Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union[(1)], and in particular Articles 15 and 24(1) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 21 December 2017, the European Commission ('the Commission') initiated an anti-subsidy investigation with regard to imports into the Union of electric bicycles originating in the People's Republic of China ('the PRC', 'China' or 'the country concerned'). The initiation was based on Article 10 of 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 ('the basic Regulation'). It published a Notice of initiation in the *Official Journal of the European Union* ('Notice of initiation')[(2)].

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

(3) Prior to the initiation of the anti-subsidy investigation, the Commission notified the Government of China ('GOC')[(3)] that it had received a properly documented complaint, and invited the GOC for consultations in accordance with Article 10(7) of the basic Regulation. The GOC accepted the offer for consultations, which were held on 18 December 2017. During the consultations, due note was taken of the comments submitted by the GOC. However, no mutually agreed solution could be reached.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/72. (See end of Document for details)*

(4) On 18 July 2018, the Commission imposed a provisional anti-dumping duty on imports of the same product originating in the PRC[4] ('the anti-dumping Regulation') in an investigation which had been initiated by Notice published on 20 October 2017[5] ('the parallel anti-dumping investigation').

(5) The injury, causation and Union interest analyses performed in the present anti-subsidy investigation and the parallel anti-dumping investigation are *mutatis mutandis* identical, since the definition of the Union industry, the representative Union producers and the investigation period are the same in both investigations. All the relevant elements pertaining to these aspects have been taken into account also in the present investigation.

(6) The GOC, the China Chamber of Commerce for Import and Export of Machinery and Electronic products ('CCCME'), the Collective of European Importers of Electric Bicycles ('CEIEB'), the latter both representing several interested parties, submitted comments after the initiation of the proceeding.

(7) These parties argued that the reasons for which the Commission granted confidential treatment to the identity of some of the interested parties supporting the complaint were both insufficient and unfounded. They added that some Union producers import complete electric bicycles from the PRC and thus, in light of Article 9(1) of the basic Regulation, may be precluded from being considered as being part of the Union Industry. They pointed out that confidential treatment of the identity of some of the interested parties precludes the exporting producers from properly examining the standing in this case. In a similar vein, they argued that the complaint does neither contain a list of all known Union producers of the like product, nor the volume and value produced by these producers.

(8) The Commission rejected this claim. The Commission recalled that Article 9(1) of the basic Regulation does not preclude considering some Union producers as part of the domestic industry just because they import the product concerned. Moreover, the Commission was satisfied with the level of support expressed by the Union industry for the initiation of the case at hand. In addition, the complaint contained a list of known producers in the Union[6], as well as their total production volume[7]. Interested parties were, accordingly, able to assess the list of known Union producers of the like product.

(9) This information allowed the GOC, the CCCME and the CEIEB to identify that two companies listed as Union producers are also importing electric bicycles from the country concerned. It is therefore clear that these interested parties could fully exercise their rights of defence in this respect.

(10) The claims were therefore rejected.

(11) The CCCME further argued that the complaint lacked the necessary level of sufficient evidence to result in the initiation of an investigation. The CCCME gave four reasons to support this claim.

(12) First, the import data, based on Chinese export statistics obtained from Chinese customs, together with the adjustments made to it to filter out the product subject to this investigation, should not be kept confidential and its source should be duly examined by the Commission.

(13) Second, certain information in the complaint such as, for instance, the alleged overcapacity in the relevant sector in the PRC, is misleading as they relate not only to the electric bicycles sector but electric bicycles and bicycles together. Similarly, the value of the Union's electric bicycles market would be overestimated as it covers all light electric vehicles and not only electric bicycles.

(14) Third, while the complaint focuses on claims of subsidisation of the Chinese electric bicycles market, it never examines subsidies existing in Europe.

(15) Fourth, according to the CCCME, the complaint made a series of unjustified claims that are harmful to the electric bicycles industry in the PRC, alleging that it is the Union producers who drive the innovation in this business and that the Chinese producers are merely replicating the status quo of the Union-developed electric bicycles technology.

(16) The Commission carried out an examination of the complaint in accordance with Article 10 of the basic Regulation, coming to the conclusion that the requirements for initiation of an investigation were met, namely that the adequacy and accuracy of the evidence presented by the complainant was sufficient. According to Article 10(2) of the basic Regulation, a complaint shall contain such information as is reasonably available to the complainant on the factors indicated therein. On the basis of the evidence provided, the Commission deemed that requirement satisfied. In this respect, none of the aspects raised by CCCME was dispositive for the Commission to have initiated the investigation into the alleged injurious subsidisation.

(17) First, regarding the Chinese import data, the Commission refers to Section 3.2 of Implementing Regulation (EU) 2018/671 (‘the registration Regulation’)[8] and to section 4.3.1 of the present Regulation, where that argument is sufficiently addressed.

(18) Second, regarding the overcapacity in China, it is indeed relevant to examine overcapacities for electric bicycles and bicycles together, since production capacity for bicycles can be converted to electric bicycles with little cost or effort (see recital (634), and there is evidence on record that this is indeed regularly done by companies producing both products.

(19) Finally, the elements concerning innovation and replication or subsidies in the EU had no weight on the Commission's assessment underlying the initiation of this case, as they do not fall within the factors considered for this purpose.

(20) The Commission therefore concluded that the complaint contained sufficient evidence of subsidisation and of resulting material injury that was sufficient to justify the initiation of the investigation.

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1.2. **Registration of imports**

(21) On 31 January 2018, the complainant submitted a request for registration of imports of electric bicycles from the PRC under Article 24(5) of the basic Regulation. On 3 May 2018, the Commission published the registration Regulation making imports of electric bicycles from the PRC subject to registration as of 4 May 2018 onwards.

(22) Responding to the request for registration, interested parties submitted comments that were addressed in the registration Regulation. The Commission confirmed that the complainants submitted sufficient evidence justifying the need to register imports. In particular, imports and market shares from the PRC had sharply increased. The comments were therefore rejected.

1.3. **Investigation period and period considered**

(23) The investigation of subsidisation and injury covered the period from 1 October 2016 to 30 September 2017 (‘the investigation period’ or ‘IP’). The examination of trends relevant for the assessment of injury covered the period from 1 January 2014 to 30 September 2017 (‘the period considered’).

1.4. **Interested parties**

(24) In the Notice of initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the GOC, the known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

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

1.5. **Sampling**

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

1.5.1. *Sampling of Union Producers*

(27) In its Notice of initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the highest representative sales volumes of the like product in the investigation period whilst ensuring a spread in product types and a geographical spread.

(28) This sample consisted of four Union producers. The sampled Union producers accounted for 60 % of the total production volume and 58 % of total sales of the Union industry. The Commission invited interested parties to comment on the provisional sample.

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(29) In light of the above, the Commission confirmed that the sample is representative of the Union industry.

1.5.2. *Sampling of importers*

(30) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of initiation.

(31) Twenty-one unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic Regulation, the Commission selected a sample of five unrelated importers on the basis of the largest volume of imports into the Union. In accordance with Article 27(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample.

(32) In light of the above, the Commission concluded that the sample is representative of the cooperating importers.

1.5.3. *Sampling of exporting producers*

(33) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of initiation. In addition, the Commission requested the authorities of the GOC to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(34) Seventy-eight exporting producers/group(s) of exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 27(1)(b) of the basic Regulation, the Commission selected the following sample of five groups of exporting producers on the basis of the volume of the product concerned referred to in recital (60) below exported to the Union also taking into consideration the level of investments relating to the product concerned during the investigation period and the geographical spread. This is considered to be the largest representative volume of exports to the Union which could reasonably be investigated within the time available:

— Bodo Vehicle Group Co., Ltd. (Bodo),

— Giant Electric Vehicle (Kunshan) Co., Ltd. (Giant),

— Jinhua Vision Industry Co., Ltd. and Yongkang Hulong Electric Vehicle Co., Ltd. (Jinhua Vision Group),

— Suzhou Rununion Motivity Co., Ltd. (Rununion Group),

— Yadea Technology Group Co., Ltd. (Yadea Group).

(35) The sampled groups of exporting producers (‘the sampled exporting producers’) represented 43 % of the total imports of the product concerned to the Union.

(36) In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the GOC, were consulted on the selection of the sample.