

**Appendix E.2.1.001: Methodology for calculating normal value**

**1. Introduction**

1. This Appendix contains details on the methodology for calculating normal value in the present case.
2. In the view of the Applicant, the normal value of Chinese Excavators should be constructed using costs and prices from a third country based on Regulation 14(1)(b) of the D&S Regulations. That is because Section 15 of the PRC's accession protocol ("**Accession Protocol**")<sup>1</sup> to the World Trade Organization ("**WTO**") contains specific provisions regarding the determination of the normal value (Section 3).<sup>2</sup>
3. Should the TRA consider that Regulation 14(1)(b) does not apply to the PRC, then normal value of Chinese Excavators should be constructed using undistorted costs and profits because costs and prices in the PRC are distorted by a particular market situation ("**PMS**") in the PRC (Section 4).<sup>3</sup>
4. Before developing these points, and as the TRA has not yet taken a definitive position on the method for calculating normal value of imports from the PRC,<sup>4</sup> the Applicant briefly recalls the practice of other investigating authorities, which is to construct normal value and, in doing so, reject all Chinese prices and costs (Section 2).

**2. Other investigating authorities' practice in determining normal value for imports from the PRC**

5. Investigating authorities in key jurisdictions for anti-dumping consistently consider that all prices and costs in the PRC are distorted as a result of intervention by the Government of the PRC ("**GOC**") and should therefore be rejected. Normal value should then be constructed using entirely undistorted, and thus non-Chinese, costs and profits. For instance:
  - **European Union ("EU"):** The European Commission consistently uses the 'significant distortions' methodology for determining normal value in anti-dumping investigations on imports from the PRC. To underpin the use of this methodology, the Commission published a 466-page report detailing distortions in the PRC's economy, both cross-cutting and in many

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<sup>1</sup> World Trade Organization, Accession of the People's Republic of China, Decision of 10 November 2001, WT/L/432.

<sup>2</sup> See also Regulations 8(1)(c) and 14(3)(a) of the D&S Regulations.

<sup>3</sup> Regulations 7(2)(b), 8(1)(a), 11, 12, and 13 of the D&S Regulations.

<sup>4</sup> TRA, Aluminium extrusions from China, AD0012, Notice of initiation of reconsideration. The request for reconsideration contains various arguments concerning the normal value determination for Chinese exporters.

sectors.<sup>5</sup> The Commission has rejected all arguments that the data in the report is incorrect or outdated,<sup>6</sup> and the TRA itself stated that it had "not identified" any evidence "to indicate that there have been any substantive changes since the publication of this report."<sup>7</sup>

Relying on the report, the Commission constructs normal value using undistorted costs. It therefore uses no Chinese prices and costs. Thus, when constructing normal value, the Commission replaces all Chinese prices and costs with undistorted costs and profits.

- **United States ("U.S."):** The Department of Commerce consistently considers that the PRC is a non-market economy for the purpose of anti-dumping investigations concerning imports from the PRC.<sup>8</sup> According to the Department, the PRC "does not operate sufficiently on market principles to permit the use of prices and costs in that country for purposes of the Department's antidumping analysis."<sup>9</sup>

Therefore, the Department constructs normal value using undistorted costs. It therefore uses no Chinese prices and costs. Thus, when constructing normal value, the Department replaces all Chinese prices and costs with undistorted costs and profits.

- **Canada:** The PRC is prescribed by the Government of Canada as a non-market economy, which is defined as an economy where "domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market."<sup>10</sup>

As a result, the Border Services Agency either bases the normal value on domestic sales prices in a surrogate country or constructs normal value

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<sup>5</sup> European Commission, Report on significant distortions in the economy of China for the purpose of trade defence investigations, SWD(2017) 483 final/2 ("**EU Significant Distortions Report**"), Appendix E.2.1.002.

<sup>6</sup> See, e.g., Commission Implementing Regulation (EU) 2022/2247 of 15 November 2022 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of electrolytic chromium coated steel products originating in the People's Republic of China and Brazil, recitals 26-34.

<sup>7</sup> TRA, Welded tubes and pipes of iron or non-alloy steel from Belarus, China, and Russia, TD0001, Transition review, para. 7.76.

<sup>8</sup> U.S. Department of Commerce, Antidumping Duty Investigation of Certain Aluminum Foil From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination, 82 FR 50858, section "Determination of Non-Market Economy Status" (containing the most recent review of China's non-market economy status).

<sup>9</sup> U.S. Department of Commerce, Antidumping Duty Investigation of Certain Aluminum Foil From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination, 82 FR 50858.

<sup>10</sup> Section 20(1) of the Special Import Measures Act, read together with Section 17.1(a) of the Special Import Measures Regulations.

*using undistorted costs.<sup>11</sup> When constructing normal value, the Agency replaces all Chinese prices and costs with undistorted costs and profits.*

- ***India:** The Directorate General for Trade Remedies considers the PRC to be a non-market economy, which it defines as an economy that is "not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise."<sup>12</sup>*

*As a result, the Directorate General constructs normal value using undistorted costs.<sup>13</sup> It therefore uses no Chinese prices and costs. Thus, when constructing normal value, the Directorate General replaces all Chinese prices and costs with undistorted costs and profits.*

- ***Türkiye:** The Ministry of Trade consistently considers that the PRC is a non-market economy and has rejected Chinese exporters' arguments that they operate under market economy conditions.<sup>14</sup>*

*As a result, when determining normal value in anti-dumping investigations on imports from China, the Ministry either bases normal value on domestic sales prices in a surrogate country or constructs normal value using undistorted costs. When constructing normal value, the Ministry replaces all Chinese prices and costs with undistorted costs and profits.<sup>15</sup>*

6. *In sum, investigating authorities in key jurisdictions for anti-dumping consistently reject all Chinese prices and costs in anti-dumping investigations on imports from the PRC and construct normal value using undistorted costs and profits.*
7. *If the TRA were to take a different approach, this would reduce the effectiveness of the D&S Regulations for the UK industry as compared to the anti-dumping legislation in other jurisdictions. In practice, this risks the UK becoming a prime destination for dumped goods from the PRC.*

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<sup>11</sup> Section 20(1) of the Special Import Measures Act.

<sup>12</sup> Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, Annexure I.

<sup>13</sup> Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, Annexure I.

<sup>14</sup> See, e.g., F. Toksoy, E. Canbolat and E. Çelebisection, *The International Trade Law Review: Turkey*, section Market economy status, 2022, Appendix E.2.1.003.

<sup>15</sup> Article 7 of the Regulation on the Prevention of Unfair Competition in Imports.

3. **Regulation 14(1)(b) applies to the PRC**
8. *The TRA should construct the normal value of Chinese Excavators using costs and profits in a third country,<sup>16</sup> because Regulation 14(1)(b) of the D&S Regulations applies to the PRC.*
9. *Regulation 14(1)(b) provides that it applies in respect of imports from exporting countries that are members of the WTO but where the terms of that country's WTO membership contain specific provisions regarding normal value determinations.*
10. *Section 15 of the Accession Protocol is entitled "Price Comparability in Determining Subsidies and Dumping." Following the expiry of section 15(a)(ii) in 2016,<sup>17</sup> it now reads, in relevant part:*

*"Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") ... shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:*

*(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:*

*(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability; ..."*  
*(emphasis added)*
11. *The phrase "either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China" concerns the determination of normal value. The Accession Protocol thus explicitly contains specific provisions regarding normal value determinations in anti-dumping investigations in the sense of Regulation 14(1)(b).*

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<sup>16</sup> Regulation 14(3)(a) of the D&S Regulations.

<sup>17</sup> Section 15(d) of the Accession Protocol, which was triggered 15 years after China's accession to the WTO in 2016.

12. *Applying Regulation 14(1)(b), this means that the TRA can construct normal value for Chinese Excavators using "the costs of production of the like goods plus a reasonable amount for administrative, selling and general costs and for profits in an appropriate third country."<sup>18</sup>*
  13. *That is because the high degree of intervention by the GOC in the entire economy means that all costs and prices in the PRC are distorted and should not be used to determine normal value.<sup>19</sup> Instead, costs and profits from a representative third country should be used.*
  14. *This approach would also align the TRA's treatment of imports from the PRC with that of investigating authorities in other key jurisdictions, and thus ensure similar levels of protection for the UK industry as for the EU, the U.S., Canadian, Indian, and Turkish industries.<sup>20</sup> This is necessary to ensure that the UK market does not become a prime target for trade-diverted dumped goods.*
- 4. There is a PMS in the PRC that distorts costs and prices**
15. *If the TRA considers that Regulation 14(1)(b) does not apply to the PRC, then, at the very least, the TRA should find that distorted, artificially low costs and prices that reflect non-commercial factors create a market-wide PMS in the PRC (Section 4.1).<sup>21</sup> The distortions created by the PMS have a different effect on domestic and export prices (Section 4.2). On that basis, sales of Excavators in the PRC do not permit a proper comparison with Excavators sold for export to the UK market.<sup>22</sup> In turn, this means that the TRA should construct normal value and, in doing so, make adjustments for all distorted costs and profits.<sup>23</sup>*

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<sup>18</sup> Regulation 14(3)(a) of the D&S Regulations. The other methods to determine normal value under Regulation 14 are not available or appropriate in the present case: (1) there is no comparable price for Excavators in China in view of the distortions established in Section III, sub-section A below; (2) normal value should not be established on the basis of the export price of like goods to appropriate third countries, as these prices are also tainted by the distortions established above; (3) normal value should not be constructed using the costs of production, ASG and profits of Chinese Excavator manufacturers in view of the distortions established above; and (4) there is no indication that the price of exports of Excavators from third countries to other third countries is indicative and can be used to calculate normal value. See Regulations 14(2) and 14(3) of the D&S Regulations.

<sup>19</sup> See below, Section III.

<sup>20</sup> See above, Section I.

<sup>21</sup> Regulation 7(4) of the D&S Regulations.

<sup>22</sup> Regulation 7(2)(b) of the D&S Regulations.

<sup>23</sup> Regulations 8(1)(a), 11, 12, and 13 of the D&S Regulations.

**4.1. Distortions caused by a PMS in the PRC**

16. *As set out in this section, all costs and prices in the PRC, both for inputs and for Excavators, are distorted as a result of a PMS in the PRC. The PMS stems from artificially low prices and prices that reflect non-commercial factors.*<sup>24</sup>
17. *After establishing that state planning of the economy creates a horizontal distortion in the PRC (Section 4.1.1), the Applicant also establishes the existence of additional specific distortions in the Chinese Excavator market (Section 4.1.2).*

**4.1.1. State planning of the economy creates a horizontal distortion in the PRC**

18. *The PRC identifies itself as a socialist market economy. The socialist market economy is developed and implemented by the Chinese Communist Party ("CCP").<sup>25</sup> The CCP is constitutionally anchored as the sole leader of the GOC and the "highest force for political leadership."<sup>26</sup>*
19. *The core principle of the PRC's socialist market economy is the "socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people."<sup>27</sup> In practice, this means that every facet of the supply chain, from inputs to financing to the final product, is heavily influenced by the GOC with the aim of achieving certain objectives. To achieve these objectives, companies, both state- and privately-owned, are subject to policy supervision and guidance from the CCP, as detailed further below.*
20. *In other words, the socialist market economy entails that the GOC uses a top-down interventionist industrial policy, which results in substantial state support in a variety of forms. This affects Chinese manufacturers' costs of production, as these reflect non-commercial factors.*<sup>28</sup>
21. *The TRA summarised the GOC's overall strategy as follows in Optical fibre cables from China – a finding that is equally applicable in the present case:*

*"Government influence and control has led to the production of [optical fibre cables] being dictated by industrial strategy, from the costs of raw material to the provision of land. Government influence through relevant laws and rules governing banks*

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<sup>24</sup> Regulation 7(4) of the D&S Regulations.

<sup>25</sup> Communist Party of China, Constitution, Appendix E.2.1.004.

<sup>26</sup> See, e.g., People's Republic of China, Constitution, Appendix E.2.1.005, Article 1, para. 2; Communist Party of China, Constitution, Appendix E.2.1.004, which reads "The Party is the highest force for political leadership. It exercises overall leadership over all areas of endeavor in every part of the country."

<sup>27</sup> People's Republic of China, Constitution, Appendix E.2.1.005, Article 6.

<sup>28</sup> TRA, Optical fibre cable from China, AD0021, Statement of essential facts, paras. 116-122.

*indicates the provision of loans at preferential rates, and government influence and control in the form of price setting exists in the energy sector."<sup>29</sup>*

22. *The CCP's industrial policy is guided by economic plans, which are implemented by all layers of the GOC and by Chinese companies. These plans set out goals that coincide with the political agenda of the CCP rather than prevailing economic conditions in a free market. As a result of this system of planning, resources are concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces.<sup>30</sup> Moreover, the GOC's control prevents normal market forces from correcting unsustainable practices through interventions such as vertical policy actions, administrative monopolies, and preferential support for state-owned enterprises ("**SOEs**").<sup>31</sup>*
23. *The currently applicable general plan is the 14<sup>th</sup> Five-Year Plan for Economic and Social Development (2021-2025) ("**FYP14**"). In FYP14, the CCP explains that its political "focus of economic development" is among others on "accelerat[ing] the construction of [the PRC as] a manufacturing powerhouse" and "promot[ing] the deep integration of advanced manufacturing" in the Chinese economy.<sup>32</sup> FYP14 also provides that the CCP "will cultivate advanced manufacturing clusters and promote the innovative development of industries such as ... engineering machinery." Excavators are engineering machinery.<sup>33</sup>*
24. *FYP14 is implemented in the construction machinery industry through the Construction Machinery Industry "14<sup>th</sup> Five-Year" Development Plan ("**Machinery Plan**").<sup>34</sup> The 150-page Machinery Plan contains detailed policy objectives for the construction machinery industry, which includes the Excavator industry. These include market-distorting objectives such as (1) state-led consolidation and vertical integration in the industry;<sup>35</sup> (2) getting*

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<sup>29</sup> TRA, Optical fibre cable from China, AD0021, Statement of essential facts, para. 130.

<sup>30</sup> See, e.g., Commission Implementing Regulation (EU) 2022/191 of 16 February 2022 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China, OJ L 36, 17.2.2022, p. 1, recitals 195-201; Commission Implementing Regulation (EU) 2021/2239, recitals 67-74; Commission Implementing Regulation (EU) 2021/635 of 16 April 2021 imposing a definitive anti-dumping duty on imports of certain welded pipes and tubes of iron or non-alloyed steel originating in Belarus, the People's Republic of China and Russia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, OJ L 132, 19.4.2021, p. 145, recitals 123-129.

<sup>31</sup> William Kovacic, Competition Policy and State-Owned Enterprises in China, World Trade Review 16:4, 2017, Appendix E.2.1.006, p. 705.

<sup>32</sup> Chinese Communist Party, 14<sup>th</sup> Five-Year Plan, p. 19. An English translation from the Centre for Security and Emerging Technology, is enclosed as Appendix E.2.1.007.

<sup>33</sup> See, e.g., SANY, SANY Group Co., Ltd., China Profile, Appendix E.2.1.008, p. 4.

<sup>34</sup> China Construction Machinery Association, Machinery Plan, Appendix E.2.1.009.

<sup>35</sup> Machinery Plan, Appendix E.2.1.009, pp. 69-70, 75, 115, 121.

- 1-2 Chinese Excavator manufacturers in the global top five in total sales;<sup>36</sup>  
(3) optimizing and upgrading the construction machinery industry;<sup>37</sup> or  
(4) providing "demand-side incentives" for construction machinery on the  
Chinese market.<sup>38</sup>*
25. *In addition to issuing and implementing economic plans, the GOC also intervenes in the economy through the guidelines of the CCP National Congress. In the POI, the applicable guidelines were those from the 19<sup>th</sup> National Congress (held in October 2017).<sup>39</sup>*
26. *The impact of economic plans on companies' actions is undeniable, both for SOEs and for privately owned companies.*
27. *Highlighting how SOEs adhere to GOC plans and guidelines, LiuGong, an SOE and Excavator manufacturer, stated that it "adheres to the overall leadership of the party [CCP] over the enterprise... [and] comprehensively strengthens the construction of the Party, promotes the deep integration of Party construction and operation, and leads the high-quality development of the enterprise."<sup>40</sup>*
28. *This level of intervention by and control from the GOC is not limited to SOEs. Companies that are majority privately-owned also do not operate under normal market conditions. Privately owned enterprises often have mixed ownership, and in any event, usually "have close links to the government."<sup>41</sup> This follows, in part, from generally applicable rules in the PRC's Company Law that require the establishment of "an organization of the Communist Party of China" in each company in order "to carry out the activities of the party in accordance with the charter of the Communist Party of China."<sup>42</sup> This reflects, as Article 11 of the PRC's constitution states, that the CCP also "guides" the development of the private sector.<sup>43</sup>*
29. *In addition to economic plans and the GOC's influence over companies, the GOC also makes use of direct interventions in the allocation of resources, for instance through market access controls.*
30. *All of this means that prices in the Chinese economy – including in the Excavator industry – reflect non-commercial factors resulting from GOC*

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<sup>36</sup> Machinery Plan, Appendix E.2.1.009, pp. 69-70.

<sup>37</sup> Machinery Plan, Appendix E.2.1.009, p. 93.

<sup>38</sup> Machinery Plan, Appendix E.2.1.009, p. 96.

<sup>39</sup> The 20th National Congress took place in October 2022.

<sup>40</sup> 2022 LiuGong Annual Report, Appendix E.2.1.010, p. 357.

<sup>41</sup> EU Significant Distortions Report, Appendix E.2.1.002, p. 15.

<sup>42</sup> Company Law of China, Appendix E.2.1.011, Article 19.

<sup>43</sup> People's Republic of China, Constitution, Appendix E.2.1.005, Article 7. See also Communist Party of China, Constitution, Appendix E.2.1.004.

*intervention in all key cost areas, thereby distorting the entire Chinese market – including the Excavator market.*

#### **4.1.2. Distortions specifically affecting the Chinese Excavator market**

##### **4.1.2.1. The Chinese Excavator market as a whole**

31. *The GOC intervenes heavily in, and thereby distorts, the entire chain of costs and prices in the Chinese Excavator market.*
32. *The Chinese Excavator market is part of the construction machinery sector, and the GOC is "[s]trongly aware" of the importance of this sector, which "receives continuous attention" from the GOC as it generated no less than USD 62 billion in revenue in 2020.<sup>44</sup>*
33. *Already in 2014, the Ministry of Commerce ("MOFCOM") underlined the importance of exports of construction machinery and highlighted selected companies, including Excavator manufacturers such as Zoomlion,<sup>45</sup> XCMG,<sup>46</sup> and SANY.<sup>47</sup> In 2015, the State Council published its Made in China 2025 ("MIC25") industrial policy masterplan, which identified enhancing the quality of Chinese construction machinery to an internationally advanced level as a policy objective. Also in 2015, the State Council issued the Guidance for the Promotion of International Cooperation in the Equipment Manufacturing Industry, which specifically refers to the GOC's "task" to help Chinese construction machinery manufacturers develop a global business network and help them expand their exports.<sup>48</sup>*
34. *Specific interventions by the GOC go hand in hand with these policy goals. FYP14, which provides that the CCP will adopt a range of measures to support Chinese manufacturers, identifies for instance the following interventions to establish an "[i]ncrease in manufacturing core competitiveness" for Chinese manufacturers:<sup>49</sup>*
  - *"[R]educe the production and operating costs of enterprises" in the manufacturing sector*

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<sup>44</sup> Astrid Pepermans, *Economic nationalism in all its variety: The case of China's construction- and railway equipment industry*, *Journal of Contemporary China* 29:123, 2020, Appendix E.2.1.012, pp. 431 and 436.

<sup>45</sup> Zoomlion Heavy Industry Science and Technology Co., Ltd.

<sup>46</sup> Xuzhou Construction Machinery Group Co., Ltd.

<sup>47</sup> Astrid Pepermans, *Economic nationalism in all its variety: The case of China's construction- and railway equipment industry*, *Journal of Contemporary China* 29:123, 2020, Appendix E.2.1.012, p. 435.

<sup>48</sup> Astrid Pepermans, *Economic nationalism in all its variety: The case of China's construction- and railway equipment industry*, *Journal of Contemporary China* 29:123, 2020, Appendix E.2.1.012, p. 435.

<sup>49</sup> CCP, 14<sup>th</sup> Five-Year Plan, Appendix E.2.1.007, p. 21.

- "[S]trengthen equipment updating and the large-scale application of new products"
  - "[E]nhance the rootedness and competitiveness of the manufacturing industry"
  - "[D]eepen the implementation of special projects to enhance the core competitiveness and technological transformation of the manufacturing industry"
35. FYP14 specifically lists "advanced engineering machinery" and "agricultural mechanical equipment," which include Excavators, as key targets for the above actions.<sup>50</sup>
36. FYP14 is not the only plan relevant to the Excavator industry. FYP14 is implemented specifically in the construction machinery industry through the Machinery Plan, which explicitly covers Excavators.<sup>51</sup> In addition, the GOC decided to (further) increase its investment in eight emerging industries, including the "high-end equipment manufacturing industry," which again includes Excavators.<sup>52</sup> Further, certain Excavators are listed in the Catalogue of Guidance for Industrial Structure Adjustment 2019.<sup>53</sup> The TRA has found that this status is relevant to Excavator manufacturers receiving state support.<sup>54</sup>
37. The impact of these plans on Chinese Excavator manufacturers is clear.
38. As an SOE, LiuGong stated that it "seeks to fully implement its obligations under [FYP14]"<sup>55</sup> and it will "systematically carry out business and functional [FYP14] strategic review and strategic assessment."<sup>56</sup>
39. The same holds true for privately owned companies, like SANY. In SANY's 2021 corporate social responsibility report, Mr. Xiang Wenbo, the Chairman of SANY, stated that SANY "will continue to implement the strategies of 'digitization, electrification, and internationalization' in line with [FYP14]."<sup>57</sup> Mr. Wenbo is a member of the CCP, and of the 14th National Committee of the

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<sup>50</sup> CCP, 14<sup>th</sup> Five-Year Plan, Appendix E.2.1.007, p. 22.

<sup>51</sup> See above, para. 24.

<sup>52</sup> XinhuaNet, China to expand investment in eight emerging industries, 2020, Appendix E.2.1.013.

<sup>53</sup> Development and Reform Commission of China, The Development and Reform Commission revised and issued the Catalogue for the Guidance of Industrial Structure Adjustment (2019 version), Appendix E.2.1.014.

<sup>54</sup> TRA, Optical fibre cable from China, AD0021, Statement of essential facts, para. 121.

<sup>55</sup> LiuGong, LiuGong Group signs strategic investor agreements for mixed-ownership reform; 8 December 2020, Appendix E.2.1.015.

<sup>56</sup> 2022 LiuGong Annual Report, Appendix E.2.1.010, p. 403.

<sup>57</sup> SANY, Corporate Social Responsibility Report 2021, Appendix E.2.1.016, p. 4.

*Chinese People's Political Consultative Conference,<sup>58</sup> a top political advisory body in the PRC.*

40. *SANY has also been recognized by various GOC bodies for its commitment to the CCP. For instance, in 2021, it received the following awards:*

- *National Best Practice for Party Organizations in Non-public Enterprises, awarded by the National Party Building Research Institute, Professional Committee for Party Building Research of Non-public Economic Organizations*
- *Advanced Group for Contributing to the Building of a Moderately Prosperous Society in all Respects, awarded by the CCP Central Committee United Front Work Department, the Central Committees of Democratic Parties, and the All-China Federation of Industry and Commerce*
- *Advanced Group of the First New Hunan Contribution Award, awarded by the Hunan Provincial People's Government*
- *Hunan Advanced Community-level Party Organization, awarded by the Hunan Provincial CPC Committee*

41. *Perhaps most telling, as China Daily reported in an article on the 18<sup>th</sup> National Congress of the CCP, are the statements from Mr. Liang Wengen, the CEO of SANY:*

*"As Liang met reporters from around the world at the congress, the businessman repeatedly pledged his allegiance to the Party.*

*'As a Communist, I will unswervingly put the Party's interest at first when it is in conflict with that of myself,' Liang said, stressing that 'he was not telling a lie.'*

*'My property, even my life, belongs to the Party. This is the quality a Communist must have,' he added."<sup>59</sup>*

42. *In sum, as a result of the significant GOC intervention in the Excavator market, all prices in the Chinese Excavator industry as a whole are distorted.*

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<sup>58</sup> *The National Committee of the Chinese People's Political Consultative Conference, 'Full List of Members of 14th CPPCC National Committee, Appendix E.2.1.017.*

<sup>59</sup> *ChinaDaily, Entrepreneurs' presence grows at CPC congress, 2012, Appendix E.2.1.018.*

**4.1.2.2. Energy cost**

43. *Energy costs incurred by Chinese Excavator manufacturers are distorted as a result of GOC intervention in the energy market, which reflects non-commercial factors.*
44. *As the TRA found, "[e]nergy prices in the PRC ... reflect non-commercial factors" as the GOC sets energy prices, which causes distortions.<sup>60</sup> Specifically, energy prices in the PRC are heavily influenced by the GOC, both in the form of fixed prices and state-guided prices.<sup>61</sup> Companies active in certain encouraged industries, including the Excavator industry, benefit from lower energy prices that are cross-subsidised by higher energy price charged to other industries.<sup>62</sup> In addition, SOEs produce around 50% of all energy in the PRC and 100% of energy transmission is done by SOEs.<sup>63</sup>*
45. *For the same reasons,<sup>64</sup> the cost of energy is also distorted in the Chinese Excavator industry.<sup>65</sup>*

**4.1.2.3. Cost of raw materials**

46. *As a result of GOC control and intervention, the cost of all key raw materials to manufacture Excavators is distorted in the PRC.*
47. *First, the cost of steel is distorted. Steel is a key basic raw material for manufacturing Excavators. SANY, for instance, reports that its "production process depends on reliable sources of large quantities of raw materials, particularly steel."<sup>66</sup> As a result of GOC intervention, the Chinese steel industry reflects non-commercial factors that cause distortions. The Applicant makes four points in this regard.*
48. *The first point is that the steel industry is considered a key strategic input industry by the GOC. Recognizing the steel industry's strategic importance, the Chinese State Council adopted an Iron and Steel Industry Development Policy in 2005, which encompassed coordinated state interventions designed*

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<sup>60</sup> TRA, Aluminium extrusions from China, AD0012, *Provisional determination*, pp. 16-17. See also TRA, Aluminium extrusions from China, AD0012, *Final determination*, para. 177; TRA, Optical fibre cables from China, AD0021, paras. 146-154.

<sup>61</sup> TRA, Aluminium extrusions from China, AD0012, *Provisional determination*, p. 16; TRA, Optical fibre cables from China, AD0021, para. 152.

<sup>62</sup> TRA, Optical fibre cables from China, AS0022, *Statement of Essential Facts*, paras. 274 and 276.

<sup>63</sup> EU Significant Distortions Report, Appendix E.2.1.002, p. 217.

<sup>64</sup> Additionally, see also EU Significant Distortions Report, Appendix E.2.1.002, p. 234.

<sup>65</sup> This is also the case for any captive energy production, as there are upstream distortions for e.g., inputs, such as artificially low-priced coal, or equipment, such as artificially low-priced solar panels. Further, there are also distortions in the case of direct power purchases, which result in artificially low-priced energy for certain industries.

<sup>66</sup> 2021 SANY Holdings Annual Report, Appendix E.2.1.019, p. 36.

*to increase the international competitiveness of top Chinese companies through consolidation, technical upgrading, and mergers.<sup>67</sup> For FYP14, the GOC issued a plan to further "facilitate the development" of the steel industry towards, among others, "better profitability and distribution."<sup>68</sup>*

49. *The GOC also released the "14th Five Year Plan for the Development of the Raw Materials Industry," which aims to "provide incentive policy support" including in research and development ("R&D") investments, for SOEs in the raw materials industry. The plan also aims to strengthen "upstream and downstream convergence" and encourages raw material enterprises, including steel enterprises, to "strengthen cooperation with upstream and downstream enterprises."<sup>69</sup>*
50. *The second point is that there is a high degree of direct state ownership in the Chinese steel industry, which results in a direct distortion of the effective, free-market allocation of resources.<sup>70</sup> The TRA previously found that state control was evident in the PRC's steel industry in light of the PRC's 13th Five-Year Plan (which covers 2016-2020), in which the GOC "made efforts to increase the size of SOEs and encourage improvement in the steel industry through incentives and subsidies."<sup>71</sup> The same continues to be true during the period of application of FYP14.*
51. *Many of the largest Chinese steel manufacturers are SOEs. These companies' grip on the Chinese steel industry is furthered by the GOC's drive to consolidate the steel sector, with the aim of concentrating 60-70% of production in the hands of ten producers by 2025. That strategy of creating state-owned giants in the steel industry is working. At present, five of the 10 largest steel manufacturers in the world are Chinese and four of these companies are SOEs:<sup>72</sup>*
  - *Baowu is the world's largest steel manufacturer, as a result of a recent merger between the Baosteel Group and Wuhan Iron & Steel. Baowu is*

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<sup>67</sup> Jeffrey D. Wilson, *Governing Global Production: Resource Networks in the Asia-Pacific Steel Industry*, Palgrave Macmillan 2013, Appendix E.2.1.020, pp. 136-137.

<sup>68</sup> *China Daily*, *China unveils five-year plan to boost raw materials industry*, 30 December 2021, Appendix E.2.1.021.

<sup>69</sup> *The 14th Five Year Plan for the Development of the Raw Materials Industry*, Appendix E.2.1.022, in particular pp. 11, 19 and 42.

<sup>70</sup> See, e.g., *Commission Implementing Regulation (EU) 2022/191*, recitals 206-208; *Commission Implementing Regulation (EU) 2021/2239* of 15 December 2021 imposing a definitive anti-dumping duty on imports of certain utility scale steel wind towers originating in the People's Republic of China, OJ L 450, 16.12.2021, p. 59, recital 135; *Commission Implementing Regulation (EU) 2021/635*, recitals 149-150.

<sup>71</sup> TRA, *Welded Tubes and Pipes from China, TD0001, Final determination*, para. 7.77.

<sup>72</sup> *World Steel Association, World steel in figures 2022*, Appendix E.2.1.023.

*an SOE.<sup>73</sup> It produces 50% more steel than the world's second largest steel manufacturer, and has tripled its capacity by absorbing several other Chinese steel companies.*

- Ansteel Group is the third largest steel manufacturer. It is an SOE.<sup>74</sup>*
- Shagang Group is the fifth largest.*
- HBIS (or Hesteel) Group is the seventh largest. It is an SOE.<sup>75</sup>*
- Shougang Group is the ninth-largest. It is an SOE.<sup>76</sup>*

52. *Further, there are personal connections between Chinese steel manufacturers and key members of the CCP. Top managers at Chinese steel manufacturers have prominent positions in the CCP. For instance, Baowu's Chairman of the Board of Directors serves as the Secretary to the CCP Committee of Baowu and Baowu's General Manager is the Deputy Secretary of the CCP Committee of Baowu.<sup>77</sup> This makes clear that the GOC is in a position to interfere with prices and costs in the steel sector.<sup>78</sup>*

53. *The third point is that the GOC controls all key inputs for the steel industry, such as raw material, energy, and labour,<sup>79</sup> so that it can leverage investments in these inputs to give the Chinese steel industry a competitive advantage.<sup>80</sup> For instance, the state-owned agency China Mineral Resources Group ("**CMRG**"), established with USD 3 billion in capital, is a group buyer of raw materials for the domestic steel industry.<sup>81</sup> CMRG will use its greater bargaining power as a group buyer to further reduce the cost of inputs for the PRC's steel industry.*

54. *The fourth point is that the Chinese steel industry also benefits from export restrictions on key inputs, which artificially increase the domestic supply and reduce domestic prices of these inputs in the PRC. According to the OECD's most recent data, which covers 2021, there are export taxes on inputs such as pig iron, various ferro-alloys, nickel, and waste and scrap of various iron*

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<sup>73</sup> Baowu, Company profile, Appendix E.2.1.024.

<sup>74</sup> Ansteel, About Ansteel, Appendix E.2.1.025.

<sup>75</sup> Steel on the Net, History of Hebei Iron & Steel (Hesteel), Appendix E.2.1.026.

<sup>76</sup> Shougang, Company profile, Appendix E.2.1.027.

<sup>77</sup> Baowu, About us, Board of directors, Appendix E.2.1.028.

<sup>78</sup> Commission Implementing Regulation (EU) 2022/802 of 20 May 2022 imposing a provisional anti-dumping duty on imports of electrolytic chromium coated steel products originating in the People's Republic of China and Brazil, OJ L 143, 23.5.2022, p. 11, recital 51.

<sup>79</sup> Commission Implementing Regulation (EU) 2022/191, recital 188.

<sup>80</sup> CCP, 14<sup>th</sup> Five-Year Plan, Appendix E.2.1.007, Article VIII: Deepen the implementation of the manufacturing powerhouse strategy, Table 4.

<sup>81</sup> Kit Norton, Steel stocks, mining giants react as China iron ore consortium enters market, 16 December 2022, Appendix E.2.1.029.

*products, as well as licensing requirements for exports of inputs such as various ferro-alloys, nickel, and chromium.<sup>82</sup> For example, export taxes on iron ore were increased by 20% in July 2021 to help meet a surge in domestic demand. These export restrictions ultimately help the Chinese steel industry sell steel to Chinese Excavator manufacturers at lower prices.*

55. *For these reasons, the cost of steel for Chinese Excavator manufacturers is distorted.*
56. *Second, next to steel, the costs of other inputs are also distorted. A significant part of the cost to make an Excavator is the cost of parts such as hydraulics, the cab, the undercarriage, the engine, the tracks, the counterweight, the boom, the dipper, fasteners. Depending on an Excavator manufacturer's production setup, some or all of these parts have to be purchased. To the extent the parts are purchased, these costs are subject to non-commercial factors as a result of the state intervention and control identified in this application. If they are not purchased, the GOC interventions directly benefit the Excavator manufacturer's production of these parts.*
57. *In addition, for some key inputs, there is additional, explicit evidence of non-commercial factors. For instance, the cost of sophisticated inputs like hydraulics in the PRC is reduced by plans such as MIC25,<sup>83</sup> which identifies "[h]igh-end numerically controlled machine tools and robots" and "[e]lectrical equipment" as sectors in which the GOC would intervene to "promot[e] manufacturing."<sup>84</sup>*
58. *For these reasons, the costs of other inputs are also distorted.*

#### **4.1.2.4. Labour cost**

59. *Labour costs are distorted in the PRC as a result of non-commercial factors, including explicit and implicit control by the GOC.*
60. *As the TRA found, "there is evidence that the labour market within the PRC reflects non-commercial factors."<sup>85</sup> These distortions follow from significant control and influence of the GOC in the labour market.<sup>86</sup>*

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<sup>82</sup> OECD, *Inventory on export restrictions on industrial raw materials*, Appendix E.2.1.030. The data on export restrictions on iron and steel products, nickel and other base metals pulled for China for 2021 is enclosed as Appendix E.2.1.031.

<sup>83</sup> The TRA has found that MIC25 "would indicate that the GOC will encourage regional authorities to support the production of the raw materials required to realise these plans until at least 2025." See TRA, *Optical fibre cables from China, AD0021, Statement of essential facts*, para. 372.

<sup>84</sup> State Council of China, 'Made in China 2025' plan issued, 19 May 2015, Appendix E.2.1.032.

<sup>85</sup> TRA, *Optical fibre cables from China, AD0021, Statement of essential facts*, para. 367.

<sup>86</sup> TRA, *Welded tubes and pipes from Belarus, China and Russia, TD0001, Final determination*, para 7.127

61. *First, the PRC has not ratified several of the International Labour Organization's ("ILO") fundamental conventions, in particular the two conventions on freedom of association.<sup>87</sup> There is also only one labour union in the PRC, and this union is not independent of the GOC as it falls under the leadership of the CCP.<sup>88</sup>*
62. *This means that Chinese workers in the Excavator industry cannot organize themselves or bargain collectively for better working conditions (including through real strike action). As the TRA put it, "[t]here are many limitations to the theoretical guarantee of the free association of workers" in the PRC and there is "no longer an official recognition of the right to strike."<sup>89</sup>*
63. *Second, wages in the Excavator industry in the PRC are not market-based as they are not freely bargained between workers and employers in an undistorted economic environment. As the GOC directs companies' behaviour and, at the same time, workers can only organize collectively through a labour union that is also directed by the GOC, there is no market-based, free bargaining.*
64. *In this regard, while Chinese labour law provides for minimum wages and those minimum wages have increased over time, the gap between minimum wages and average wages has increased (as average wages grew faster than minimum wages).<sup>90</sup> According to the ILO, this means that minimum wages need to be complemented with collective bargaining power, which is non-existent in the PRC, before there can be a significant effect on wage inequality.<sup>91</sup>*
65. *Third, wages are also kept artificially low by the hukou system of local household registration status. This system has "helped bring down prices substantially, making Chinese products fiercely competitive in the world market" by introducing wage discrimination for a "a semi-urbanized/marginalized migrant population" of rural Chinese who move to urban areas to work in among others manufacturing.<sup>92</sup> As the TRA found, despite recent reforms to the hukou system, "the same structure still applies" and the system still "creates a pool of cheap labour."<sup>93</sup>*

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<sup>87</sup> ILO, *Freedom of Association and Protection of the Right to Organise Convention*, 1948 (No. 87); ILO, *Right to Organise and Collective Bargaining Convention*, 1949 (No. 98). See ILO, *Ratifications of fundamental instruments by country*, Appendix E.2.1.033.

<sup>88</sup> *Trade Union Law of the People's Republic of China*, Appendix E.2.1.034, Article 4.

<sup>89</sup> TRA, *Optical fibre cables from China, AD0021, Statement of essential facts*, paras. 361, 363.

<sup>90</sup> ILO, *Wages, productivity and labour share in China, 2016*, Appendix E.2.1.035, figure 5.

<sup>91</sup> ILO, *Wages, productivity and labour share in China, 2016*, Appendix E.2.1.035, p. 4.

<sup>92</sup> Kam Wing Chan, *Internal migration in China: Integrating migration with urbanization policies and hukou reform*, KNOMAD Policy Brief 16, November 2021, Appendix E.2.1.036, p. 1.

<sup>93</sup> TRA, *Optical fibre cables from China, AD0021, Statement of essential facts*, para. 360.

66. *The hukou system divides citizens broadly into rural and urban residents. Workers with a rural hukou who migrate to work in manufacturing in urban areas lack access to urban social benefits and basic public services in the urban areas where they work. In addition, rural-to-urban migrants typically earn significantly less than workers with an urban hukou, which constitutes a significant cost advantage for employers. A 2022 study summarizes the impact of hukou on labour costs as follows:*
- "... employers set lower wage rates for rural-to-urban migrants than their equally productive local urban citizens (Chen and Hoy 2011; Song and Smith 2019). For example, Li (2012) unveiled the wage gaps between rural-to-urban migrant and local urban labourers. He mentioned that migrant labourers worked for 58 h per week on average, relative to 43 h per week for their urban counterparts. The hourly pay for migrant labourers is 45% that of local urban labourers. Worse still, most urban labourers are given higher in-kind payment, such as in the form of employer insurance coverage, than migrant labour groups. When in-kind payment is taken into account, the hourly pay for migrant labourers is merely 37% that of local urban labourers."<sup>94</sup>*
67. *Other sources suggest that the wage gap between workers with a rural and an urban hukou is smaller but still significant.<sup>95</sup> However, these sources do not appear to take into account the additional hours of work put in by workers with a rural hukou and the lower in-kind payments for workers with a rural hukou.*
68. *Fourth, two thirds of migrant workers (who make up more than one third of the PRC's total workforce) do not have a signed labour contract with their employer.<sup>96</sup> This means that these migrant workers are not covered by social protection insurance (e.g., social security contributions and unemployment contributions), which constitutes a significant cost advantage for employers. It is questionable whether these workers are paid at least the minimum wage.*
69. *Fifth, the GOC also directly distorts labour costs by subsidising employment. In 2022, Chinese Premier Li Keqiang announced policy supports for job creation and pushed local governments to take more action. As a result,*

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<sup>94</sup> J. Hung, hukou system influencing the structural, institutional inequalities in China: the multifaceted disadvantages rural hukou holders face, *Social Sciences* 11(5), 2022, Appendix E.2.1.037, p. 194.

<sup>95</sup> Xiaogang Wu, Zhuoni Zhang, Wage discrimination in urban China: How hukou status affects migrant pay, *HKUST IEMS Thought Leadership Brief No. 6*, Appendix E.2.1.038.

<sup>96</sup> China National Bureau of Statistics, *Investigation Report of the Chinese Migrant Workers 2016*, Table 9, Appendix E.2.1.039 (including machine translation).

*companies will be entitled to job creation subsidies for hiring college graduates unable to find jobs and young persons registered as unemployed.*<sup>97</sup>

70. *For these reasons, the labour cost for Chinese Excavator manufacturers is distorted.*

#### **4.1.2.5. Shipping and logistics costs**

71. *Shipping and logistics costs, which, given the size and weight of Excavators and their parts, are significant cost centres, are distorted as a result of GOC intervention.*
72. *Prices of certain railway bulk cargo, luggage freight rates, and port services (such as ship entry and exit, berthing and departure, and port security) are set by the GOC and designated government departments.<sup>98</sup> In addition, important Chinese transportation companies, like China Ocean Shipping Company ("COSCO") and China Merchants Group are SOEs and provide preferential shipping rates.<sup>99</sup> Further, in FYP14, the CCP stated that it would "standardize and reduce logistics charges such as for ports and shipping and road and rail transportation."<sup>100</sup> This will likely happen through consolidation,<sup>101</sup> as in the steel sector.*
73. *Moreover, the GOC's "14th Five Year Plan for Water Transportation" notes that the "water transport industry should give full play to its comparative advantages of high internationalization" and "strengthen the connection between port planning and industrial planning"<sup>102</sup> such as the plans for developing the construction machinery industry and, specifically, the Excavator manufacturing sector.*
74. *Similarly, the "14th Five Year Modern Logistics Development Plan" notes that the logistics industry is "highly integrated and integrates service functions such as transportation, warehousing, distribution, and information". It aims to "develop and strengthen strategic emerging industries and promote the prosperity and development of the service industry requires modern logistics to adapt to the needs of the modern industrial system for diversified*

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<sup>97</sup> Xinhua, *China to scale up support for employment, entrepreneurship to expand space of employment*, 9 September 2022, Appendix E.2.1.040.

<sup>98</sup> *Pricing Law of the People's Republic of China*, Appendix E.2.1.041, Article 3; *Central Pricing Catalogue*, Appendix E.2.1.042.

<sup>99</sup> U.S. Department of Commerce, *Decision Memorandum for Preliminary Determination of Countervailing Duty Investigation: Calcium Hypochlorite from the People's Republic of China*, Appendix E.2.1.043, pp. 11, 14 (finding that preferential shipping rates constituted a countervailable subsidy of 5.34%).

<sup>100</sup> CCP, *14<sup>th</sup> Five-Year Plan*, Appendix E.2.1.007, p. 21.

<sup>101</sup> *EU Significant Distortions Report*, Appendix E.2.1.002, p. 19.

<sup>102</sup> *14th Five Year Plan for Water Transport*, Appendix E.2.1.044, pp. 6 and 28.

*professional services, deeply embedded in the supply chain of the industrial chain, to promote the cost reduction and efficiency increase of the real economy, to enhance the ability of value creation, and to promote The industrial base is advanced and the industrial chain is modernized."<sup>103</sup> Such emerging industries include the Excavator manufacturing sector as well.*

75. *These interventions distort both the cost of freight on raw materials and the freight cost for delivering an Excavator to a customer. Both cost areas are distorted by the GOC's control and interventions.*

#### **4.1.2.6. Research and development cost**

76. *The Excavator industry is a research-intensive industry, and R&D costs are a significant cost centre for Excavator manufacturers. R&D costs for Chinese Excavator manufacturers are distorted as a result of state control and intervention.*

77. *First, in general terms, the GOC is investing heavily in R&D and is creating mechanisms to reduce R&D costs and innovation risks for companies active in strategic industries, such as the manufacturing industry (and the construction equipment manufacturing industry in particular).<sup>104</sup>*

78. *MOFCOM noted the need for more governmental support in the construction equipment sector, encouraging Chinese construction equipment manufacturers to build R&D centres and factories abroad and merge with, or acquire companies in developed markets.<sup>105</sup> Chinese Excavator manufacturers have implemented this instruction from the GOC:*

- *SANY opened a new global R&D centre in the PRC in the POI with the aim of finding a "guarantee for achieving the world's top sales volume,"<sup>106</sup> and to complement research done to R&D centres in Spain and the PRC.<sup>107</sup> Further, SANY R&D related to Excavators was "selected as a national key R&D project in 2021," which entailed among others getting a subsidy.<sup>108</sup> SANY also acquired a German concrete machinery*

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<sup>103</sup> 14th Five Year Modern Logistics Development Plan, Appendix E.2.1.045, pp. 1 and 4.

<sup>104</sup> EU Significant Distortions Report, Appendix E.2.1.002, p. 17.

<sup>105</sup> Astrid Pepermans, *Economic nationalism in all its variety: The case of China's construction- and railway equipment industry*, *Journal of Contemporary China* 29:123, 2020, Appendix E.2.1.012, p. 436.

<sup>106</sup> Seetao, *Sany Heavy Machinery was selected as a national key R&D project in 2021*, 12 July 2021, Appendix E.2.1.046; SANY, *Press release: SANY Global R&D Center officially operational*, 26 January 2022, Appendix E.2.1.047.

<sup>107</sup> SANY, *Press release: SANY Heavy Energy Europe Innovation Center (SHEEIC) was established in Spain*, 3 June 2020, Appendix E.2.1.048.

<sup>108</sup> Seetao, *Sany Heavy Machinery was selected as a national key R&D project in 2021*, 12 July 2021, Appendix E.2.1.046.

*manufacturer, with the R&D cooperation between both companies being "evidently fruitful."<sup>109</sup>*

- *LiuGong has five "world-class R&D facilities" in the PRC, India, Poland, the UK and the U.S.,<sup>110</sup> employing more than 1,000 engineers.<sup>111</sup> The PRC facility was opened last, in 2015. LiuGong also acquired a Polish bulldozer manufacturer.<sup>112</sup>*

79. Second, the GOC intervenes specifically in R&D costs through:

- *"[D]irect government funding of research through the establishment of tech parks, research centers, and a series of mission-oriented programs."<sup>113</sup> In these tech parks, companies are often "exempted from property taxes and urban land use taxes."<sup>114</sup>*
- *This funding directly benefits Chinese Excavator producers. For instance, SANY reported that its 2021 R&D expenses amounted to approximately RMB 750 million.<sup>115</sup> For the first half of 2022, SANY reported an increase of 23.9% in its R&D expenses.<sup>116</sup> At least part of the R&D expenses were funded through what SANY describes as government grants, incentives, preferential treatment and favourable support.<sup>117</sup>*
- *"[T]argeted supporting fiscal and taxation policies."<sup>118</sup> These "tax incentives for innovation" take various forms:<sup>119</sup>*
  - *Tax bonuses for wages, bonuses and allowances of R&D personnel*
  - *Corporate tax rate cuts, such as (1) a 150 percent tax allowance against taxable profits on the level of R&D expenditure; and (2) a 100*

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<sup>109</sup> SANY, Press release: Better together: SANY and Putzmeister 10 years hand in hand, 16 June 2022, Appendix E.2.1.049.

<sup>110</sup> For Construction Pros, LiuGong opens new R&D center, 19 June 2015, Appendix E.2.1.050.

<sup>111</sup> LiuGong, Press release: Innovation and transformation, LiuGong explores a sustainable path to the future, 28 November 2018, Appendix E.2.1.051.

<sup>112</sup> LiuGong, Press release: Innovation and transformation, LiuGong explores a sustainable path to the future, 28 November 2018, Appendix E.2.1.051.

<sup>113</sup> Michael König and others, From imitation to innovation: Where is all that Chinese R&D going?, National Bureau of Economic Research Working Paper 27404, 2020, Appendix E.2.1.052, p. 3.

<sup>114</sup> Michael König and others, From imitation to innovation: Where is all that Chinese R&D going?, National Bureau of Economic Research Working Paper 27404, 2020, Appendix E.2.1.052, p. 3.

<sup>115</sup> 2021 SANY Holdings Annual Report, Appendix E.2.1.019, p. 12.

<sup>116</sup> 2022 SANY Holdings Interim Report, Appendix E.2.1.053, pp. 7 and 10.

<sup>117</sup> 2021 SANY Holdings Annual Report, Appendix E.2.1.019, pp. 37 and 156.

<sup>118</sup> EU Significant Distortions Report, Appendix E.2.1.002, p. 17.

<sup>119</sup> Michael König and others, From imitation to innovation: Where is all that Chinese R&D going?, National Bureau of Economic Research Working Paper 27404, 2020, Appendix E.2.1.052, p. 3; KPMG, China Tax Alert - Issue 7: 75% R&D super deduction extended, raised to 100% for manufacturers, May 2021, Appendix E.2.1.054.

*percent tax allowance against taxable profits on donations to R&D foundations*

- *Exemptions from import duties and VAT on items for R&D purposes*
- *R&D subsidies*

*These fiscal and taxation policies have significant impact on large players like the Chinese Excavator manufacturers. For instance, SANY reports that tax cuts on its R&D expenses were the key driver to reduce the actual corporate income tax rate to 9.0% (instead of the general corporate income tax rate of 25.0%).<sup>120</sup>*

80. *For these reasons, the cost of R&D for Chinese Excavator manufacturers is distorted.*

#### **4.1.2.7. Cost of land or rent**

81. *Excavator manufacturing requires significant amounts of space. In view of high freight costs for Excavators, as explained above, Chinese Excavator manufacturers further prefer high-value locations, close to transportation links such as ports. SANY's manufacturing facilities, for instance, are located close to Shanghai port.*
82. *There are (at least) three key GOC interventions that distort the cost of land or rent for Excavator manufacturers. As the TRA has found, these interventions are "evidence that the land market in the PRC reflects non-commercial factors," as "land prices and rent rates ... are artificially low and/or reflect non-commercial factors."<sup>121</sup>*
83. *First, as the TRA explained, all land in the PRC is ultimately owned by the GOC.<sup>122</sup> The GOC (whether centrally or via villages or townships) grants land use rights. Prices for land use rights are "arbitrarily set by the authorities," and are either artificially low or have been allocated free of charge to certain favoured industries.<sup>123</sup> This artificially low cost (or no cost) of land is the result of substantial state intervention dating back to the nationalisation and collectivisation of land in the PRC beginning in 1956. As a result prices paid*

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<sup>120</sup> 2021 SANY Holdings Annual Report, Appendix E.2.1.019, pp. 12 and 135.

<sup>121</sup> TRA, Optical fibre cables from China, AD0021, Statement of essential facts, paras. 334, 338.

<sup>122</sup> TRA, Hot-rolled flat and coil products from China, TS0018, Statement of essential facts, para. 97.

<sup>123</sup> TRA, Hot-rolled flat and coil products from China, TS0018, Statement of essential facts, para. 97, summarizing European Commission findings, and Table 4 at para. 85, demonstrating that artificially low land use rights amounted to significant countervailable subsidies.

*for land use rights "were not representative of a market price determined by free market supply and demand."<sup>124</sup> This is still the case today.*

84. *The benefits of cheap land use rights are long-term: the leasehold for industrial land is normally 50 years, renewable for a further 50 years. SANY has reported that it indeed has 50-year leaseholds.<sup>125</sup> Therefore the real cost of land is artificially low as a result of substantial government intervention.*
85. *Second, the GOC continues to determine how industrial land is used. In FYP14, the CCP stated that it will "promote the increase in capacity and efficiency of industrial land and promote new models of industrial land."*
86. *Third, the GOC exempts some land from land use tax. As the TRA found, since 1986, certain categories of land are exempt from land use tax.<sup>126</sup> SANY reported that it benefits from land use tax exemptions.<sup>127</sup>*
87. *For these reasons, the cost of land or rent for Chinese Excavator manufacturers is distorted.*

#### **4.1.2.8. Finance cost**

88. *Excavator manufacturing is a cost-intensive industry and the cost of financing and access to credit are a significant cost factor. GOC interventions distort the finance cost for Chinese Excavator manufacturers. This occurs through a variety of instruments, such as preferential loans and credit lines, equity infusions, and grants.<sup>128</sup> For present purposes, and given the importance of loans, the Applicant highlights only preferential loans.*
89. *First, as concerns preferential loans, and as the TRA found, the GOC provides loans at artificially low costs directly through state-owned or -controlled banks and/or indirectly through all Chinese banks, including privately owned banks.<sup>129</sup> These preferential loans contain features such as:*
- Interest rates lower than the market would provide (also taking into account the risk profile of the recipient)*
  - Credit ratings that reflect non-commercial factors, thereby reducing credit rates compared to a free market*

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<sup>124</sup> TRA, Hot-rolled flat and coil products from China, TS0018, Statement of essential facts, para. 97, summarizing European Commission findings.

<sup>125</sup> 2021 SANY Holdings Annual Report, Appendix E.2.1.019, p. 141.

<sup>126</sup> TRA, Hot-rolled flat and coil products from China, TS0018, Statement of essential facts, paras. 109-111.

<sup>127</sup> 2020 SANY Annual Report, Appendix E.2.1.055, p. 120.

<sup>128</sup> See Appendix F.2.001, which details all subsidies provided to Chinese Excavator manufacturers.

<sup>129</sup> TRA, Optical fibre cables from China, AD0021, Statement of essential facts, para. 113.

- *Preferential repayment terms*
  - *Government-lead restructuring payment schedules*
  - *Debt forgiveness not in line with market practices*
90. *The Export-Import Bank of China also plays an important role, as it provides loans to support the export of goods produced in the PRC,<sup>130</sup> including Excavators.*
91. *The GOC provides preferential loans to the manufacturing sector, including the Excavator manufacturing sector, because it considers this sector to be of strategic importance. Referencing the 13<sup>th</sup> Five-Year Plan, the People's Bank of China stated that it will "innovate and apply structural monetary policy instruments to guide financial institutions to increase credit to ... the manufacturing sector."<sup>131</sup> Further, in FYP14, the CCP stated that it would:<sup>132</sup>*
- *"[E]xpand the scale of mid- and long-term loans and credit loans for the manufacturing industry"*
  - *"[I]ncrease loans for technological transformation"*
  - *"[P]romote the preference of equity investment and bond financing for manufacturing" These researchers listed Mr. Liang Wengen, the CEO of SANY, as a "politically connected entrepreneur[]," because Mr. Liang Wengen served (1) as a National Delegate of the CPC in 2015; (2) on the executive committee of the All-China Federation of Industry and Commerce; and (3) at the National People's Congress.<sup>133</sup> This confirms that SANY, in particular, has ample access to distorted, preferential loans. For instance, preferential loans, including direct loans from the GOC, permitted SANY to set up multiple industrial parks, a factory in Zhongyi, and a global R&D centre in Jiangsu.<sup>134</sup>*
93. *LiuGong is an SOE and, in that capacity, has easy access to preferential financing.*
94. *In sum, Chinese Excavator manufacturers have access to preferential loans. These preferential loans benefit Chinese Excavator manufacturers' business*

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<sup>130</sup> TRA, Optical fibre cables from China, AD0021, Statement of essential facts, para. 105.

<sup>131</sup> The People's Bank of China, 2019 Annual Report, Appendix E.2.1.056, p. 31.

<sup>132</sup> CCP, 14<sup>th</sup> Five-Year Plan, Appendix E.2.1.007, p. 21.

<sup>133</sup> C. J. Milhaupt and W. Zheng, "Beyond Ownership: State Capitalism and the Chinese Firm," 103 *Georgetown Law Journal* 665 (2015), pp. 690, 718, Appendix E.2.1.057.

<sup>134</sup> 2020 SANY Annual Report, Appendix E.2.1.055, pp. 139-140. On the Zhongyi facility, see Seetao, 300 sets of Sany host equipment set off across the country!, 9 February 2022, Appendix E.2.1.058. On the Jiangsu facility, see Seetao, Sany Heavy Machinery Global R&D Center officially opened!, 10 January 2022, Appendix E.2.1.059.

*operations also when the loans are used for activities other than Excavator manufacturing per se (e.g., for making long-term strategic investments).*

95. *For these reasons, the finance cost for Chinese Excavator manufacturers is distorted.*

**4.1.2.9. Tax and regulatory cost**

96. *As a matter of policy, the GOC artificially reduces tax and regulatory costs for Chinese manufacturers, including Excavator manufacturers, in order to confer benefits on these manufacturers. This policy extends until today and will continue to increase the benefits for Chinese manufacturers: FYP14 provides that the GOC will "consolidate and expand the achievements of tax reduction and fee reduction" for companies. The impact of these distortions is very significant, as taxation and regulatory cost make up a large part of the cost of doing business.*
97. *SANY and LiuGong's annual reports give some indications of the extent to which the GOC is distorting tax and regulatory costs to benefit Chinese Excavator producers by providing "preferential treatment, incentives and favourable support," such as:*
- *Tax cuts on corporate income tax. Specifically, eligible high-tech enterprises, including in tech parks, enjoy a 15% corporate income tax rate, with a full tax exemption for the first two years. SANY and LiuGong are designated as high-tech enterprises for these purposes and thus, although the corporate income tax rate in China is 25%, SANY and LiuGong are subject to a preferential tax rate of only 15%.<sup>135</sup>*
  - *"[T]argeted supporting fiscal and taxation policies" for R&D costs, including in the form of tax cuts.<sup>136</sup>*
  - *Tax cuts on land use taxes.<sup>137</sup>*
98. *These tax cuts, and potential other tax cuts, reduce the income tax rate for Chinese Excavator manufacturers. SANY, for instance, reported that its 2021 actual corporate income tax rate was 9.0% instead of the generally applicable rate of 25.0%.<sup>138</sup>*

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<sup>135</sup> *The same EIT rate reduction is available to companies active in encouraged industries in the western region. Both SANY and LiuGong are active in an encouraged industry in the western region.*

<sup>136</sup> *See Section 4.1.2.6 above. See also EU Significant Distortions Report, Appendix E.2.1.002, p. 17.*

<sup>137</sup> *See Section 4.1.2.7 above.*

<sup>138</sup> *2021 SANY Holdings Annual Report, Appendix E.2.1.019, pp. 12 and 135. See also Section 4.1 of Appendix F.2.001 – Subsidies.*

99. *Finally, Chinese Excavator manufacturers also benefit from VAT refunds. For instance, for 2020, SANY reported benefiting from VAT refunds for RMB 594 million.*<sup>139</sup>
100. *For these reasons, the tax and regulatory cost for Chinese Excavator manufacturers is distorted.*

**4.1.2.10. Conclusion**

101. *In sum, state intervention and control distorts costs and prices throughout the Excavator industry in the PRC. Through state intervention and control, costs and prices are artificially low and reflect non-commercial factors, thereby creating a PMS affecting all key inputs for Excavator manufacturers, as well as the ultimate market for Excavators in the PRC.*

**4.2. The PMS has a different effect on domestic and export prices**

102. *The PMS in the PRC affects prices on the domestic market in the PRC in a different way than prices on the UK market.*<sup>140</sup>
103. *Around 75% of UK consumption of Excavators is imported.*<sup>141</sup> *In contrast, given the large excess capacity of Chinese Excavator manufacturers, the fact that the PRC is the largest Excavator producer in the world, and factors such as the cost of shipping, there is no incentive for Chinese consumers to import Excavators into the PRC.*<sup>142</sup>
104. *As detailed in **Section 4.1** above, Chinese Excavator manufacturers benefit from artificially low, distorted costs for all cost areas.*<sup>143</sup> *In contrast, UK Excavator manufacturers pay higher, undistorted costs. This cost advantage gives Chinese Excavator manufacturers a competitive advantage when selling Excavators to the UK market, allowing Chinese Excavator manufacturers to undercut UK Excavator manufacturers while maintaining profitability. Chinese Excavator manufacturers do not have this competitive advantage when selling on the Chinese domestic market, because all Chinese Excavator manufacturers, including those manufacturers that do not export to the UK*

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<sup>139</sup> 2020 SANY Annual Report, Appendix E.2.1.055, p. 160. See also Section 4.2 of Appendix F.2.001 – Subsidies.

<sup>140</sup> See, by analogy, TRA, Aluminium extrusions from China, AD0012, Final determination, paras. 240-246.

<sup>141</sup> See below, section G.1.

<sup>142</sup> See, by analogy, TRA, Optical fibre cable from China, AD0021, Statement of essential facts, paras. 306-308.

<sup>143</sup> See, by analogy, TRA, Optical fibre cable from China, AD0021, Statement of essential facts, paras. 309-310.

*market,<sup>144</sup> benefit from the same cost advantage. Absent the cost advantage, prices on the domestic market in the PRC would be higher, leading to a higher normal value. As a result, because of the PMS, a proper comparison between normal value and the export price is not possible.<sup>145</sup>*

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<sup>144</sup> Such as Xuzhou Construction Machinery Group Co., Ltd. (known as XCMG), Qingdao Everun Machinery Co., Ltd, Zoomlion Heavy Industry Science and Technology Co., Ltd., or Shantui Construction Machinery Co., Ltd.

<sup>145</sup> In addition, there are likely limited imports of Excavators into China given the strength of the domestic industry and the fact that China imposes an 8% most-favoured-nation import duty on imports of Excavators (and a 7.20% import duty on imports from Korea). See ITC, Market Access Map, product code 842952, Appendix E.2.1.060.