Commission Implementing Regulation (EU) 2019/73 of 17 January 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of electric bicycles originating in the People's Republic of China

COMMISSION IMPLEMENTING REGULATION (EU) 2019/73

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imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of electric bicycles originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)], and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 20 October 2017, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the European Union ('the Union') of cycles, with pedal assistance, with an auxiliary electric motor ('electric bicycles') originating in the People's Republic of China ('the PRC') on the basis of Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council ('the basic Regulation').

(2) The Commission published a Notice of initiation in the *Official Journal of the European Union*[(2)] ('the Notice of initiation').

(3) The Commission initiated the investigation following a complaint lodged on 8 September 2017 by the European Bicycle Manufacturers Association ('the complainant' or 'EBMA'). The complainant represents more than 25 % of the total Union production of electric bicycles. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

(4) On 21 December 2017, the Commission initiated an anti-subsidy investigation with regard to imports into the Union of electric bicycles originating in the PRC and started a separate investigation. It published a Notice of initiation in the *Official Journal of the European Union*[(3)].

1.2. Registration of imports

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/73. (See end of Document for details)*

(5) On 31 January 2018, the complainant submitted a request for registration of imports of electric bicycles from the PRC under Article 14(5) of the basic Regulation. On 3 May 2018, the Commission published Implementing Regulation (EU) 2018/671 ('the registration Regulation')[4] making imports of electric bicycles from the PRC subject to registration as of 4 May 2018 onwards.

1.3. **Provisional measures**

(6) On 18 July 2018, the Commission imposed a provisional anti-dumping duty on imports into the Union of electric bicycles originating in the PRC by Commission Implementing Regulation (EU) 2018/1012[5] ('the provisional Regulation').

(7) As stated in recital (7) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 October 2016 to 30 September 2017 ('the investigation period' or 'IP') and the examination of trends relevant for the assessment of injury covered the period from 1 January 2014 to the end of the investigation period ('the period considered').

1.4. **Subsequent procedure**

(8) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the complainants, the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('the CCCME'), the Collective of European Importers of Electric Bicycles ('CEIEB'), individual unrelated importers, and individual Chinese exporting producers made written submissions making their views known on the provisional findings.

(9) The parties who so requested were granted an opportunity to be heard. Hearings took place with the complainants, the CEIEB, unrelated importers, and one individual Chinese exporting producer. One hearing with the Hearing Officer in trade proceedings was held with that Chinese exporting producer.

(10) The Commission considered the comments submitted by interested parties and addressed them as detailed in this Regulation.

(11) The Commission continued seeking and verifying all information it deemed necessary for its final findings. In order to verify the questionnaire replies of unrelated importers, verification visits were carried out at the premises of the following parties:

— BH BIKES EUROPE S.L. (Vitoria, Spain);

— BIZBIKE BVBA (Wielsbeke, Belgium);

— NEOMOUV SAS (La Flèche, France).

(12) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports into the Union of electric bicycles originating in the PRC ('final disclosure').

(13) The comments submitted by the interested parties were considered and taken into account where appropriate.

1.5. **Sampling**

(14) The list of Chinese exporting producers included in the Annex 1 to this Regulation was modified to take account of the change of name of one Chinese exporting producer to Easy Electricity Technology Co., Ltd. and another exporting producer Wuxi Shengda Vehicle Technology Co., Ltd. was added to the Annex 1.

1.6. **Individual examination**

(15) Six non-sampled exporting producers formally requested individual examination under Article 17(3) of the basic Regulation. Three of those companies were groups of companies with a total of six related traders. Furthermore, two of the companies that formally requested individual examination also requested market economy treatment. Following provisional disclosure four of those companies reiterated their requests for individual examination.

(16) As explained in recital (47) of the provisional Regulation, the examination of such a high number of requests would have been unduly burdensome and would not have allowed the completion of the investigation within the time period established in the basic Regulation. Furthermore, the additional period of time between the provisional and definitive phases was not sufficient to allow the Commission to consider this large number of requests. The Commission therefore confirmed its decision not to grant any requests for individual examination.

1.7. **Market economy treatment ('MET')**

(17) The CCCME, Bodo Vehicle, Suzhou Rununion and Jinhua Vision reiterated their claim that since subparagraph (a)(ii) of section 15 of the Protocol of Accession of the PRC to the World Trade Organisation ('WTO') had lapsed after 11 December 2016, the existence of dumping should be established on the basis of the domestic prices and costs of the Chinese exporting producers. The Commission addressed that claim as explained in section 3.1.1 of the provisional Regulation.

(18) The Commission applied the legislation in force and applicable to this investigation, namely Article 2(7)(a) and (b) of the basic Regulation.

(19) Giant Electric Vehicle 'Giant' responded to the provisional disclosure, restating its claims that the Commission should have granted Giant MET as, in Giant's view, it fulfilled the MET criteria in Article 2(7)(c) of the basic Regulation, notably criteria 1 and 3. In particular, Giant challenged the Commission's interpretation of State interference, submitting that the possibility of State interference was not sufficient to reject an MET claim. In addition, it restated its arguments that the impact of the distortions on the price of aluminium was not significant.

(20) Concerning criterion 1, the Commission found significant State interference in relation to the aluminium market as described in detail in the MET disclosure document

dated 3 May 2018, the letter of 29 May replying to Giant's comments on the MET disclosure and the provisional Regulation, in particular recitals (88) and (89). The Commission found that the Chinese government can exercise complete control over the aluminium market and regulates the aluminium market with the objective to prevent arbitrage in the economic sense. The Commission found that that situation results in a distorted aluminium market the PRC and constitutes significant State interference by the Chinese government. The distortion in the aluminium market is so strong that there is no arbitrage, lack of which *per se* constitutes significant distortion.

(21) Giant never challenged the Commission's findings of significant State interference in the PRC's aluminium market and of the Chinese government's complete control over it. It merely claimed that the effect of this State interference was not significant in value terms during the investigation period. The Commission cannot accept the proposed interpretation, which is not supported by the case-law cited by Giant[(6)]. In fact, according to case-law, criterion 1 precludes the granting of MET where the State has significantly interfered with the operation of market forces. The significant State interference in that regard would not support the conclusion that market economy conditions prevail for a producer operating in such market.[(7)]

(22) Thus, the Commission's finding regarding criterion 1 in the provisional Regulation was confirmed.

(23) Concerning criterion 3, Giant claimed that the Commission did not address its claims that the financial incentives were insignificant and not carried over from the former non-market economy system but an expression of legitimate industrial policy. In addition, Giant resubmitted that the Commission should have considered the significance of the land-use rights being granted basically for free over their life of 50 years.

(24) The Commission notes that the claim regarding financial incentives as well as the methodology applied in relation to the land-use rights, was not only already extensively dealt with in the MET disclosure document, but were also addressed in the letter of 29 May 2018 replying to Giant's comments. In addition, the Commission's reasoning is also described in the provisional Regulation, in particular in recitals (91) and (92).

(25) Based on the reasoning described in those documents, the Commission concluded that the preferential tax rate was a financial incentive of a quasi-permanent open-ended character which could also serve the purpose of attracting capital at discounted rates, thereby significantly distorting competition over a long period of time. The Commission also concluded that the tax deduction for R&D expenses was recurrent and not limited in time and therefore would have similar effect. Finally, the Commission recalls that the Giant effectively did not pay for its land-use rights (see recital (21)). Giant did not present any new argument.

(26) Thus, criterion 3, that is, the requirement that there are no significant distortions carried over from the former non-market economy system, remains not fulfilled.

(27) The CEIEB claimed that the denial of MET to a Chinese exporting producer was discriminatory, as the Union industry purchases aluminium frames from the PRC and therefore also benefits from the distortions in the aluminium market in the PRC. The CEIEB also raised the issue of imports of aluminium frames from the PRC by the Union industry under a duty suspension scheme. Those claims were rejected. Purchases by the Union industry are irrelevant for the analysis under Article 2(7)(c) of the basic Regulation which aims at examining whether an exporting producer is entitled to MET for the determination of the normal value. As a result, the Commission did not consider it relevant for the MET determination.

1.8. Investigation period and period considered

(28) In the absence of comments concerning the investigation period and period considered, recital (7) of the provisional Regulation is confirmed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Claims regarding the product scope

(29) After the publication of the provisional Regulation, three Chinese exporting producers, one importer and the CCCME reiterated their claim set out in recitals (57) to (63) of the provisional Regulation to exclude electric bicycles with an auxiliary motor pedal assistance of up to 45 km/h (‘speed electric bicycles’) from the product scope.

(30) Those parties argued that speed electric bicycles have significantly different characteristics and intended uses, are not subject to the same regulatory requirements, have significantly different prices and costs, and that, from the consumers' perspective, they are not interchangeable with the other electric bicycles with an auxiliary motor pedal assistance of up to 25 km/h covered by this investigation.

(31) The CCCME claimed that the Commission had failed to note that the consumer alteration of the software on cut-off speed mentioned by the complainant was illegal and added that this prospect could not be treated as a likely possibility.

(32) The complainant agreed that it was illegal for consumers to increase the auxiliary motor pedal assistance cut-off speed by making alterations to the software. However, it recalled that its claim was not related to such possibility but to the modifications by economic operators (importers, traders) before the electric bicycles were sold on the Union market. Indeed, when those changes to software programming involve a decrease in the cut-off speed of the auxiliary motor pedal assistance, they would be legal from a product type approval perspective. The complainant added that such changes to software programming created an obvious risk of circumvention of the anti-dumping and anti-subsidy measures.

(33) The Commission points out that recital (65) of the provisional Regulation does not only refer to consumer alteration of the software but to software programming in general. In addition, the same recital clearly referred to both the possibility to change the cut-off speed upwards and downwards. While the CCCME notes that an increase by the consumer of the auxiliary motor pedal assistance cut-off speed would be illegal,