it did not book significant revenues from investment income. As mentioned in recital (102), Sinosure failed to provide information on such investment income.

(337) Therefore, the Commission concluded that the legal framework set out above is being implemented by Sinosure in the exercise of governmental functions with respect to the MAE sector. Sinosure acted as a public body in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law. Furthermore, the sampled exporting producers received a benefit, since the insurance was provided at rates below the minimum fee needed for Sinosure to cover its operational costs.

(338) The Commission also determined that the subsidies provided under the export insurance programme are specific, because they could not be obtained without exporting and are thus export contingent within the meaning of Article 4(4)(a) of the basic Regulation.

(c) *Calculation of the subsidy amount*

(339) As Sinosure held a predominant market position during the investigation period, the Commission could not find a market-based domestic insurance premium. Therefore, in line with previous anti-subsidy investigations, the Commission thus used the most appropriate external benchmark, for which information was readily available, i.e. the premium rates applied by the Export-Import Bank of the United States of America to non-financial institutions for exports to OECD countries.

(340) The Commission considered that the benefit conferred on the recipients is the difference between the amount that the company had actually paid as insurance premium and the amount that it should have paid by applying the external benchmark premium rate mentioned in recital (291).

(341) Sinoboom and Zoomlion benefited from this scheme, and even though their benefit was negligible, it was accounted for in the calculation of their global subsidy margin. However, at a more granular level, the determined subsidy margin for them was set at 0,00 % due to rounding.

(342) The subsidy rate established regarding this scheme during the investigation period for the following sampled groups amounted to:

Company name	Subsidy rate
Dingli	0,05 %
Sinoboom	0,00 %
Zoomlion	0,00 %

([135]) Sinosure Annual Report 2023, p. 3. www.sinosure.com.cn/images/xwzx/ndbd/2024/07/09/961D4764432B71CF10660C000F29D9F9.pdf .

3.8. **Grant programmes**

(a) *Legal basis*

(343) The grants were awarded by national, provincial, city, or district government authorities. The level of legal detail for the particular law under which these benefits were granted, if there was any legal basis for them at all, was not disclosed to the Commission. As mentioned in recital (101), the GOC also failed to provide such information.

(b) *Findings of the investigation*

(344) The Commission found that all four sampled groups of companies benefitted from a variety of grant programmes. Given the large amount of grants that the Commission found in the books of the sampled groups of companies, only a summary of the key findings is presented in this Regulation. Evidence of the existence of numerous grants and the fact that they had been granted by various levels of the GOC was initially provided by the sampled groups and confirmed by their financial statements and during the verification visits. Detailed findings on these grants were provided to the individual companies in their specific disclosure documents.

(c) *Benefit*

(345) These grants constituted subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation, as a transfer of funds from the GOC in the form of grants to the sampled groups of companies took place that conferred a benefit equal to the amount of the grant.

(d) *Specificity*

(346) The Commission assessed all the grants received by the sampled companies and found that not all were specific to the production of MAE. However, the grants related to technology, innovation and development, the purchase of fixed assets, and industrial support and promotion were considered to be specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation given that, they appear to be limited to certain companies, certain industries, or specific projects in specific regions.

(347) Furthermore, these grants did not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation, given that the eligibility conditions and the actual selection criteria for enterprises to be eligible are not transparent, not objective and do not apply automatically.

(e) *Calculation of the subsidy amount*

(348) The benefit was calculated as the amount received in the IP, or allocated to the investigation period where the amount was depreciated over the useful life of the fixed asset to which the grant received before the investigation period was related. However, based on the Guidelines for the Calculation of the Amount of Subsidy in Countervailing Duty Investigations ([136]), non-recurring subsidies received in the IP, which amounted to less than 1 % ad valorem, were expensed, even when they were linked to the purchase of fixed assets. This allocation method is fully in line with the WTO report from the informal group of experts which provides that grants for which the purpose is for the purchase of fixed assets should be allocated while *'it was deemed appropriate, primarily from the standpoint of administrative convenience, that very small subsidies be expensed regardless of type or other considerations. A level of less than 0,5 per cent of sales for any individual subsidy is recommended for this threshold'* ([137]).

([136]) 98/C 394/04 (OJ C 394, 17.12.1998, p. 6).
([137]) G/SCM/W/Rev.2*.

(f) *Conclusion*

(349) The subsidy rate established with regard to the grant programmes described above during the investigation period for the sampled groups of companies amounted to:

Grants

Company name	Subsidy rate
Dingli Group	3,59 %
JLG Group	0,14 %
Sinoboom Group	1,37 %
Zoomlion Group	0,77 %

3.9. **Government provision of goods and services for less than adequate remuneration ('LTAR')**

Government provision of land use rights for less than adequate remuneration

(350) All land in the PRC is owned either by the State or by a collective, constituted of either villages or townships, before the land's legal or equitable title may be patented or granted to corporate or individual owners. All parcels of land in urbanised areas are owned by the State and all parcels of land in rural areas are owned by the villages or townships.

(351) Pursuant to the PRC Constitution and the Land Law, companies and individuals may however purchase 'land use rights' ('LUR'). For industrial land, the leasehold is normally 50 years, renewable for a further 50 years.

(352) The GOC indicated that LUR are neither goods (tangible or movable personal property other than money ([138])) nor services, thus consequently the alleged programme does not constitute 'provisions of goods or services at LTAR' as per Article 3(1)(a)(iii) of the basic Regulation.

(353) The Commission disagreed with this allegation. First, the Manual on Statistics of International Trade in Services ('the Manual') on which the GOC relies to allege that LUR are not services, contains a category relating to '*… government services not included elsewhere*' which are identified as main components of standard services. In addition, irrespective of the legal means by which the land, is acquired, it remains that the provision of LURs amounts *in fine* to the provision of land. In this regard, the WTO Dispute Settlement Body already confirmed that land is considered an 'immovable' good and that Article 1.1(a)(1)(iii) of the SCM Agreement may apply ([139]). Thus, provision of LUR is a provision of goods or services.

(354) Following definitive disclosure, the GOC indicated that more specific definition of the 'government services not included elsewhere' provided in the Manual proved that this category cannot include LURs. On that basis the GOC requested termination of the investigation into this programme.

(355) The Commission noted that irrespective of the above point, the second argument presented in the recital (353) remained valid: '*the provision of LURs amounts in fine to the provision of land*'. Therefore, Commission upheld its position that the provision of LUR was a provision of 'goods and services' and rejected the claim of termination.

([138]) Softwood Lumber IV Panel Report, paras. 7.23-7.24.

([139]) WTO Panel Report, United States - Preliminary Determinations With Respect To Certain Softwood Lumber From Canada, WT/DS236/R, paras. 5.4 et seq, (adopted on 1 November 2002).

(a) *Legal basis/Regulatory Framework*

(356) The land-use right provision in China falls under Land Administration Law of the People's Republic of China ([140]). In addition, also the following documents are part of the legal basis:

(1) Articles 205-462 of the Civil Code which entered into force in January 2021, and in particular Articles 246, 260-261 and 330-361;

(2) Land Administration Law of the People's Republic of China (Order of the President of the People's Republic of China No 28) ([141]) as last amended in 2019 ny Order of the President of the PRC n°32;

(3) Law of the People's Republic of China on Urban Real Estate Administration (Order of the President of the People's Republic of China No 29) ([142])amended in 2019 and published under the Order of the President of the PRC n°32;

(4) Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas (Decree No 55 of the State Council of the People's Republic of China) ([143]) amended on 29 November 2020 as the State Council decree n°732;

(5) Regulation on the Implementation of the Land Administration Law of the People's Republic of China (Order of the State Council of the People's Republic of China [2014] No 653) ([144]) amended in 2021 by Order of State Council n°743);

(6) Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation (Announcement No 39 of the CSRC) ([145]); and

(7) Notice of the State Council on the Relevant Issues Concerning the Strengthening of Land Control (Guo Fa (2006) No 31) ([146]).

(b) *Findings of the investigation*

(357) According to Article 10 of the Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation, local authorities set land prices according to the urban land evaluation system, which is updated every three years, and the government's industrial policy.

(358) In previous investigations ([147]), the Commission found that prices paid for LURs in the PRC were not representative of a market price determined by free market supply and demand, since the auctioning system was found to be unclear, non-transparent and not functioning in practice, and prices were found to be arbitrarily set by the authorities. As mentioned in the previous recital, the authorities set the prices according to the urban land evaluation system, which instructs them among other criteria to consider also industrial policy when setting the price of industrial land.

(359) The above evidence contradicts the claims of the GOC that the prices paid for LUR in the PRC are representative of a market price, which is determined by free market supply and demand.

(360) Following definitive disclosure, the GOC reiterated its claims that LURs price formation mechanism and LURs market in China were clear, transparent and functional. The GOC also claimed that it thoroughly explained during the verification process auctioning system and price evaluation system. The GOC claims that the Commission should update and revise its view with respected to LURs market instead of relying on outdated findings of the previous investigations.

([140]) See Land Administration Law of the PRC of 25 June 1986, as amended, available at: https://www.fao.org/faolex/results/details/en/c/LEX-FAOC003560.

([141]) See Regulation on the Implementation of the Land Administration Law of the PRC of 27 December 1998, as amended, available at: https://www.fao.org/faolex/results/details/en/c/LEX-FAOC170451.

([142]) See https://law.pkulaw.com/chinalaw/d8db5e659bc282b9bdfb.html.

([143]) See https://law.pkulaw.com/chinalaw/66cde758ad66f43bbdfb.html.

([144]) See https://law.pkulaw.com/chinalaw/6ef282863f024c04bdfb.html.

([145]) See https://law.pkulaw.com/chinalaw/58891db210496a5fbdfb.html?keyword=%E5%9B%BD%E6%9C%89%E5%BB%BA%E8%AE%BE%E7%94%A8%E5%9C%B0%E4%BD%BF%E7%94%A8%E6%9D%83.

([146]) See https://www.gov.cn/zwgk/2006-09/05/content_378186.htm.

([147]) See HRF case recitals (295) to (299), Tyres case recitals (488) to (490), GFF case recitals (500) to (502), OFC case recitals (541) to (543), ACF case recitals (540) to (548), BEV case recitals (681) to (683).

(361) The Commission, however, noted that the findings made in previous and recent anti-subsidy investigations were adequately substantiated and relate to the same subsidy programmes as those mentioned in the present investigation. The Commission relied in each of these prior investigations on a similar legal framework governing land use rights in the PRC and notably on the fact that local authorities set land prices according to the urban land evaluation system and the government's industrial policy. This investigation did not show any noticeable change in this respect and GOC failed to provide evidence showing a discontinuation of this policy.

(362) The Commission also recalled that the GOC failed to provide information with regard to the acquisition of land by the producers/exporters of MAE. The GOC was unable to explain how in some circumstances companies were able to receive land for free. As explained in recital (106) those failures were among the points raised in the Article 28 Letter.

(363) Thus, on the basis of the information available in this investigation, the Commission rejected those claims.

(c) *Benefit*

(364) The findings of this investigation show that the situation concerning acquisition of LUR in the PRC is non-transparent and the prices were arbitrarily set by the authorities.

(365) Therefore, the provision of land-use rights by the GOC should be considered a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation in the form of provision of goods, which confers a benefit upon the recipient companies. As explained in recitals (350) to (351) and (357) to (359) above, there is no functioning market for land in the PRC and the use of an external benchmark (see recital (369)) demonstrates that the amount paid for land-use rights by the sampled exporting producers is well below the normal market rate.

(d) *Specificity*

(366) In the context of preferential access to industrial land for companies belonging to certain industries, the Commission noted that the price set by local authorities has to take into account the government's industrial policy, as mentioned above in recital (358). Within this industrial policy, the MAE as part of part of the construction industry is listed as an encouraged industry. In addition, according to Decision No 40 of the State Council, public authorities shall take into account 'The Guiding Catalogue of the Industrial Restructuring' and the industrial policies when providing land. Article XVIII of Decision No 40 makes clear that industries that are 'restricted' will not have access to land use rights. It follows that the subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic Regulation because the preferential provision of land is limited to companies belonging to certain industries, in this case the MAE industry, and government practices in this area are unclear and non-transparent.

(e) *Calculation of the subsidy amount*

(367) As in previous investigations ([148]) and in accordance with Article 6(d)(ii) of the basic Regulation, land prices from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu ('Chinese Taipei') were used as an external benchmark ([149]). The benefit conferred on the recipients is calculated by taking into consideration the difference between the amount actually paid by each of the sampled exporting producers (i.e., the actual price paid as stated in the contract and, when applicable, the price stated in the contract reduced by the amount of local government refunds/grants) for land use rights and the amount that should normally have been paid on the basis of the Chinese Taipei benchmark.

([148]) See Tyres case, GFF case, OFC case, and ACF case.

([149]) Upheld by the General Court in Case T-444/11 Gold East Paper and Gold Huacheng Paper versus Council, Judgment of the General Court of 11 September 2014 ECLI:EU:T:2014:773.

(368) The Commission considers Chinese Taipei as a suitable external benchmark for the following reasons:

— the comparable level of economic development, GDP and economic structure in Chinese Taipei and a majority of the provinces and cities in the PRC where the sampled exporting producers are based;

— the physical proximity of the PRC and Chinese Taipei;

— the high degree of industrial infrastructure in both Chinese Taipei and many provinces of the PRC;

— the strong economic ties and cross border trade between Chinese Taipei and the PRC;

— the high density of population in many of the provinces of the PRC and in Chinese Taipei;

— the similarity between the type of land and transactions used for constructing the relevant benchmark in Chinese Taipei with those in the PRC; and

— the common demographic, linguistic and cultural characteristics between Chinese Taipei and the PRC.

(369) Following the methodology applied in previous investigations ([150]), the Commission used the average land price per square metre established in Chinese Taipei corrected for inflation and GDP evolution as from the dates of the respective LUR contracts. The information concerning industrial land prices as of 2015 was retrieved from the website of the Industrial Bureau of the Ministry of Economic Affairs of Taiwan ([151]). For the previous years, the prices were corrected using the inflation rates and evolution of GDP per capita at current prices in USD for Chinese Taipei as published by the IMF for 2015.

(370) The GOC claimed that the above benchmark is not correct as the Commission is comparing the price for land ownership in Chinese Taipei with the price of land use rights for the limited duration in the PRC.

(371) In this respect, the Commission noted that the selection of Chinese Taipei as a benchmark was based on the examination of several factors listed in recital (368) above. The Commission considered however, that even if there were certain differences in the market conditions between land use rights in mainland China and sale of land in Chinese Taipei, these would not be of such nature to invalidate the choice of Chinese Taipei as a valid benchmark. The Commission could not identify during the course of the investigation any other adequate benchmark or adjustment method that would adequately reflect these differences in the market conditions.

(372) Following definitive disclosure, the GOC reiterated its position that the price of the land ownership cannot be a benchmark for the land use rights. However, no new arguments were presented which would invalidate the position of the Commission as expressed in recitals (368) and (371). The Commission also noted that the GOC was unable to present a reliable benchmark that would reflect the difference between land use rights and property rights. Therefore, this argument was rejected.

(373) Following definitive disclosure, CCCME claimed that the Commission's choice of land prices in Chinese Taipei as benchmark was inappropriate in view of substantial difference of level of economic development and GDP per capita between Chinese Taipei and the PRC (which is even bigger if only Hunan province, where the production of MAE is mostly located, is taken for comparison). This difference was even more substantial in the past where LURs were actually obtained by the MAE producers. CCCME observed also that adjustments done to the benchmark based on the inflation and GDP evolution were not appropriate, as the correction indexes reflect changes in Chinese Taipei, which is not comparable with the respective developments in the PRC. Finally, the CCCME claimed that the Commission did not disclose the calculation details of the benchmark and thus deprived the CCCME and the companies it represented of the rights to understand how the subsidy amount was calculated.

([150]) See GFF, OCS, Solar panels, OFC and BEV cases.
([151]) https://lvr.land.moi.gov.tw.

(374) As explained in recital (371), the Commission relied on the benchmark that was considered the most appropriate, even considering differences between the market conditions. The Commission could not identify during the course of the investigation any other adequate benchmark or adjustment method that would adequately reflect these differences in the market conditions. Therefore, this argument was rejected.

(375) With regard to the claim of insufficient disclosure, the Commission noted that calculations of the subsidy amount were disclosed to the sampled Chinese exporting producers, which are members of the CCCME. For the sake of clarity these benchmarks were also added to the open file.

(376) Following definitive disclosure, Zoomlion group claimed that the subsidy amount under this scheme should be recalculated taking into account alleged abnormal development of industrial land prices in Chinese Taipei in 2021 and 2022. The company claimed that the Commission should disregard the price levels of these two years and replace them by indexing from the price level of previous years.

(377) The Commission disagreed. The methodology of calculation of subsidy amount under this scheme and the respective benchmarks was considered accurate, hence the Commission saw no reason or any factual or legal basis for an adjustment only because certain MAE producers obtained their LURs in specific years. Nevertheless, the Commission noted that Zoomlion group did not provide any data or supporting evidence substantiating its allegation on the 'abnormal development of industrial land prices in Chinese Taipei'.

(f) *Conclusion*

(378) The subsidy rate established with regard to this subsidy during the investigation period for the sampled exporting producers amounts to:

Land use rights at LTAR

Company name	Subsidy rate
Dingli Group	2,09 %
JLG Group	0,19 %
Sinoboom Group	1,86 %
Zoomlion Group	1,53 %

3.10. **Revenue foregone through tax exemption and reduction programmes**

3.10.1. *Enterprise Income Tax ('EIT') reduction for High and New Technology Enterprises*

(379) According to the Law of the People's Republic of China on Enterprise Income Tax ('EIT Law'), high and new technology enterprises to which the State needs to give key support benefit from a reduced enterprise income tax rate of 15 % rather than the standard tax rate of 25 %.

(a) *Legal basis*

(380) The legal basis of this programme is Article 28 of the EIT Law and Article 93 of the Implementation Rules for the Enterprise Income Tax Law of the PRC ([152]), as well as:

— Circular of the Ministry of Science and Technology, Ministry of Finance and the State Administration of Taxation on revising and issuing Administrative Measures for the Recognition of High-Tech Enterprises (No. 32 of 2016);

([152]) Implementing Regulations of the Enterprise Income Tax Law of the People's Republic of China (Revised in 2019) - Order of the State Council of the People's Republic of China No. 714.

— Circular of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Revising and Issuing the Guidelines for the Administration of Accreditation of High-tech Enterprises, (No. 195 of 2016);

— Announcement of the State Administration of Taxation on the Application of Preferential Income Tax Policies to High-tech Enterprises (Announcement No. 24 of 2017);

— The 2016 Catalogue of High-tech Fields Supported by the State ([153]).

(381) Chapter IV of the EIT Law contains provisions regarding 'Preferential Tax Treatment'. Article 25 of the EIT Law, which stands as a chapeau for Chapter IV, provides that *'The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State'*. Article 28 of the EIT law provides that *'the rate of enterprise income tax on high and new technological enterprises needing special support of the State shall be reduced to 15 %'*.

(382) Article 93 of the Implementation Rules for the Enterprise Income Tax Law clarifies that:

"The important high and new technology enterprises to be supported by the state" as referred to in Clause 2 of Article 28 of the Enterprise Income Tax Law refer to the enterprises which own key intellectual property rights and satisfy the following conditions:

1. *Complying with the scope of the Key State Supported High and New Technology Areas;*
2. *The proportion of the research and development expense in the sales revenue shall be no less than the prescribed proportion;*
3. *The proportion of the income from high-tech technology/product/service in the enterprise's total revenue shall be no less than the prescribed proportion;*
4. *The proportion of the technical personnel in the enterprise's total employees shall be no less than the prescribed proportion;*
5. *Other conditions prescribed in the Measures for the Administration of High-Tech Enterprise Identification.*

Measures for the Administration of High-Tech Enterprise Identification and Key State Supported High and New Technology Areas shall be jointly formulated by the technology, finance and taxation departments under the State Council and come into effect after approved by State Council'.

(383) The above-mentioned provisions clearly specify that the reduced enterprise income tax rate is reserved to *'important high and new technology enterprises to be supported by the State'* which own key intellectual property rights and satisfy certain conditions such as *'complying with the scope of the Key State Supported High and New Technology Areas'*.

(384) According to Article 11 of the Administrative Measures for the Recognition of High-Tech Enterprises, to be recognised as high-tech an enterprise must simultaneously meet certain conditions among which: *'it has obtained the ownership of intellectual property rights, which plays a central role in technically supporting its main products (services), through independent research, transfer, grant, mergers and acquisitions, etc.'* and *'the technology that plays a central role in technically supporting its main products (services) is within the range predetermined in the "high-tech fields supported by the state".'*

(385) Companies benefiting from this measure have to file their income tax return and the relevant annexes. The actual amount of the benefit is included in the tax return.

(b) *Findings of the investigation*

(386) The Commission found that companies within the sampled exporting producer groups qualified as high-tech companies during the investigation period and thus enjoyed a reduced EIT rates of 15 %. However, only in three of the sampled groups the companies actually benefited from this scheme in the IP.

([153]) http://kj.quanzhou.gov.cn/wsbs/xgxz/201703/t20170322_431820.htm.

(c) *Benefit*

(387) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(d) *Specificity*

(388) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this scheme only to enterprises that are operating in certain high technology priority areas determined by the State. The MAE industry is such a high technology priority.

(389) Thus, the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain companies and sectors.

(390) The GOC argued that this subsidy program was not specific as the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing eligibility, and the amount of the tax reduction, and that eligibility is automatic and that the qualification criteria and conditions are strictly adhered to.

(391) The Commission disagreed with this claim. Article 4(2)(a) of the basic Regulation provides that '*where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific*'. Indeed, the subsidy scheme at issue have their legal basis in Chapter IV 'Tax Preferences' of the EIT. By its name and content, this chapter explicitly provides for specific preferential treatment which 'explicitly limits access to a subsidy to certain enterprises'. More specifically, Article 93 of the Implementation Rules for the Enterprise Income Tax Law clarifies that 'The important high and new technology enterprises to be supported by the state [shall satisfy certain] conditions', such as '1. Complying with the scope of the Key State Supported High and New Technology Areas'. As is clear from the above, all enterprises or industries are not eligible to benefit from the same preferential tax treatments. Consequently, the subsidies provided under this tax exemption were considered specific under Article 4(2)(a) of the basic Regulation

(e) *Calculation of the subsidy amount*

(392) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable under the reduced tax rate.

(f) *Conclusion*

(393) The subsidy rate established with regard to this subsidy during the investigation period for the sampled exporting producers amounts to:

EIT reduction for HNTE

Company name	Subsidy rate
Dingli Group	3,77 %
Sinoboom Group	1,87 %
Zoomlion Group	1,29 %

3.10.2. *Preferential pre-tax deduction of research and development expenses*

(394) The tax offset for research and development entitles companies to preferential tax treatment for their R&D activities in certain high technology priority areas determined by the State and when certain thresholds for R&D spending are met.

(395) More specifically, R&D expenses incurred by an enterprise when it conducts any R&D activity, an extra 100 % of the amount of R&D expenses actually incurred shall be deducted before tax payment, in addition to the deduction of actual expenses as prescribed, as of 1 January 2023, provided that the said expenses are not converted into intangible assets and included in the current profits and losses.

(396) If the said expenses have been converted into intangible assets, such expenses may be amortised at the rate of 200 % of the costs of the intangible assets before tax payment as of 1 January 2023.

(a) *Legal basis*

(397) The legal basis for the programme is Article 30(1) of the EIT Law, along with Article 95 of the Implementation Rules for the Enterprise Income Tax Law of the PRC as well as the following notices:

— Announcement of the State Administration of Taxation on Issues concerning the Attribution Scope of the Weighted Pre-tax Deduction of R&D Expenses (Announcement No 40 of 2017);

— Announcement of the Ministry of Finance and State Administration of Taxation on Further Improving the Policies Regarding Weighted Pre-tax Deduction of R&D Expenses (Announcement No 7 of 2023);

(b) *Findings of the investigation*

(398) The Commission found out that companies within the sampled groups enjoyed additional deduction on research and development expenses incurred from the research and development of new technologies, new products and new techniques.

(c) *Benefit*

(399) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(d) *Specificity*

(400) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this measure only to enterprises that incur R&D expenses in certain high technology priority areas determined by the State, such as the MAE sector. Thus, the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises and sectors.

(401) The GOC of China argued that 'research and development super deductions' is not specific as this is a universal tax policy with the purpose to encourage enterprises to increase their investment in R&D activities. According to the GOC, there are objective criteria and conditions for the application of the programme and the programme applies automatically when the corresponding conditions are met.

(402) The Commission did not agree with the GOC reading of the laws and implementing measures, which show that the programme is limited to certain sectors and enterprises supported by the GOC on the basis of criteria that do not appear objective or neutral, such as that they comply with the scope of the 'Key State Supported High and New Technology Areas'. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation, as it applies only to enterprises operating in certain high technology areas, such as the MAE industry. Moreover, Article 30 of EIT Law provides that R&D expenses incurred by enterprises in the field of development of new technologies, new product and new techniques may be additionally deducted at the time of calculating taxable income, Article 95 of the Implementation Rules for the EIT Law explains what the deduction consists of, while Article 4 of the Notice on Improving Reduction of R&D Development Expenses lists the industries for which the pre-tax deduction is not applicable (with a certain degree of discretion, as the list ends with wording '*…and any other industries stipulated by the Ministry of Finance and State Administration of Taxation*').

(403) Following definitive disclosure, the GOC argued that the Commission statement that *'the programme is limited to certain sectors and enterprises supported by the GOC […], such as they comply with the scope of the "Key State Supported High and New Technology Areas"'* is flawed.

(404) However, the GOC admitted that eligibility of this program is limited to the enterprises which incurred expenses related to the research and development of new technologies, new products and new processes. No explanation was given how the word 'new' should be defined in this context. The GOC did not comment either on the clearly discretional possibility of the authorities to exclude certain industries from the application of this tax deduction. Therefore, the Commission disagreed with the GOC claim that the eligibility of this programme was '*clearly and objectively stipulated by law*'. Hence, this claim was rejected.

(e) *Calculation of the subsidy amount*

(405) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable after the additional 100 % deduction of the actual expenses on R&D.

(f) *Conclusion*

(406) The subsidy rate established with regard to this subsidy during the investigation period for the sampled exporting producers amounts to:

Pre-tax deduction for R&D

Company name	Subsidy rate
Dingli Group	1,09 %
JLG Group	0,08 %
Sinoboom Group	0,93 %
Zoomlion Group	0,87 %

3.10.3. *Dividends exemption between qualified resident enterprises*

(407) The EIT Law offers income tax preferences to Enterprises engaged in industries or projects the development of which is specifically supported and encouraged by the State and in particular, exempt from tax the income from equity investment, such as dividends and bonuses, between eligible resident enterprises.

(a) *Legal basis*

(408) The legal basis for the programme is Article 26(2) of the EIT Law, along with the Implementation Rules for the Enterprise Income Tax Law of the PRC.

(409) Article 25 of the EIT, which stands as a chapeau for Chapter IV 'Preferential Tax Policies', provides that *'The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and* encouraged *by the State*'. Furthermore, Article 26(2) specifies that the tax exemption is applicable to income from equity investments between '*eligible resident enterprises*', which appears to limit its scope of application to only certain resident enterprises.

(b) *Findings of the investigation*

(410) The Commission found that one company in the sampled groups received an exemption from tax of dividend income between qualified resident enterprises.

(c) *Benefit*

(411) The Commission considered that this scheme is a subsidy under Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(412) Following definitive disclosure, the GOC claimed that this programme had a purpose of avoiding double taxation and did, therefore, not grant enterprises additional tax benefits by forgoing or not collecting revenue otherwise due.

(413) Although the Commission agreed that the elimination of double taxation is an internationally recognised tax practice, it does not apply equally across all countries. The GOC failed to show how the deduction in question avoids double taxation specifically (namely, by showing that the dividends subject to the exemption are taxed elsewhere and the rule only captures situations of double imposition). The claim was therefore rejected.

(d) *Specificity*

(414) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this exemption only to qualified resident enterprises which have the major support of, and the development of which is encouraged by the State. Thus, the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises and sectors.

(415) Following definitive disclosure, the GOC claimed that the Commission conclusions as to the limitation of the eligibility of this programme to only some enterprises is wrong as the Commission misinterpreted the term 'qualified' as used in Article 26 of the EIT Law. According to the GOC word 'qualified' was used there in the context of 'qualified investment incomes' rather than in the context of the 'qualified resident enterprises'.

(416) The Commission disagreed. Article 26(2) of the EIT is part of Chapter IV 'Tax Preferences', which provides for a number of preferential tax treatments that are exemptions to the general taxation rules. Furthermore, Article 25 of the EIT, which stands as a chapeau for Chapter IV 'Preferential Tax Policies', provides that 'The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State'. In addition, Article 26(2) specifies that the tax exemption is applicable to income from equity investments between 'eligible resident enterprises', which appears to limit its scope of application to only certain resident enterprises. Therefore, the Commission considered that such preferential tax policy is limited to certain industries, which are specifically supported and encouraged by the State, such as the MAE industry, and is therefore specific within the meaning of Article 4(2)(a) of the basic Regulation. This was also confirmed by the English copy of the income tax return (form A107010, line 3) submitted by several sampled Groups which reads '(II) Dividends, bonuses and other equity investment income between qualified resident enterprises is exempted from enterprise income tax (4 + 5 + 6 + 7 + 8)' in the Chinese version of the tax declaration, in this respect.

(e) *Calculation of the subsidy amount*

(417) The Commission has calculated the amount of the subsidy by applying the normal tax rate to the dividend income that has been deducted from taxable income.

(f) *Conclusion*

(418) The subsidy rate established with regard to this subsidy during the investigation period for the sampled exporting producers amounts to:

EIT dividend exemption

Company name	Subsidy rate
Sinoboom Group	0,04 %

3.11. **Other schemes**

(419) The Memorandum on sufficiency of evidence listed other schemes for which there was sufficient evidence in the complaint tending to show the existence of countervailable subsidies available for the MAE exporting producers. The list of such programmes includes but is not limited to:

— Government provision of electricity for less than adequate remuneration

— Government provision on inputs for less than adequate remuneration

— Government provision of shipping and logistic services for less than adequate remuneration

— Revenue foregone in the form of accelerated depreciation of instruments and equipment used by High Tech enterprises for High-Tech development and production

— Income support.

(420) In the context of this investigation, the Commission could not conclude on the countervailability of these programmes. This is without prejudice to the Commission examining those measures on the occasion of future reviews, including reviews pursuant to Article 19 of the basic Regulation.

(421) Following the definitive disclosure, the CMAE indicated that for the above schemes, the memorandum on the sufficiency of evidence showed that the complainant had provided information to establish the level of subsidisation available from third country investigations. The CMAE also observed that for most of these schemes the Commission had informed the GOC of its intention to use facts available following the application of the Article 28 of the basic Regulation. Therefore, CMAE requested the Commission to take all necessary steps to reach a conclusion about the countervailability of these schemes.

(422) The Commission noted that while there was sufficient evidence to initiate the investigation on the schemes in question, it could not complete the assessment on the above schemes given a number of factors such as the number of schemes to be investigated, their intrinsic complexity and 13-month deadline pertaining to anti-subsidy investigations. However, as mentioned in recital (420), this is without prejudice to the possibility of reaching findings on these schemes in the future, including in the framework of reviews.

3.12. **Conclusion on subsidization**

(423) The Commission calculated the amount of countervailable subsidies for the cooperating groups of companies in accordance with the provisions of the basic Regulation by examining each subsidy or subsidy programme, and added these figures together to calculate a total amount of subsidisation for each of the exporting producers for the investigation period. To calculate the overall subsidisation the Commission first calculated the percentage of subsidisation: the subsidy amount as a percentage of the company's turnover or company's turnover of the PUI. This percentage was then used to calculate the subsidy amount allocated to exports of the product concerned to the Union during the investigation period. This subsidy amount was later expressed as a percentage of the Costs, Insurance and Freight ('CIF') value of the same export.

(424) Following definitive disclosure, Zoomlion group challenged the allocation key used by the Commission in apportioning the subsidies received by the mother company to the MAE producer. It claimed that the turnover, relating to transactions of a given input between these companies, expressed as a percentage of the group turnover, should have been used as an allocation key. Zoomlion group also challenged the calculation of the consolidated turnover used as a denominator in the calculations of the subsidy rate arguing that the group turnover should have been used instead of the mother company's consolidated turnover.

(425) The Commission rejected these claims. First, the Commission considered that an allocation based on turnover was conservative as far as a mother company is concerned, in the absence of a more appropriate apportionment method. It also noted that the transactions related to inputs were not the sole transactions between the related companies as the mother company was also involved in the sales of the product under investigation. Second, the Commission considered that the consolidated turnover had been calculated correctly, on the basis of verified information submitted by Zoomlion group. On the contrary, the group turnover suggested by Zoomlion group was not submitted, nor verified in the course of the investigation. It was only submitted as an approximation following definitive disclosure Also, the Commission considered that the data of the mother company was more pertinent than that of the group as the mother company had bi-directional transactions (both sale of inputs and purchase of the product under investigation) with the entity producing and selling the product under investigation, showing their interconnection, justifying the consolidation at its level. Hence, an allocation based on consolidated turnover was considered the most appropriate.

(426) Following additional disclosure Zoomlion group reiterated its claim that the Commission had erroneously used the turnover of the mother company rather than the total group turnover. It also added that, should the Commission use such turnover as an allocation key, it should use exclusively the turnover to unrelated companies in the numerator as part of the allocation exercise and not include that to related companies.

(427) For the reasons mentioned in recital (425) and considering the strong relationship between the mother company and the producer of MAE, in the form of a majority shareholding of the mother company in the producer of MAE and the availability of a verified consolidated turnover for the investigation period for the mother company as provided by Zoomlion group, the Commission considered that using such turnover for the allocation of the benefits was more appropriate than using an approximation of the consolidated group turnover for the investigation period that was neither submitted nor verified ahead of the definitive disclosure. As far as the use of (a minor share of) sales to related companies in the numerator is concerned, the Commission considered that such approach was to the benefit of Zoomlion group as it presumed that sales to unrelated customers would normally be made at a higher price than between related parties whereby the numerator was slightly underestimated leading to a slightly lower allocation to the product under investigation and lower subsidy amount. On these grounds, Zoomlion group's claims were rejected.

(428) As a result of the corrections in the calculation of the subsidy amount for Zoomlion group, summed up in the recital (321), the overall subsidy rate for the group increased from 11,14 % to 11,65 %. Zoomlion group received a full re-disclosure of the calculations with the explanatory description of the changes made, including small technical and clerical errors done in the original calculations.

(429) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating exporting producers not included in the sample was calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts. Indeed, the Commission considers that the facts available used in those cases did not affect substantially the information needed to determine the amount of subsidisation in a fair manner, so that exporters who were not asked to cooperate in the investigation will not be prejudiced by using this approach.

(430) Given the high rate of cooperation of Chinese exporting producers and the representativeness of the sample also in terms of subsidy eligibility, the Commission considered it appropriate to set the amount for 'all other companies' at the level of the highest amount established for the sampled companies. The 'all other companies' amount was applied to those companies which did not cooperate in the investigation.

(431) On this basis, the countervailable subsidy amounts as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company name	Overall subsidy rate
Dingli Group	14,28 %
JLG Group	0,00 %
Sinoboom Group	7,31 %
Zoomlion Group	11,65 %
Cooperating non-sampled companies	12,12 %
All other companies	14,28 %

4. INJURY

4.1. Exclusion of imports of the JLG Group from the analysis of subsidised imports

(432) Except for the JLG Group, the subsidy rates established in relation to the imports from the PRC were above the *de minimis* threshold laid down in Article 14(3) of the basic Regulation. The imports of the JLG Group were *de minimis* and could thus not be considered in the injury analysis below but were taken into account when analysing the effects of other factors on the injurious situation of the Union industry.

(433) To assess if the findings of absence of subsidisation regarding the JLG Group could be extended to the non-sampled exporting producers, the Commission assessed the volume and prices of the imports of the JLG Group compared to all other imports from the PRC to the Union in the IP.

(434) In the IP, the volume of non-subsidised imports from the JLG Group amounted to [20 – 25 %] of total imports from the PRC, and it represented around [40 – 45 %] of the sampled imports. The Commission then compared the average CIF export price of the JLG Group to the average CIF export prices of the other three sampled exporting producers based on the verified data and the average price of all the Chinese imports to the Union, based on the submitted sampling replies ([154]). It found that in the IP, the average CIF export price of the JLG Group was [25 – 30 %] higher than the average export price of the other sampled exporting producers. In the same period, the average CIF export price of the JLG Group was [40 - 45 %] higher than the export price of all the other exporting producers based on the sampling replies. As these total exports of all exporting producers (excluding the exports of the JLG Group) accounted for [75 – 80 %] of the total imports from the PRC to the Union in the IP, the Commission considered that it could not extend the findings of absence of subsidisation regarding the JLG Group to the non-sampled exporting producers and to all the imports from the PRC to the Union in general.

4.2. Units and sections of the units

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

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

4.3. Definition of the Union industry and Union production

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

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

(438) As indicated in Section 1.4.1, three Union producers were selected for the sample, representing 56 % of the total Union production of the like product.

4.4. Union consumption

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

— the sales data concerning the Union industry's sales on the Union market, provided by CMAE, crosschecked with the verified data of the sampled Union producers;

— the sales quantities provided by the cooperating exporting producers for imports from the PRC ([155]); and

— the imports from all other third countries, as recorded in the Comext database of Eurostat ([156]).

(440) Union consumption developed as follows:

Table 1

Union consumption (in units)

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

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

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

4.5. Imports from the country concerned

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

(442) Imports from the PRC were based on the data provided by the cooperating exporting producers that were considered to represent 100 % of imports to the Union ([157]).

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

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

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

([157]) As explained in Section 4.1, imports of the JLG Group to the Union were not considered as being subsidised and were thus treated as 'other imports'.

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

Table 2

Import volume (in units) and market share

	2020	2021	2022	IP
Volume of imports from the PRC (units) ([158])	5 000-15 000	15 000-25 000	20 000-30 000	20 000-30 000
Index	*100*	*236*	*299*	*314*
Market share	29 %	42 %	42 %	41 %
Index	*100*	*147*	*146*	*142*

Source: Data provided by the cooperating exporting producers.

(445) During the period considered, the volume of imports of the product concerned from the PRC increased by 214 % and their market share went up from 29 % in 2020 to 41 % in the IP, representing an increase of 42 %.

4.5.2. *Prices of the imports from the country concerned and price undercutting*

(446) The Commission established the prices of imports based on data provided by the cooperating exporting producers that were considered close to 100 % of imports to the Union ([159]).

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

Table 3

Import price (EUR/unit)

	2020	2021	2022	IP
Price of imports from the PRC (per unit)	11 040	11 883	16 377	17 008
Index	*100*	*108*	*148*	*154*

Source: Data provided by the cooperating exporting producers.

(448) In the period considered, the average price of the Chinese imports increased by 54 %, reaching a level of 17 008 EUR/unit in the IP.

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

— the weighted average sales prices per product type of the three sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and

— the corresponding weighted average prices per product type of the imports from the sampled Chinese exporting producers to the first independent customer on the Union market, established on a Cost, Insurance, Freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.

([158]) The data on import volumes are presented in ranges in order not to allow disclosing sensitive information on import prices of JLG.
([159]) As explained in Section 4.1, imports of the JLG Group to the Union were not considered as being subsidised and were thus treated as 'other imports'.

(450) The price comparison was made for the same product type for transactions at the same level of trade, duly adjusted where necessary. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period. On basis of the above, a weighted average undercutting margin of 21 % was established for the subsidised Chinese imports on the Union market.

(451) Regardless the existence of price undercutting, the Commission also established that the Chinese imports significantly suppressed the prices of the Union industry, which had to sell at below costs during the IP.

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

4.6.1. *General remarks*

(452) In accordance with Article 8(3) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(453) As mentioned in Section 1.4.1, sampling was used for the determination of possible injury suffered by the Union industry.

(454) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on basis of data contained in the complaint and the complainant's reply to a specific questionnaire. The data related to all Union producers. The Commission evaluated the microeconomic indicators on basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

(455) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity and magnitude of the subsidy margin.

(456) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.6.2. *Macroeconomic indicators*

4.6.2.1. Production, production capacity and capacity utilisation

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

Table 4

Production, production capacity and capacity utilisation (in units)

	2020	2021	2022	IP
Production volume (units)	17 743	26 427	32 349	35 402
Index	*100*	*149*	*182*	*200*
Production capacity	70 732	70 762	73 152	75 111
Index	*100*	*100*	*103*	*106*

	2020	2021	2022	IP
Capacity utilisation	25 %	37 %	44 %	47 %
Index	*100*	*149*	*176*	*188*

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

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

4.6.2.2. Sales volume and market share

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

Table 5

Sales volume and market share

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

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

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

4.6.2.3. Growth

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

4.6.2.4. Employment and productivity

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

Table 6

Employment and productivity

	2020	2021	2022	IP
Number of employees	2 215	2 624	3 027	3 099
Index	*100*	*118*	*137*	*140*

	2020	2021	2022	IP
Productivity (unit/FTE)	8	10	11	11
Index	*100*	*126*	*133*	*143*

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

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

4.6.2.5. Magnitude of the subsidy margin

(464) Except for the JLG Group, all subsidy margins established (see Section 3.6.4) were significantly above *de minimis* level. The impact of the magnitude of the subsidisation on the Union industry was substantial given the volume and prices of imports from the country concerned.

4.6.3. *Microeconomic indicators*

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

4.6.3.1. Prices and factors affecting prices

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

Table 7

Sales prices in the Union

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

Source: Questionnaire replies of the sampled Union producers.

(467) The table above shows the evolution of the unit sales price on the Union market as compared to the corresponding cost of production during the period considered.

(468) Over the period considered, the prices of the factors of production increased substantially. The costs increase of more than 30 % concerned mainly the prices of steel, of semi-conductors and of energy. Since the production utilisation increased from a very low level in 2020 (25 %) to 47 % in the IP, and since the fixed costs remained the same, the overall costs increased to a lesser extent.

(469) In parallel, the volume of imports of MAE from China increased between 2020 and 2022 by 199 % (see Table 2) at prices significantly below the Union industry prices (see Table 3). This price pressure prevented the Union industry from increasing prices to reflect the increasing costs. As the result, the Union industry was forced to set its prices at an unsustainably low level in order not to lose too much market share. Therefore, although not directly visible from Table 7 because of the ranges, on average, the costs of production were higher than the sales prices throughout the whole period. Accordingly, in the period considered, the Union industry continued operating at losses (see Table 10), even in a situation of a booming market and increasing sales. Under normal market conditions, i.e. in the absence of strongly increasing imports at unfairly low prices, the Union industry would have been able to benefit and return to a profitable situation.

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

4.6.3.2. Labour costs

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

Table 8

Average labour costs per employee

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

Source: Questionnaire replies of sampled Union producers.

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

4.6.3.3. Inventories

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

Table 9

Inventories

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

Source: Questionnaire replies of the sampled Union producers.

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

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

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

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

Table 10

Profitability, cash flow, investments and return on investments

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

Source: Questionnaire replies of sampled Union producers.

(477) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.

(478) In 2020 the financial situation of the Union industry was already affected by the rise in Chinese imports which started in 2018. As explained in Section 4.6.3.1, the price pressure from unfair imports on the Union market prevented the Union industry from increasing prices to reflect the increasing costs. As the result, the Union industry was forced to set its prices at an unsustainably low level to maintain sufficient volume. Since the Union industry could not, under the pressure of the low-priced Chinese imports, increase its production, this reflected in a low-capacity utilisation, which increased from 25 % in 2020 to 47 % in the IP, but remained under 50 % compared to the capacity utilisation of the sampled Chinese exporting producers which was, depending on the company and the year, between 53 % to 99 %.

(479) Although in 2021, the profitability improved by 27 %, the Union industry remained loss making. In 2022, the financial situation of the Union industry worsened, as profitability went down by 185 %. The drop in profitability in 2022 was caused by the abnormal increase in costs of production driven by increased raw material prices in combination with the fact that sales prices were based fixed for a certain period of time. Therefore, the sales prices could not be increased accordingly which translated in heavy losses. Therefore, despite the expanding market and the massive increase in consumption, the Union industry was not able to keep up with the continuous cost increase.

This situation worsened in 2022. As the result, during the period considered overall profitability increased but it remained negative in the investigation period – between [(– 5 %)–0 %]. Cash flow dropped considerably (by 146 %) and in parallel, the level of yearly investments decreased by 64 % over the period considered. The return on investments followed the same downward trend, it decreased during the period considered by 440 %.

4.6.3.5. Conclusion on injury

(480) The year 2020 which was taken as the reference point for the analysis of trends was according to the complainant strongly impacted by the pandemic situation and the Union industry's activities were the lowest over the last decade. Therefore, the increase of indicators from 2020 was not an indication for a growing industry but rather meant a recovery back to previous level of activities.

(481) Indeed, the data submitted for 2019 by the complainant confirmed that in 2020, the Union industry's production and sales were exceptionally low – in 2019, the volume of production of the Union producers was similar to the level of the production in the IP, and the sales of the Union industry on the Union market between 2019 and the IP decreased by 14 %. However, as the reference year 2020 was impacted by the pandemic situation, a number of indicators showed an increase in the period considered. In particular, the production of the Union industry increased by 100 % and its sales on the Union market increased by 62 %.

(482) Despite the considerable increase in Union consumption of the product concerned during the period considered (by 122 %), the Union industry was not able to increase its sales correspondingly in order to at least maintain its market share. On the contrary, due to the Chinese imports at significant subsidised prices during the period considered the market share of the Union industry decreased from 52 % to 38 %. In parallel, the volume of the Chinese imports increased substantially, by 214 %, in the same period and their market share increased from 29 % to 41 %. In addition to the losses incurred by the Union industry throughout the period considered, other injury indicators like cash flow, level of investments and return of investments developed negatively as well.

(483) On basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 8(4) of the basic Regulation.

5. **CAUSATION**

(484) In accordance with Article 8(5) of the basic Regulation, the Commission examined whether the subsidised imports from the country concerned caused material injury to the Union industry. In accordance with Article 8(6) of the basic Regulation, the Commission also examined whether other known factors could, at the same time, have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the subsidised imports from the country concerned was not attributed to the subsidised imports. The Commission examined imports from third countries, the non-subsidised imports from the PRC and the export performance of the Union industry. No other factors that could have caused the injury to the Union industry was known to exist.

5.1. **Effects of subsidised imports**

(485) As set out in Section 4.5.1, the import volumes of the product concerned from the PRC increased significantly over the period considered. Prices of imports also undercut the Union industry's prices by 21 % on average. The Union industry was therefore unable to maintain or increase its market share and benefit from the increased consumption of the product concerned on the Union market during the period considered. This situation had a serious impact on the Union industry's profitability, which was negative throughout the whole period considered.

(486) Therefore, the Commission concluded that those subsidised imports had a negative impact on the situation of the Union industry.

5.2. **Effects of other factors**

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

5.2.1. *Imports from other countries and non-subsidised imports*

5.2.1.1. Imports from other countries

(488) The Commission established the imports from other third countries on basis of Eurostat data. Since the data for these imports under some of the CN codes were only reported in tonnes (and not in units), the Commission could not establish volumes and prices per unit, like it was done for the Union industry and for imports from China, based on data provided by the sampled exporting producers. Therefore, the volumes and prices of imports from other third countries could not be directly compared with those of the Union industry and imports from China and were, hence, only indicative, though the trends based on these volumes and prices over the period considered were accurate. To establish the market shares, however, the Commission used a conversion factor from tonnes into units based on the data of the cooperating Chinese exporting producers ([160]). As regards prices the Commission did not consider this as accurate, as in view of the differences in product mix the use of a conversion factor would not lead to accurate prices per unit.

(489) Apart from the PRC, the product concerned was imported to the Union from several other countries which collectively accounted for 8 % of the market share in the IP:

Table 11

Imports from other countries (in tonnes)

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

([160]) The Commission used a conversion factor of 4 888 kg per unit.

Country		2020	2021	2022	IP
	Average price	5,76	5,67	5,88	6,01
	Index	*100*	*102*	*102*	*104*
Total of all third countries except the PRC					
	Volume (in tonnes)	16 643	21 442	24 174	26 135
	Index	*100*	*129*	*145*	*157*
	Market share	12 %	10 %	8 %	8 %
	Average price	3,93	4,40	4,72	4,80
	Index	*100*	*120*	*120*	*122*

Source: Eurostat.

(490) Apart from China, the two next biggest importing countries to the Union were the United States and the Union Kingdom, with each having a market share of 3 % in the IP. The rest of the countries (except China) together represented in the IP a market share of around 3 %. The prices of imports from these countries increased during the period considered by 22 %.

(491) In absolute terms, the level of imports from total of all third countries except the PRC increased by 57 %, however, due to the increased consumption on the Union market, the market share of all of these countries decreased by 4 percentage points during the period considered and were far lower than the market share of Chinese imports.

(492) The Commission therefore concluded that imports from other countries have not contributed to the injury suffered by the Union industry.

5.2.1.2. Non-subsidised imports from the PRC

(493) As mentioned in Section 4.1, the subsidy rate of the JLG Group was found to be below the *de minimis* threshold laid down in Article 14(3) of the basic Regulation, and therefore, the Commission considered these imports among other factors to assess whether these imports could have contributed to the injury suffered by the Union industry.

Table 12

Non-subsidised imports (in units)

	2020	2021	2022	IP
Non-subsidised imports	(2 000–3 000)	(3 000–4 000)	(6 000–7 000)	(8 000–9 000)
Index	*100*	*171*	*306*	*372*
Average price	(5 000–10 000)	(10 000–15 000)	(15 000–20 000)	(15 000–20 000)
Index	*100*	*142*	*237*	*237*
Market share	(5–10 %)	(5–10 %)	(10–15 %)	(10–15 %)
Index	*100*	*106*	*150*	*168*

(494) The non-subsidised imports increased over the period considered by 272 %, from [2 000–3 000] units in 2020 to [8 000–9 000] units in the investigation period. Their market share increased by 68 % from [5–10 %] in 2020 to [10–15 %] in the investigation period. As mentioned in Section 4.1, in the IP, the average CIF export price of the JLG Group was [25–30 %] higher than the average export price of the other sampled exporting producers. In the same period, the average CIF export price of the JLG Group was [40-45 %] higher than the export price of all the other exporting producers based on the sampling replies. However, the prices of the JLG Group remained during the period considered well below the prices of the Union industry and therefore, these low-priced imports and their increase in import volume were considered to have had a negative impact on the performance of the Union industry, and thus, might have contributed to the material injury suffered by the Union industry. However, given that their average prices are higher than those of the subsidised imports, that the volumes are smaller and the limited market share these non-subsidised imports represent, the Commission considered that those imports did not attenuate the causal link established between the injury suffered by the Union industry and the subsidised imports from the PRC.

5.2.2. *Export performance of the Union industry*

(495) The Commission assessed the export volume based on the information submitted by CMAE. Export prices were determined based on the questionnaire replies of the sampled Union producers.

(496) The volume and prices of exports of the Union industry developed over the period considered as follows:

Table 13

Export performance of the Union industry

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

Source: CMAE, questionnaire replies of sampled Union producers.

(497) In the period considered, the Union industry increased its export volume by 188 %. However, as mentioned in Section 4.6.3.5, in 2020 the Union industry was strongly impacted by the pandemic situation which impacted its level of exports. Before the pandemic, their level of exports was similar to the level achieved in 2021.

(498) The average export prices decreased, in the period considered, by 7 %, and they were, in the IP, below the average cost of production. However, these export prices per unit varied from around 13 000 EUR/unit to 49 000 EUR/unit.

(499) Overall, the investigation revealed that the majority of the export sales of the sampled Union producers were profitable. Hence, it was concluded that the export performance of the Union industry was positive and could not contribute to the injury suffered by the Union industry.

5.3. **Conclusion on causation**

(500) The Commission distinguished and separated the effect of all known factors on the situation of the Union industry from the injurious effects of the subsidised imports. The effect of these other factors, if any, on the Union's industry performance were however limited.

(501) In light of the above considerations, the Commission established a causal link between the injury suffered by the Union industry and the subsidised imports from China, which was not attenuated by the factors mentioned above.

6. UNION INTEREST

(502) The Commission examined whether, despite the determination of injurious subsidy, the imposition of measures would not be against the Union interest in accordance with Article 31 of the basic Regulation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, upstream suppliers, users, distributors and unrelated importers.

6.1. Interest of the Union industry

(503) The Union industry producing the mobile aerial platforms is composed according to the complainant of 22 companies and employs according to its information more than 3 000 staff. None of the producers opposed the initiation of the investigation.

(504) As concluded in Section 4.6.3.5, the subsidised imports from the PRC negatively impacted the situation of the Union producers of the product concerned: despite the increase in consumption on the Union market, the market share of the Union producers did not increase, and its profitability declined.

(505) It is expected that the imposition of countervailing duties will restore fair trade conditions in the Union market and will enable the Union industry to improve its profitability and recover.

(506) The Commission therefore concluded that the imposition of the measures is in the interest of the Union industry.

6.2. Interest of upstream suppliers

(507) Beyond the direct employment, the MAE industry also relied on a comprehensive network of upstream suppliers of the different MAE components which are then assembled on the production lines of the Union industry. The complainants alone relied according to their information on at least 280 suppliers, of which an estimated 260 operate in the Union. This would translate according to the estimate of the Union industry in about 32 000 jobs in the EU in at least 14 different Member States: Italy, Poland, France, Germany, Belgium, Hungary, Slovenia, Sweden, Denmark, Finland, Spain, the Netherlands, Ireland and Romania. Many of these suppliers were according to the complainant SMEs in remote or vulnerable regions of the Union. Some SMEs were in its view as well heavily dependent on demand from the Union MAE industry.

(508) In the absence of additional information available to the Commission, based on the above the Commission considered that besides the positive effect on the financial situation of the Union industry, the imposition of countervailing duties might positively impact the MAE suppliers, situated across a broad range of Member States.

6.3. Interest of users, distributors and unrelated importers

6.3.1. *Rental companies*

(509) According to the complainant, the vast majority of users (between 75-90 %) are rental companies. No user participated in the investigation.

(510) According to the complainant, the lifetime of the machines was long and since every machine was rented and used many times, the price fluctuation was diluted. Also, with the average machine price around EUR [35 000-40 000], any price fluctuations were divided over several years and several instances of use, and over different customers. In its view, the size of the fleet of the big rental companies was also relatively big compared to the annual Union consumption. Taken altogether, the size of these fleets, and the relatively slow replacement rate, makes the users much less vulnerable to price fluctuations. Rental companies were in its view also protected by potential increases in price resulting from measure by their ability to pass these effects on to their customers, allowing them to maintain their margins.

(511) The complainant also argued that machines were also commonly resold by rental companies or other buyers. These re-sales, even after several years of use, could be done at a considerable portion of the purchase price. Therefore, any increase in price resulting from the measure would also, in turn, increase the re-sale price of the used machines.

(512) Based on the above, the Commission considered that the impact on the rental companies were indeed less significant than if they were further 'processing' the product concerned. Since machines remained in general the property of the rental companies, any increase of its price would directly reflect in an increase of its assets. The fact that the machines were used over a longer period diminished in the Commission's view the negative effect of a potential price increase as well.

(513) Therefore, the Commission concluded that measures would not have a disproportionate effect on rental companies.

6.3.2. *Other users*

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

(515) In the complainant's view, the impact of price increases on these companies is limited since the mobile aerial platforms only represent a marginal portion of their equipment and of their costs. These end-users are companies with sufficient volume of activities making the investments in the platforms a limited portion of their costs.

(516) The Commission considered that the companies that purchase MAE have different core activities and the cost of MAE would in general be marginal compared to the total costs of these companies. Any potential price increase of MAE would add to their costs but not to the extend to have a serious financial impact of its operation. The Commission thus concluded that the impact of the measures on these other users was limited.

6.3.3. *Unrelated importers and traders*

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

6.4. **Conclusion on the Union interest**

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

7. **DEFINITIVE COUNTERVAILING MEASURES**

(519) In view of the conclusions reached with regard to subsidisation, injury, causation and Union interest, definitive countervailing duties should be imposed to remove the material injury caused to the Union industry by the subsidised imports of the product concerned from the PRC.

7.1. **Level of the definitive countervailing measures**

(520) Article 15(1), third subparagraph of the basic Regulation states that the amount of the countervailing duty shall not exceed the amount of countervailable subsidies established.

(521) Article 15(1), fourth subparagraph then states that *'Where the Commission, on the basis of the information submitted, can clearly conclude that it is not in the Union's interest to determine the amount of measures in accordance with the third subparagraph, the amount of the countervailing duty shall be less if such lesser duty would be adequate to remove the injury to the Union industry.'*

(522) No such information has been submitted to the Commission, and therefore the level of the countervailing measures will be set with reference to Article 15(1), third subparagraph.

(523) Given that the definitive measures in this case will be based on the amount of countervailable subsidies established, the injury margin was not established.

(524) On the basis of the above, the definitive countervailing duty rates, expressed on the CIF Union border price, customs duty unpaid, are as follows:

Company	Definitive countervailing duty
Hunan Sinoboom Intelligent Equipment Co., Ltd.	7,31 %
Zoomlion Intelligent Access Machinery Co., Ltd.	11,65 %
Zhejiang Dingli Machinery Co., Ltd.	14,28 %
Other cooperating companies	12,15 %
All other companies	14,28 %

(525) The anti-subsidy investigation was carried out in parallel with a separate anti-dumping investigation concerning the same product concerned originating from the PRC, in which the Commission imposed anti-dumping measures at the level of the dumping margin for Sinoboom and Dingli and at the level of the injury margin for Zoomlion. The company Zoomlion was not part of the sampled exporting producers in the anti-dumping investigation and its dumping margin was based on injury margin of all other cooperating companies.

(526) The normal value in the anti-dumping investigation was constructed in accordance with Article 2(6a) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ([161]) with reference to undistorted costs and profits in an appropriate external representative country. Consequently, in accordance with Article 15(2) of the basic Regulation and in order to avoid double counting, the Commission first imposed the definitive countervailing duty at the level of the established definitive amount of subsidisation and then imposed the remaining definitive anti-dumping duty, which corresponds to the relevant dumping margin reduced by the amount of the countervailing duty and up to the relevant injury elimination level established in the separate anti-dumping investigation. Since the Commission reduced the dumping margin found with the entire amount of subsidisation established in the PRC, there was no double counting issue within the meaning of Article 24(1) of the basic Regulation.

(527) After definitive disclosure, the CCCME argued that there was nevertheless an issue of double counting, even in a situation where the definitive anti-dumping duties were imposed at the injury elimination level, for two reasons. First, the definitive anti-dumping duties set at the injury elimination level would have the effect of already offsetting the subsidisation embedded in the lower Chinese export price. Second, the non-sampled companies in the anti-dumping proceeding received a dumping margin which was the weighted average level of the sampled producers. The dumping margins of two out of the four sampled companies were extremely high as a result of the partial application of the facts available. In the view of the CCCME, this gave rise to an unreasonable weighted average level of dumping margin that unfairly constrained the non-sampled companies' final duty setting.

([161]) ~~Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21, ELI: http://data.europa.eu/eli/reg/2016/1036/oj).~~

(528) The Commission disagreed with these arguments. First, as already explained in recital (526) above, as the Commission reduced the dumping margin found with the entire amount of subsidisation established in the PRC, any risk of double counting was eliminated. The purpose of establishing the injury elimination level is a different one, i.e. to assess if a lower margin than the dumping margin would be adequate to remove the injury. Accordingly, the injury elimination level has no link with any double counting issue, which concerns the assessment if (part of) the dumping margin is caused by subsidisation and not which level of duty is adequate to remove the injury. This so-called lesser duty rules only applies in anti-dumping proceedings and not in anti-subsidy proceedings. Capping the combined level of anti-dumping and anti-subsidy duties by the injury elimination level, as suggested by the CCCME, would *de facto* result in the application of the lesser duty rule in an anti-subsidy proceeding, which is not permitted by the basic anti-subsidy Regulation.

(529) Second, as regards the situation of the non-sampled coopering producers, the Commission considered that their anti-dumping duty was based on the (lower) sampled average injury elimination level, so the sampled average countervailing duty could be added to their duty. The claim of CCCME that the sampled average dumping margin was artificially high, was neither factually correct nor substantiated. Contrary to what the CCCME claimed, best facts available were not applied to two sampled companies, but only to one company, and only to a limited extent. The application of best facts available only had a minor impact on the dumping margins. In any event, the CCCME did not provide any evidence showing that the partial application of best facts available to one company resulted in an artificially high sampled average dumping margin.

(530) The CMAE argued, on the other hand, that the Commission should not have reduced the dumping margin found with the entire amount of subsidization, as at least part of the subsidization was not covered in the dumping margin. According to the CMAE, for a number of subsidies such as grants, preferential financing, tax exemption and reduction identified by the Commission, no double remedies would occur considering the specificity of the data used in the parallel anti-dumping investigation to construct normal value. According to the complainant, in the parallel anti-dumping investigation, the Commission constructed the normal value by replacing the value of inputs and factors of production. However, it did not assess the existence of subsidies on any of the inputs or on electricity in the anti-subsidy investigation. This means that there is no risk of double remedy between the subsidies and the dumping margin that would stem from the replacement of the value of inputs or electricity under the dumping methodology used by the Commission. Accordingly, the CMAE claims that cumulation of the countervailing measures with the anti-dumping duties is possible up to 14,25 % for Dingli and 7,31 % for Sinoboom.

(531) The Commission noted that its approach to deduct in full the subsidy amount from the dumping margin as it applied the methodology based on Article 2(6a) of the basic anti-dumping Regulation when constructing normal value was fully in line with the basic anti-dumping and anti-subsidy regulation as well as the relevant WTO texts. The Commission acknowledged the complainant's argument that even in the context of methodology to construct normal value based on undistorted prices and costs, it would be in principle possible to cumulate countervailing and anti-dumping duties, except for export subsidies. This was explicitly acknowledged by the relevant WTO jurisprudence ([162]) on this issue subject to certain relevant conditions. However, with regard to the subsidies affecting the financial results of the exporting producers, such as grants, preferential financing, and preferential tax regimes, the Commission acknowledged the complainant's arguments and evidence that the financial results of the company used in the representative country could be lower than what it would have been had this company received such subsidies in Brazil. However, as these arguments and the relevant evidence were submitted at a very late stage of the investigation, the Commission could not collect additional information and properly address the information submitted, and it was thus unable to reach a finding on the merit of this claim. Thus, in a situation

([162]) See WT/DS379/AB/R, paragraphs 541-542, 543, 599 and 602. See also Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 189, 15.6.2020, p. 1, ELI: http://data.europa.eu/eli/reg_impl/2020/776/oj), rec. (1135) et seq.

where it is unclear whether the approach taken in the anti-dumping investigation to construct normal value would mean that some subsidies found in this investigation were totally neutralised, the Commission, in the exercise of its discretion, decided to maintain its approach as already disclosed to interested parties in this case. This conclusion is without prejudice to the possibility to revisit the issue in the future.

(532) Given the high rate of cooperation of exporting producers in the PRC, the Commission found that the level of the highest duty imposed on the sampled companies would be representative as the 'all other companies' rate. The 'all other companies' duty will be applied to those companies, which did not cooperate in this investigation.

(533) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating exporting producers not included in the sample was calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample.

(534) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Company	Dumping margin	Subsidy rate	Injury elimination level	Countervailing duty rate	Anti-dumping duty rate
Hunan Sinoboom Intelligent Equipment Co., Ltd.	49,30 %	7,3 %	54,90 %	7,3 %	42,0 %
Zoomlion Intelligent Access Machinery Co., Ltd.	48,10 %	11,6 %	30,10 %	11,6 %	30,1 %
Zhejiang Dingli Machinery Co., Ltd.	20,60 %	14,2 %	47,60 %	14,2 %	6,4 %
Terex (Changzhou) Machinery Co., Ltd.	48,69 %	12,1 %	22,90 %	12,1 %	22,9 %
Other cooperating companies listed in Annex I with the exception of Terex (Changzhou) Machinery Co. Ltd.	48,10 %	12,1 %	30,10 %	12,1 %	30,1 %
Other companies cooperating in the anti-dumping investigation but not in the anti-subsidy investigation listed in Annex II	48,10 %	14,2 %	30,10 %	14,2 %	30,1 %
Other companies non cooperating in anti-dumping investigation but cooperating in the anti-subsidy investigation listed in Annex III	66,70 %	12,1 %	54,90 %	12,1 %	54,6 %
All other companies	66,70 %	14,2 %	54,90 %	14,2 %	52,5 %

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

(536) A company may request the application of these individual duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission. 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 informing about the change of name will be published in the *Official Journal of the European Union*.

7.2. **Special monitoring clause**

(537) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual countervailing duties. The companies with individual countervailing duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the countervailing duty applicable to 'all other companies'.

(538) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of countervailing duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.

(539) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 23(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

(540) 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 ([163]). 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 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).

8. **REGISTRATION**

(541) As mentioned in Section 1.2, the Commission made imports of MAE subject to registration. The registration took place with a view to possibly collecting duties retroactively under Article 16(4) of the basic Regulation.

(542) Since no provisional duties were imposed, no retroactive collection could occur. Thus, the registration of imports should be discontinued.

9. **DISCLOSURE**

(543) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty on imports of the product concerned originating in the People's Republic of China. Interested parties were given the opportunity to provide comments on the accuracy of the calculations specifically disclosed to them.

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

(544) In view of Article 109 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council ([164]), 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.

(545) As explained in recitals (526) above, the Commission deducted from the dumping margin part of the subsidy amount in order to avoid double counting. Thus, should any modification or removal of the definitive countervailing duties occur, the level of anti-dumping duties should be automatically increased by the same proportion in order to reflect the actual extent of double counting as a result of this modification or removal. This change of the anti-dumping duties should take place as from the entry into force of this regulation.

(546) 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 countervailing duty is imposed on imports of mobile access equipment designed for the lifting of persons, self-propelled, with a maximum working height of 6 metres 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 definitive countervailing duty applicable for the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Countervailing duty	TARIC additional code
Hunan Sinoboom Intelligent Equipment Co., Ltd.	7,3 %	89DL
Zoomlion Intelligent Access Machinery Co., Ltd.	11,6 %	89DQ
Zhejiang Dingli Machinery Co., Ltd.	14,2 %	89DO
Other cooperating companies listed in Annex I	12,1 %	See Annex I
Other companies cooperating in the anti-dumping investigation but not in the anti-subsidy investigation listed in Annex II	14,2 %	See Annex II

([164]) 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 (OJ L, 2024/2509, 26.9.2024, ELI: http://data.europa.eu/eli/reg/2024/2509/oj).

Company	Countervailing duty	TARIC additional code
Other companies non cooperating in anti-dumping investigation but cooperating in the anti-subsidy investigation listed in Annex III	12,1 %	See Annex III
All other companies	14,2 %	8999

3. Countervailing duties are not applicable to Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd. (TARIC additional code 89DM).

4. The application of the individual countervailing 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.

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

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

7. In cases where the countervailing duty has been subtracted from the anti-dumping duty for certain exporting producers, refund requests under Article 21 of Regulation (EU) 2016/1037 shall also trigger the assessment of the dumping margin for the exporting producer prevailing during the refund investigation period.

Article 2

Implementing Regulation (EU) 2025/45 is amended as follows:

(1) Article 1(2) is replaced by the following:

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

Company	Definitive anti-dumping duty	TARIC additional code
Hunan Sinoboom Intelligent Equipment Co., Ltd.	42,0 %	89DL
Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd.	22,5 %	89DM
Zoomlion Intelligent Access Machinery Co., Ltd.	30,1 %	89DQ
Terex (Changzhou) Machinery Co., Ltd. (listed in Annex I)	22,9 %	89DN

Company	Definitive anti-dumping duty	TARIC additional code
Zhejiang Dingli Machinery Co., Ltd.	6,4 %	89DO
Other cooperating companies listed in Annex I	30,1 %	See Annex I
Other companies cooperating in the anti-dumping investigation but not in the anti-subsidy investigation listed in Annex II	30,1 %	See Annex II
Other companies non cooperating in anti-dumping investigation but cooperating in the anti-subsidy investigation listed in Annex III	54,6 %	See Annex III
All other companies	52,5 %	8999’

(2) in Article 1, a new paragraph 6 is inserted:

‘6. Should the definitive countervailing duties imposed by Article 1 of Commission Implementing Regulation (EU) 2025/796 (*) be modified or removed, the duties specified in paragraph 2 shall be increased by the same proportion limited to the actual dumping margin found or the injury margin found as appropriate per company and from the entry into force of this Regulation.

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(*) Commission Implementing Regulation (EU) 2025/796 of 24 April 2025 imposing a definitive countervailing duty on imports of mobile access equipment originating in the People’s Republic of China and amending Implementing Regulation (EU) 2025/45 imposing a definitive anti-dumping duty on imports of mobile access equipment originating in the People’s Republic of China (OJ L, 2025/796, 25.4.2025, ELI: http://data.europa.eu/eli/reg_impl/2025/796/oj).’;

(3) in Article 1, a new paragraph 7 is inserted:

‘7. In cases where the countervailing duty has been subtracted from the anti-dumping duty for certain exporting producers, refund requests under Article 21 of Regulation (EU) 2016/1037 shall also trigger the assessment of the dumping margin for that exporting producer prevailing during the refund investigation period.’;

(4) the Annex is replaced by Annex I, Annex II and Annex III.

Article 3

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Implementing Regulation (EU) 2024/2725.

2. No definitive countervailing duty will be levied retroactively for registered imports.

3. Data collected in accordance with Article 1 of Implementing Regulation (EU) 2024/2725 shall no longer be kept.

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, 24 April 2025.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

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

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

ANNEX II

People's Republic of China (PRC) exporting producers cooperating in the anti-dumping investigation but not in the anti-subsidy investigation:

Country	Name	TARIC additional code
PRC	Reeslift Ltd.	89DY
PRC	Shandong Qiyun Group Co., Ltd.	89EA
PRC	Sunward Intelligent Equipment Co., Ltd.	89DS

ANNEX III

People's Republic of China (PRC) exporting producers cooperating in the anti-subsidy investigation but not in the anti-dumping investigation:

Country	Name	TARIC additional code
PRC	Zhejiang Noblelift Equipment Joint Stock Co. Ltd	89MH