Commission Implementing Regulation (EU) 2018/671 of 2 May 2018 making imports of electric bicycles originating in the People's Republic of China subject to registration

COMMISSION IMPLEMENTING REGULATION (EU) 2018/671

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)] ('the basic anti-dumping Regulation'), and in particular Article 14(5) thereof,

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[(2)] ('the basic anti-subsidy Regulation'), and in particular Article 24(5) thereof,

After informing the Member States,

Whereas:

(1) On 20 October 2017, the European Commission ('the Commission') announced, by a notice published in the *Official Journal of the European Union*[(3)] ('the AD notice of initiation'), the initiation of an anti-dumping proceeding ('the anti-dumping proceeding') with regard to imports into the Union of electric bicycles originating in the People's Republic of China ('PRC') following a complaint lodged on 8 September 2017 by the European Bicycle Manufacturers Association ('the complainant' or 'EBMA') on behalf of producers representing more than 25 % of the total Union production of electric bicycles.

(2) On 21 December 2017, the Commission announced, by a notice published in the *Official Journal of the European Union*[(4)] ('the AS notice of initiation'), the initiation of an anti-subsidy proceeding ('the anti-subsidy proceeding') with regard to imports into the Union of electric bicycles originating in the PRC following a complaint lodged on 8 November 2017 by the complainant on behalf of producers representing more than 25 % of the total Union production of electric bicycles.

1. PRODUCT CONCERNED AND LIKE PRODUCT

(3) The product subject to registration ('the product concerned') for both proceedings is cycles, with pedal assistance, with an auxiliary electric motor, originating in the PRC, currently falling within CN codes 8711 60 10 and ex 8711 60 90 (TARIC code 8711 60 90 10). These CN and TARIC codes are given for information only.

2. REQUEST

(4) The complainant indicated in its complaints its intention to request registration. On 31 January 2018, the complainant submitted registration requests pursuant to Article 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic anti-subsidy Regulation. The complainant requested that imports of the product concerned be made subject to registration so that measures may subsequently be applied against those imports from the date of such registration, provided all conditions set out in the basic Regulations are met.

3. GROUNDS FOR REGISTRATION

(5) According to Article 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic anti-subsidy Regulation, the Commission may direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration, provided all conditions set out in the basic Regulations are met. Imports may be made subject to registration following a request from the Union industry, which contains sufficient evidence to justify such action.

(6) According to the complainant, registration is justified as the product concerned is being dumped and subsidised. Significant injury to the Union industry, is being caused by an acceleration of low-priced imports which will undermine the remedial effect of potential definitive duties by allowing stockpiling ahead of the 2018 selling season.

(7) The Commission examined the request in the light of Article 10(4) of the basic anti-dumping Regulation and Article 16(4) of the basic anti-subsidy Regulation.

(8) With respect to the dumping part of the request, the Commission verified whether the importers were aware, or should have been aware, of the dumping as regards the extent of the dumping and the injury alleged or found. It also analysed whether there was a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

(9) With respect to the subsidy part of the request, the Commission verified whether there are critical circumstances where, for the subsidised product in question, injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefitting from countervailable subsidies and whether it is deemed necessary to assess countervailing duties retroactively on those imports in order to preclude the recurrence of such injury.

3.1. Awareness of the importers of the dumping, the extent thereof and the alleged injury

(10) As regards dumping, at this stage, the Commission has at its disposal sufficient evidence that imports of the product concerned from the PRC are being dumped. In particular, the complainant provided evidence on the normal value based on domestic

prices and based on the choice of Switzerland according to Article 2(7) of the basic anti-dumping Regulation.

(11) The evidence of dumping is based on a comparison of the normal value thus established with the export price (at ex-works level) of the product concerned when sold for export to the Union. As a whole, and given the extent of the alleged dumping margins ranging from 193 % to 430 %, this evidence provides sufficient support at this stage that the exporting producers practice dumping.

(12) That information was contained in the notice of initiation for this proceeding published on 20 October 2017.

(13) Giant, an exporting producer with a related importer, claimed that the initiation of an anti-dumping investigation was not sufficient to establish awareness of dumping.

(14) By its publication in the *Official Journal of the European Union*, the notice of initiation is a public document accessible to all importers. Furthermore, as interested parties in the investigation, importers have access to the non-confidential version of the complaint. Therefore, the Commission considered that the importers were aware, or should have been aware, of the alleged dumping practices, the extent thereof and the alleged injury at the latest at that moment.

(15) The same interested party claimed that an importer could not be expected to be aware of the application of Article 2(7) of the basic anti-dumping Regulation and even less able to anticipate the normal value against which Chinese export prices into the Union should be assessed.

(16) The Commission noted that the application of Article 2(7) of the basic anti-dumping Regulation was mentioned in the complaint and also referred to it in the notice of initiation.

(17) The complaint also provided sufficient evidence of alledged injury showing a steep decline of the market share of the Union Industry from 42,5 % in 2014 to 28,6 % in the period used for the complaint, depressed and declining levels of profitability from 3,4 % of turnover in 2014 to 2,1 % in the period used for the complaint as well as underselling calculations ranging from 153 % to 206 %.

(18) The Commission thus concluded that the first criterion for registration was met with respect to the dumping part of the request.

3.2. **Further substantial rise in imports**

(19) Eurostat data do not allow a full analysis of the evolution of imports of electric bicycles into the Union. Indeed, while the investigation period starts in October 2016, an estimated 99 % of imports of electric bicycles were classified until January 2017 under a CN code which covered other products.

(20) In this context, the complainant provided detailed figures based on the export data of the Chinese customs from January 2014 until February 2018. Based on

submissions from interested parties and a reconciliation of statistics, the Commission considered that there is a delay of two months between exports from the PRC and imports into the Union.

(21) In its analysis, the Commission therefore considered that the Chinese customs' export data provided sufficient *prima facie* evidence of imports into the Union with a two-month delay for shipment. To determine the amount of imports during the investigation period (i.e. 1 October 2016 - 30 September 2017), the Commission thus used the Chinese export data between August 2016 and July 2017.

(22) The volume of exports from the PRC to the Union increased by 82 % in the period from November 2017 to February 2018 when compared to the period from November 2016 to February 2017. In addition, the average monthly volume of exports from the PRC to the Union in the period from November 2017 to February 2018 was 64 % higher than the average monthly volume of imports to the Union during the investigation period. The Commission considered that these figures provided evidence of a substantial increase in imports.

(23) Some unrelated importers and Giant claimed that the raw Chinese export data relied upon by the complainant to support its request for registration should be disclosed in the non-confidential file in order to ensure the reliability of the source and of the data supplied. Importers claim that the codes used were not mentioned and could include other products.

(24) The complainant made available to the Commission the detailed statistics used to support its request. The disclosure of these data would breach copyrights. However, the complainant made available in the non-confidential version of the request the aggregated export figures per month and per year. The complainant also indicated that the source was the Chinese customs, mentioned the codes used and explained its methodology to exclude other products than the product concerned. As such, the source was known and public against payment. Furthermore, these data were broadly corroborated by Eurostat for the period available. No other interested party proposed alternative data or methodology. In these circumstances and given the level of disclosure of aggregated data and methodology on the non-confidential file, the Commission considers that the input data is not necessary for the party concerned to exercise their rights of defence. This argument had therefore to be rejected.

(25) Some unrelated importers further argued that stockpiling was not possible due to long lead times between design and delivery. In this regard, the Commission considered that the lead-time from designing an electric bicycle to actual delivery did not prevent the possibility of stockpiling an already designed electric bicycle, especially considering the information contained in the complaint concerning spare capacities in the PRC. Furthermore, the available statistical evidence supported the claim that there was a substantial rise in imports. The argument was therefore rejected.

(26) Some unrelated importers and Giant denied that the increase in Chinese exports provided evidence of a further substantial rise in imports and claimed that it reflected the seasonality of the sales of electric bicycles. The Commission considered

that a year-on-year comparison was not influenced by seasonality effects and provided evidence of a rise of 82 % in the volume of imports since the initiation of the case. The argument was therefore rejected.

(27) Giant denied that the rise of imports was substantial and claimed that it was below or in line with the overall growth in Union demand for electric bicycles. Giant quoted the publications of the Confederation of the European Bicycle Industry ('CONEBI') which estimated this growth to be 22,2 % in 2016 in comparison with 2015, and of EBMA, the complainant, which estimated the growth rate for 2017 at 23 % in comparison with 2016. Giant claimed that October 2017 was the proper starting point to assess the increase in imports. Giant calculated that based on Eurostat import data, monthly imports of electric bicycles had increased by 8,7 % between October 2017 and January 2018.

(28) The Commission notes that Giant submitted that the shipment time between exports from the PRC and imports into the Union was 'at least one or two months'. As a result, the imports in October 2017 corresponded to the exports from the PRC made in August 2017, before the initiation of the investigation. In addition, the average monthly volume of exports from the PRC to the Union in the period from August 2017 to February 2018 was 36 % higher than the average monthly volume of imports to the Union during the investigation period. This growth rate does not take into account the very significant increase of imports which had already occurred during the investigation period and is nevertheless well above the 2016 and 2017 growth rates in the Union market demand.

(29) Therefore, the Commission concluded that the second criterion for registration for the dumping part of the request was also met.

3.3. **Undermining of the remedial effect of the duty**

(30) The Commission has at its disposal sufficient evidence that additional injury would be caused by a continued rise in imports from the PRC at further decreasing prices.

(31) As established in recitals (19) to (29), there is sufficient evidence of a substantial rise in imports of the product concerned.

(32) In addition, there is evidence of a decreasing trend in the import prices of the product concerned. The average price in euros of imports from the PRC into the Union was indeed 8 % lower in the period from November 2017 to February 2018 than in the period from November 2016 to February 2017 and 7 % lower when compared to the investigation period.

(33) Additional circumstances show that the further substantial rise in imports is likely to seriously undermine the remedial effect of the duties to be applied. It is indeed reasonable to assume that the imports of the product concerned may further increase prior to the adoption of provisional measures, if any, since the latter would occur at the latest around the 20th of July which would coincide with the end of the 2018 selling season of electric bicycles.