

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**

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

- (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').

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of initiation of an anti-dumping proceeding concerning imports of electric bicycles originating in the People's Republic of China, OJ C 353, 20.10.2017, p. 19.

⁽³⁾ Notice of initiation of an anti-subsidy proceeding concerning imports of electric bicycles originating in the People's Republic of China, OJ C 440, 21.12.2017, p. 22.

⁽⁴⁾ 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, OJ L 113, 3.5.2018, p. 4.

⁽⁵⁾ Commission Implementing Regulation (EU) 2018/1012 of 17 July 2018 imposing a provisional anti-dumping duty on imports of electric bicycles originating in the People's Republic of China and amending Implementing Regulation (EU) 2018/671, OJ L 181, 18.7.2018, p.7.

- (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.

⁽⁶⁾ Case C-337/09 P, *Council v Zhejiang Xinan Chemical Industrial Group*, EU:C:2012:471, paragraphs 66 & 73. See also Case C-26/96, *Rotexchemie v. Hauptzollamt Hamburg-Waltershof*, EU:C:1997:261, paragraph 9 and Case C-338/10, *GLS v. Hauptzollamt Hamburg-Stadt*, EU:C:2012:158, para. 20.

⁽⁷⁾ Case C-337/09 P, *Council v Zhejiang Xinan Chemical Industrial Group Co. Ltd*, EU:C:2012:471, paragraph 90: 'In that regard, it must be noted that MET may only be granted to an operator if the costs to which it is subject and the prices it charges are the result of the free operation of supply and demand. That would not be the case if, for example, the State interfered directly with the price of certain raw materials or the price of labour.'

- (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, it does not question other software programming changes, such as decreasing the cut-off speed of the auxiliary motor for pedal assistance by economic operators mentioned in recital (32) of this Regulation. The argument was therefore rejected.
- (34) Following final disclosure, the CCCME argued that the Commission only presented the argument concerning economic operators rather than the consumers altering the software programming to increase or decrease the speed of the auxiliary motor assistance for the first time in the final disclosure. That statement is incorrect. As noted in the previous recital, recital (65) of the provisional Regulation referred to all types of software programming, irrespective of who carries out the software programming. There is no indication that recital (65) of the provisional Regulation only referred to software programming carried out by consumers and did not include software programming carried out by economic operators. In any event, the Commission observes that inclusion in the final disclosure is sufficient to allow all interested parties to comment.

- (35) The CCCME claimed that the complainant's statement that all electric bicycles were subject to the same tests under the norm EN 15194 was inaccurate. The CCCME submitted that the norm EN 15194 subjects all electric bicycles to the same test procedures. That norm, however, has no bearing on the difference in speed which commands different requirements and makes speed electric bicycles not interchangeable with other electric bicycles. The CCCME further argued that speed electric bicycles, as opposed, to ordinary electric bicycles, did not fall under the scope of norm EN 15194.
- (36) The CCCME submitted that speed electric bicycles are covered as moped vehicles for use on public roads by Regulation (EU) No 168/2013 of the European Parliament and of the Council ⁽⁸⁾. That Regulation excludes electric bicycles with an auxiliary motor pedal assistance of up to 25 km/h. Additional rules applying to speed electric bicycles cover taxes, licensing and insurance, license plates and moped compliant helmet and safety compliance checks.
- (37) The CCCME submitted that the reasoning set out in recital (70) of the provisional Regulation that all electric bicycles share the same physical characteristics does not overcome the argument that there are distinct equipment and regulatory requirements associated with speed electric bicycles. The CCCME claimed that due to those distinct requirements, speed electric bicycles were not interchangeable with other electric bicycles and that consumers supported this view. In order to substantiate that argument, the CCCME mentioned the opposition of the European Cyclist Federation to the Commission's proposal to request third party liability insurance for all electric bicycles, not only speed electric bicycles.
- (38) The complainant reiterated its claim that all electric bicycles share the same physical characteristics. In particular, the complainant submitted that all electric bicycles are made of the same bicycle parts and components, and that there are no bicycles' parts which are exclusively used for speed electric bicycles. This includes the motors manufactured by the major motor producers which can be used to power all types of electric bicycles with the adequate software programming. The difference between speed electric bicycles and other electric bicycles cannot therefore be reliably established on the basis of their physical appearance.
- (39) The complainant submitted that consumer perception is not a determining factor for the determination of the product scope in trade defence proceedings and claimed that electric bicycles of all auxiliary motor pedal assistance levels are available in the different use categories (for example, for use in commuting, trekking, racing, and on mountains) and are marketed to all customer groups irrespective of their age and gender. Consumer perception and use therefore does not justify an exclusion of speed electric bicycles from the product scope.
- (40) The complainant submitted that the criterion of type approval and more generally the classification under Regulation (EU) No 168/2013 are not suitable for the definition of the product scope in the present case. The complainant argued that not all speed electric bicycles are subject to type approval but only those intended for use on public roads. This would exclude, for instance, an electric mountain bike used exclusively for competitive events or off-road mountains which would also not be subject to the further requirements related to type approval (license plate, helmet and insurance).
- (41) Furthermore, the complainant argued that electric bicycles which are not subject to type approval under the Regulation (EU) No 168/2013 are nevertheless subject to the exact same product safety requirements under the Union machinery directive. The complainant further added that the applicable norm setting specific requirements is the same for all electric bicycles, namely the harmonised norm EN 15194 and therefore restated the claim reflected in recital (64) of the provisional Regulation.
- (42) The Commission assessed that the claims above made by the CCCME concerning interchangeability, regulatory requirements and consumer perception were a repetition of those already addressed in recitals (67) to (73) of the provisional Regulation.

⁽⁸⁾ Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles. Text with EEA relevance, OJ L 60, 2.3.2013, p. 52.

- (43) The Commission noted that its proposal to extend the requirement of third-party liability insurance to all electric bicycles, used by the CCCME to substantiate the claimed difference in consumer perception, equally showed that the differences in regulatory requirements were evolving and did not provide a suitable and stable basis to exclude speed electric bicycles from the product scope.
- (44) The Commission concluded that the additional information submitted was not of a nature to alter its findings regarding the product scope, namely that electric bicycles share the same basic physical characteristics and properties and that consumer perception and uses overlap significantly. The arguments of the CCCME were therefore rejected.
- (45) One interested party argued that the product scope of the investigation should be limited to low-end electric bicycles. Mid- and high-end electric bicycles should be removed from the product scope, since there is allegedly no dumping taking place in the mid- and high-end segment of electric bicycles. That interested party claimed that quality and performance, price, cost and profit margin of electric bicycles could be used to differentiate between those market segments.
- (46) The Commission recalled that the product concerned and the like product were defined on the basis of their physical characteristics. Criteria such as price, cost and profit margin cannot be used to define the product concerned⁽⁹⁾. As to quality and performance, beyond the fact that the interested party did not explain how to measure and quantify these elements in a systematic way, the Commission recalls that quality and performance can be taken into account through adjustments for physical characteristics. In any event, even if they were relevant for defining the product scope, quod non, the Commission notes that although several interested parties put forward similar claims during the investigation, none provided any pertinent information that would have justified or allowed for a possible segmentation of the market. In the absence of any evidence, the Commission in any event had to reject that argument and confirmed the findings laid out in recital (122) of the provisional Regulation.
- (47) In the absence of any other comments with respect to the product scope, the Commission confirmed the conclusions set out in recitals (67) to (74) of the provisional Regulation.

3. DUMPING

3.1. Analogue country

- (48) No comments were received regarding the choice of the Union industry as analogue country and no alternative analogue countries were suggested. Recital (103) of the provisional Regulation is therefore confirmed.

3.2. Normal value

- (49) As set out in recital (103) of the provisional Regulation, the normal value was based on the prices actually paid or payable in the Union for the like product. No comments on that point were received.
- (50) Two Chinese exporting producers disputed the values used for the normal value, taking examples of product type (PCN) pairs where one should be, according to the common understanding in the electric bicycles industry, more expensive than the other, but were in fact cheaper. Those two exporting producers claimed that the Commission should adjust the normal value per PCN to be more 'in line' with the presumed cost of the materials and parts used.
- (51) That claim was denied, as the normal value is based on actual prices paid in the Union for the like product. Each electric bicycle is composed of multiple components, which together with other factors determine the sales price. The combined effect of those components and factors can outweigh the impact of the price differences of one particular component as claimed by both exporting producers. Those two exporting producers did not claim an adjustment for physical differences under Article 2(10)(a) of the Regulation.
- (52) Recitals (104) to (106) of the provisional Regulation are therefore confirmed.

⁽⁹⁾ See case T-394/13 *Photo USA Electronic Graphic vs. Council* ECLI:EU:T:2014:964.

- (53) Following final disclosure, two exporting producers argued that the explanation provided in recital (51) would be insufficient. Those exporting producers gave an example of two PCNs differing only in the power level of the engine assistance. In that example, the PCN with the lower-powered engine assistance fell into the more expensive normal value range than the PCN with the higher-powered engine assistance.
- (54) The Commission noted that such a situation was not typical for the normal value used in this investigation, as in most cases the more expensive PCN characteristics fell into more expensive normal value ranges. Indeed, the average normal value of PCNs with the higher assistance level is 60,8 % higher than the PCN's with the lower assistance level. The situation referred to in recital (53) can occur without compromising the reliability of this normal value for fair comparison purposes, as the normal value is based on the sales in the Union of multiple Union producers. Those sales inherently include price differences depending on the particular models influencing the price per PCN in the sales mix. Also, the normal value of the product concerned presented in ranges seemingly amplifies the price difference in some cases. This is because two PCNs with a very small price difference can be shown in two different ranges if their prices are close to the range limits.
- (55) In the absence of any other claims regarding the normal value, recitals (104) to (106) of the provisional Regulation are therefore confirmed.

3.3. Export price

- (56) In the absence of any comments regarding the export price, recitals (107) to (109) of the provisional Regulation are confirmed.

3.4. Comparison

- (57) One exporting producer claimed that the Commission should not deduct credit costs incurred between the producer and its related sales companies in Europe. That claim was accepted. This resulted in an adjustment to the export price of less than 1 %.
- (58) The same exporting producer asked whether the normal value included packaging costs, and if so, whether the comparison with the export price was made 'packed to packed'. That claim was accepted for all exporting producers as the normal value was determined on the basis of packed liked products. This resulted in an adjustment to the export price of less than 1 %.
- (59) In recital (116) of the provisional Regulation, the Commission invited interested parties to provide reliable and verifiable quantification of costs for an adjustment under Article 2(10)(k) of the basic Regulation to account for the design, marketing and research and development (R&D) costs of brand-name importers.
- (60) Two Chinese sampled exporting producers submitted claims for an adjustment under Article 2(10)(k) of the basic Regulation and provided evidence from their brand-name importers in the Union in this regard. The evidence provided consisted of data from the importers concerned regarding R&D and design costs. Those importers had been inspected as part of this investigation.
- (61) The Commission considered the data submitted to justify the claims made and accepted that certain R&D and design costs were indeed required in the operations of the brand-name importers. It was however unable to accept the data of the importers selected by the exporting producers as that data covered issues wider than R&D and design costs of brand name importers. The significant differences in the reported cost categories expressed as a percentage of the two brand-name importers' turnover did not provide a representative basis for establishing the costs needed for the claimed adjustment.
- (62) However, the Commission was able to identify those costs in the records of the sampled and verified Union producers, who provided the source of the data for the normal value in this investigation. The sampled and verified Union producers were therefore considered a reliable source of data for a normal value adjustment for R&D and design under Article 2(10)(k).
- (63) On that basis, the Commission made an adjustment of 2,3 % to the normal value for the three Chinese exporting producers who sold only non-branded electric bicycles, that is to say that they produced electric bicycles in the PRC for brand holders in the Union.

- (64) The Union industry noted the initial claims for R&D, design and other adjustments made by the two Chinese exporting producers and argued that such claims should not be accepted. They also argued that the 2,3 % adjustment made by the Commission should not be applied to another Chinese exporting producer, who had not claimed the adjustment.
- (65) However, concerning the 2,3 % adjustment, the Commission based itself on financial data from the Union industry. Furthermore, in order to provide for a fair and reasonable comparison between the export price and the normal value, the adjustment had to be made for the three Chinese exporting producers concerned. The claim of the Union industry was, therefore, rejected.
- (66) In their comments following final disclosure, the three Chinese exporting producers argued that the R&D and design adjustment should not have been based on the verified Union industry data, but on the data of two unrelated importers provided by the exporting producers following the provisional disclosure. Those importers also claimed that the Commission had failed to take into account all relevant cost differences needed for the price comparison. One exporting producer claimed the 2,3 % adjustment to the normal value is too low compared to its own costs relating to branding operations.
- (67) The Commission sufficiently explained the source of that adjustment in recital (61) and notes that only the costs related to the operations of the brand holder importer which were additional to the operations of a standard importer could be taken into account for that adjustment.
- (68) As to the claim that the Commission should have instead used the data from the two unrelated importers, the Commission would note the following points. The Commission notes that using the Union industry's data as the source for such an adjustment has been done before, in the proceeding concerning certain cast iron articles originating in the PRC ⁽¹⁰⁾, but the Commission has also used unrelated importers's data, as in the proceeding concerning certain footwear with uppers of leather originating in the PRC and Vietnam ⁽¹¹⁾. In this case, the Commission found it appropriate to use the data of the Union producers who had incurred costs relating to branding.
- (69) Firstly by using the Union producers's data, the Commission was able to collect a full dataset from all producers. Therefore, the data used is more representative than that from two unrelated importers.
- (70) Secondly the Commission did not verify the datasets provided by the two unrelated importers, the reason being that data was submitted after the verification visits took place. By contrast, the data from the Union producers had been specifically verified.
- (71) The Commission further notes that given that the data from the Union industry was used to calculate normal value, as well as to calculate the non-injurious price, using data from the same companies was more coherent.
- (72) Following the final disclosure, Giant asked for the R&D and design 2.3 % adjustment to be applied to a part of its sales, where those activities were provided by their customer, namely the brand holder importer. That adjustment was granted, leading to a 1,2 % points decrease in its dumping margin. The result was disclosed and was not subject to further comment.
- (73) Three Chinese exporting producers reiterated the claim made before provisional disclosure, set out in recitals (118) to (122) of the provisional Regulation, that the PCN used by the Commission throughout the investigation should be expanded to include other elements.
- (74) Those three Chinese exporting producers did not provide any new information to allow that claim to be re-examined. The findings in recitals (121) to (122) of the provisional Regulation were, accordingly, upheld.

⁽¹⁰⁾ Commission Implementing Regulation (EU) 2018/140 of 29 January 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cast iron articles originating in the People's Republic of China and terminating the investigation on imports of certain cast iron articles originating in India, OJ L 25, 30.1.2018, p. 6.

⁽¹¹⁾ Council Regulation (EC) No. 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam, OJ L 275, 6.10.2006, p. 1.

- (75) Those three Chinese exporting producers reiterated the same claim following the final disclosure, without providing any new information. Contrary to the arguments put forward in their latest comments, the Commission carefully considered the evidence provided by the sampled Chinese exporting producers and all other available information and explained its conclusions in recitals (118) to (122) of the provisional Regulation.
- (76) One Chinese exporting producer requested evidence as to the level of trade of the sales of the Union industry on the domestic market, used for normal value calculation purposes, in order to consider whether a claim for a level of trade adjustment under Article 2(10)(d)(i) of the basic Regulation was warranted. That information, which was considered confidential by all interested parties, including the Chinese exporting producer itself, was made available in ranges by interested parties in the open file. It showed that typically more than 85 % of the sampled Union producer's sales were to retailers.
- (77) Following that new evidence being placed on the open file, the Chinese exporting producer submitted a level of trade adjustment claim. Because said Chinese exporting producer had related sales companies in the Union, it also considered that the adjustments made under Article 2(9) of the basic Regulation to its export price changed the level of trade of its sales from retailers to distributors. The same argument was made after final disclosure. The Commission noted that the adjustments under Article 2(9) of the basic Regulation are intended to remove the effect of related importers in the Union, not to change the level of trade of the sale, which remained essentially (typically above 85 %) to retailers. After review of the arguments presented, the Commission rejected that claim.

3.5. Dumping margins

- (78) As detailed in section 3, the Commission took into account interested parties' comments and recalculated the dumping margin of all Chinese exporting producers.
- (79) The definitive dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Table 1

Definitive dumping margins

| Company | Definitive dumping margin |
|--|---------------------------|
| Bodo Vehicle Group Co., Ltd. | 86,3 % |
| Giant Electric Vehicle (Kunshan) Co. | 32,8 % |
| Jinhua Vision Industry Co., Ltd and Yongkang Hulong Electric Vehicle Co., Ltd. | 39,6 % |
| Suzhou Rununion Motivity Co., Ltd. | 100,3 % |
| Other cooperating companies | 48,6 % |
| All other companies | 100,3 % |

4. INJURY

4.1. Definition of the Union industry and Union production

- (80) Following the publication of the provisional Regulation and comments received, the Commission further examined the situation of certain Union producers of the like product which had reported imports of the product concerned as referred to in recitals (130) to (132) of the provisional Regulation.
- (81) In accordance with Article 4(1)(a) of the basic Regulation, the Commission established that six companies initially considered to be part of the Union industry should be excluded from the definition of the Union Industry. Following comments, the Commission reassessed the situation of those six companies and concluded that the interest represented by their import activity exceeded the interest represented by their production activity. As a result, it excluded those six companies from the definition of Union industry.

- (82) Given that six Union producers were excluded from the Union industry definition, the remaining 31 producers constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (83) The injury indicators for market share, production, production capacity, capacity utilisation, sales volume, employment and productivity were revised accordingly, as described under recitals (106), (113) and (121).

4.2. Union consumption

- (84) In the absence of any comments with respect to the Union consumption, the Commission confirmed its conclusions set out in recitals (133) to (135) of the provisional Regulation.

4.3. Imports from the PRC

- (85) Following the publication of the provisional Regulation, the CCCME repeated its request that the source and the detailed exports statistics submitted by the Complainant be disclosed and reiterated its claim that the description of the methodology followed by the Complainant to identify the product concerned was not sufficiently detailed. The CCCME did not provide new nor additional arguments in support of those claims, which were already addressed in recitals (143) to (148) of the provisional Regulation. Those claims were therefore rejected.
- (86) Following final disclosure, the CCCME questioned why – despite the removal of six producers from the definition of the Union industry referred to in recital (82), the market share of Chinese imports and imports from other third countries remained unchanged. In that respect, it is noted that the market share is calculated as a percentage of total Union consumption. As stated in recital (84), Union consumption was not revised since the publication of the provisional Regulation. Therefore, the market shares of Chinese imports and imports from other third countries remained unchanged as well.
- (87) One unrelated importer claimed that the decrease in prices of imports from the PRC was not due to unfair trade practices but to the decrease in the cost of lithium and the intense competition to win market share in the Union. However, it did not explain how these developments would invalidate any of the findings laid out in the provisional Regulation, notably the finding of dumping. The claim has therefore to be rejected and the reasoning in recitals (151) to (158) of the provisional Regulation is upheld.
- (88) The CCCME and some exporting producers claimed that the Commission had wrongly assessed the evolution of the average price of Chinese imports by observing that it was markedly below the average price of Union producers and third countries. Those parties claimed that the average price of Chinese imports disclosed nothing about potential undercutting in the absence of a 'like-for-like analysis', namely an analysis on the basis of the product type. They claimed that the Commission should acknowledge that a declining average price of Chinese imports may well just reflect a change in product mix.
- (89) As indicated in recital (154) of the provisional Regulation, the Commission agrees that a change in product mix may influence the evolution of the average price of imports from the PRC. However, it remains that the average prices of imports from the PRC have been constantly and significantly below the average prices from any other source of supply despite a context in which the CCCME itself claims that the product concerned improved in quality and expanded to higher price segments. In addition, this declining trend has to be considered in relation with the like-for-like analyses which led to findings of substantial undercutting and dumping.
- (90) With regard to undercutting calculations, one Chinese exporting producer with related importers in the Union claimed that the Commission should have used the reported CIF values of its imports instead of using a constructed CIF value. It claimed that the methodology used to determine the CIF value used in the undercutting calculations should be disclosed. It also claimed that by using such methodology, the Commission had artificially brought its prices to Union's border's level which is not the point where it competes with Union producers. It further submitted that such methodology introduced a difference in level of trade which made the price comparison unfair.
- (91) First, the Commission notes that it has duly disclosed to all parties concerned, including the Chinese exporting producer in question, the methodology used for the undercutting calculation (the Union industry's unit price was

compared with the unit price of each exporting producer per product type and the difference was multiplied by the exporting producer's exported quantity). Second, the same claim concerning the construction of the export price of that Chinese exporting producer for the dumping calculation was rejected as set out in recital (75). In fact, for the same reasons, namely the construction of the CIF price does not change the level of trade of the sale, which remains predominantly (typically above 85 %) to retailers, the Commission also has to reject the claim for the undercutting calculation. Finally, the Commission cannot use for the undercutting calculation the reported CIF prices because the underlying sales took place between related parties. In addition, the Chinese exporting producer in question did not establish how those prices could be reliable despite this relationship.

- (92) Following final disclosure, the same interested party repeated the claim described in recital (90).
- (93) The Commission recalls that, as far as the determination of the undercutting margin is concerned, the basic Regulation does not prescribe a specific methodology. The Commission therefore enjoys a wide margin of discretion in assessing that factor. That discretion is limited by the need to base conclusions on positive evidence and to make an objective examination, as required by Article 3(2) of the basic Regulation. It should also be recalled that Article 3(3) of the basic Regulation specifically provides that the existence of significant price undercutting has to be examined at the level of the dumped imports, and not at the level of any subsequent resale price on the Union market.
- (94) On that basis, when it comes to the elements taken into account for calculation of undercutting (in particular the export price), the Commission has to identify the first point at which competition takes (or may take) place with Union producers in the Union market. That point is in fact the purchasing price of the first unrelated importer because that company has in principle the choice to source either from the Union industry or from overseas suppliers. That assessment should be based on the export price at the Union frontier level which is considered to be a level comparable to the Union industry ex-works price. In the case of export sales via related importers, the point of comparison should be right after the good crosses the Union border, and not at a later stage in the distribution chain, e.g. when selling to the final user of the good. Thus, by analogy with the approach followed for the dumping margin calculations, the export price is constructed on the basis of the resale price to the first independent customer duly adjusted pursuant to Article 2(9) of the basic Regulation. As that article is the only article in the basic Regulation which gives guidance on the construction of the export price, the application thereof by analogy is justified.
- (95) That approach also ensures coherence in cases where an exporting producer is selling the goods directly to an unrelated customer (whether importer or final user) because, under that scenario, resale prices would not be used by definition. A different approach would lead to discrimination between exporting producers based solely on the sales channel that they use. The Commission considers that the establishment of the relevant import price for undercutting calculations should not be influenced by whether the exports are made to related or independent operators in the Union. The methodology followed by the Commission ensures that both circumstances receive equal treatment.
- (96) Therefore, in order to allow for a fair comparison, a deduction of SG&A and profit from the resale price to unrelated customers made by the related importer is warranted in order to arrive to a reliable CIF price. The Commission, therefore, rejected that claim.
- (97) The CCCME and four Chinese exporting producers claimed that the rejection of their claim for a level of trade adjustment under recital (157) of the provisional Regulation did not address the difference of prices arising at the level of OEM customers. Those interested parties submitted that a fair price comparison required an upward adjustment to reflect the mark-up of OEM customers and brand owners post-importation. The same argument was also raised again after disclosure.
- (98) The Commission considered, as already explained in recital (157) of the provisional Regulation, the claim for an adjustment of the level of trade and concluded that there is no consistent and distinct price difference for OEM and brand owner sales in the Union. Adjusting upwards the Chinese import price by the brand importers mark-up allegedly reflecting a difference in level of trade would undermine the investigation's finding that there is no consistent and distinct price difference for OEM and brand owner sales in the Union. Thus, the claim was rejected.

- (99) Following provisional disclosure, Giant made a claim concerning the calculation of the conventional customs duty in case of imports by related companies acting as an importer. They argued that the amount for the conventional customs duty should be based on the actual CIF value, not the constructed CIF value. That claim was accepted. The revised undercutting margins ranged from 16,2 % to 43,2 % as indicated in Table 2.

Table 2

Undercutting margins

| Company | Undercutting margin |
|--|---------------------|
| Bodo Vehicle Group Co., Ltd. | 41,4 % |
| Giant Electric Vehicle (Kunshan) Co. | 19,4 % |
| Jinhua Vision Industry Co., Ltd and Yongkang Hulong Electric Vehicle Co., Ltd. | 16,2 % |
| Suzhou Rununion Motivity Co., Ltd. | 43,2 % |

- (100) In the absence of any other comments with respect to the imports from the PRC and further to the revision of the undercutting calculations set out in recital (99), the Commission confirmed all other conclusions set out in recitals (136) to (157) of the provisional Regulation.

4.4. Economic situation of the Union industry*4.4.1. General remarks*

- (101) Following the publication of the provisional Regulation, one importer claimed that the Commission should explain how it obtained and estimated the performance indicators since those provided in the provisional Regulation did not align with the figures provided by the sampled Union producers. In particular, it pointed out that none of the sampled Union producers had reported a decline in production and sales.
- (102) The Commission refers to recital (162) of the provisional Regulation where it explained that macro-indicators were not only based on information gathered from the sampled Union producers but also from the market information submitted by the Confederation of the European Bicycle Industries ('CONEBI') and import statistics.
- (103) As explained in recital (163) of the provisional Regulation, the Commission used for consumption the figure submitted by CONEBI and verified by the Commission. The Union industry's sales volume was obtained by deducing imports from the total consumption figure. The production was estimated on the basis of the relevant ratios of sales and production verified at the sampled Union producers.
- (104) As stated in recital (164) of the provisional Regulation, the Commission followed the methodology described in the complaint and which was not commented upon during this investigation.
- (105) In the absence of other comments, the Commission confirmed recitals (159) to (166) of the provisional Regulation.

*4.4.2. Macroeconomic indicators**4.4.2.1. Production, production capacity and capacity utilisation*

- (106) Following the exclusion of certain companies from the definition of the Union industry as explained in recitals (80) to (83), the figures for production, production capacity and capacity utilisation in the Union were revised as indicated in Table 3.

Table 3

Production, production capacity and capacity utilisation

| | 2014 | 2015 | 2016 | IP |
|------------------------------|-----------|-----------|-----------|-----------|
| Production volume (pieces) | 831 142 | 976 859 | 1 095 632 | 1 066 470 |
| <i>Index</i> | 100 | 118 | 132 | 128 |
| Production capacity (pieces) | 1 110 641 | 1 366 618 | 1 661 587 | 1 490 395 |
| <i>Index</i> | 100 | 123 | 150 | 134 |
| Capacity utilisation | 75 % | 71 % | 66 % | 72 % |
| <i>Index</i> | 100 | 95 | 88 | 96 |

Source: CONEBI, sampled Union producers, interested parties' submissions

- (107) The production volume of the Union industry thus increased by 28 % over the period considered despite a decrease of 3 % between 2016 and the investigation period. The production capacity increased by 34 % between 2014 and the investigation period. Production capacity increased by 50 % between 2014 and 2016 and then declined by 9 % between 2016 and the investigation period. Capacity utilisation declined from 75 % in 2014 to 72 % during the investigation period, with a decrease from 75 % to 66 % between 2014 and 2016 and an increase from 66 % to 72 % between 2016 and the investigation period. The trends described in the provisional Regulation remained therefore the same for production, production capacity and capacity utilisation after the revision of the companies which constituted the Union Industry.
- (108) The CCCME and four exporting producers claimed that the growth in production did not indicate injury. They further submitted that Union producers had increased their capacity from 2014 and 2016. These interested parties claimed that it was only possible because the Union industry did not face competition until 2016 as would have been acknowledged in their complaint. They submit that between 2014 and 2016, the Union industry built a large excess capacity until they realised that this surplus capacity was affecting their profitability and cut back on capacity to improve profitability when sales remained strong. They noted however that capacity utilisation remained strong and that the decline observed in 2015-16 corresponded to a significant increase in capacity.
- (109) The Commission noted that the complaint never stated that the Union Industry did not face competition between 2014 and 2016. As stated in recital (169) of the provisional Regulation, the increase in production was driven by the increase in consumption. However, after 2015, production and consumption diverged markedly and increasingly, translating the pressure on sales and a continued loss of market share. Likewise, capacity increased at the same pace as consumption until 2016 and the deterioration of the capacity utilisation was therefore linked to the same pattern. In addition, as explained in recital (172) of the provisional Regulation, the indicators for capacity and capacity utilisation are of limited relevance with regards profitability.
- (110) Following disclosure, the CEIEB claimed that there was no link between the deterioration of the capacity and capacity utilisation and dumped imports from the PRC since it was difficult to determine which part of the capacity was used for conventional, which part for electric bikes, and since the production of conventional bicycles decreased by 3.7 % in 2016 according to figures published by CONEBI.
- (111) The Commission recalled that the capacity and capacity utilisation were verified in relation with the product under investigation and excluded conventional bicycles. The claim was therefore rejected.
- (112) In the absence of any other comments with respect to production, production capacity and capacity utilisation and taking into account the correction made in recital (106), the Commission confirmed the conclusions set out in recitals (167) to (172) of the provisional Regulation.

4.4.2.2. Sales volume and market share

- (113) Following the exclusion of certain companies from the definition of the Union industry as outlined in recitals (80) to (83), the figures for sales volume and market share of the Union industry were revised.

Table 4

Sales volume and market share

| | 2014 | 2015 | 2016 | IP |
|---|---------|---------|-----------|-----------|
| Total Sales volume on the Union market (pieces) | 850 971 | 932 846 | 1 061 975 | 1 019 001 |
| <i>Index</i> | 100 | 110 | 125 | 120 |
| Market share | 75 % | 68 % | 64 % | 51 % |
| <i>Index</i> | 100 | 92 | 85 | 69 |

Source: CONEBI, sampled Union producers, interested parties' submissions

- (114) The Union industry's sales volume thus increased by 20 % during the period considered. The Union industry's sales volume increased by 25 % between 2014 and 2016 and then declined by 4 % between 2016 and the investigation period. The market share of the Union industry decreased significantly, going from 75 % in 2014 to 51 % during the investigation period. The trends described in the provisional Regulation remained the same for sales volume and market share after the revision of the companies which constituted the Union Industry.
- (115) Following final disclosure, the CCCME claimed that the overall increase in sales of 20 % of the period considered must be deemed a strong performance and cannot be indicative of material injury.
- (116) However, the 20 % increase in sales of the Union industry has to be seen in the light of a 74 % increase in Union consumption during the same period, as stated in Table 2 of the provisional Regulation. The Commission found no indication that an increase in sales which was that much lower than the increase in consumption could be considered a strong performance, and indeed not be indicative of material injury.
- (117) The CCCME also claimed that, according to information in the complaint, the Union producers supporting the complaint only suffered a minor decrease in market share of 2 percentage points during the period considered. That small decrease would allegedly confirm that the complainants have not suffered material injury from imports of the product concerned.
- (118) Pursuant to Article 3(1) of the basic Regulation the term injury is defined as 'material injury to the Union industry'. Thus, the Commission is required to assess injury to the Union industry as a whole, not only to the complainants. The Commission found that the Union industry suffered a significant loss of market share of 24 percentage points. The fact that some Union producers lost less (or more) market share than others does not question that finding.
- (119) In the absence of any other comments with respect to sales volume and market share and further to the correction made in recital (113), the Commission confirms all other conclusions set out in recitals (173) to (176) of the provisional Regulation.

4.4.2.3. Growth

- (120) In the absence of comments, the Commission confirmed its conclusions set out in recital (177) of the provisional Regulation.

4.4.2.4. Employment and productivity

- (121) Following the exclusion of certain companies from the definition of the Union industry as outlined in recitals (80) to (83), the figures for employment and productivity of the Union industry were revised.

Table 5

Employment and productivity

| | 2014 | 2015 | 2016 | IP |
|--------------------------------|-------|-------|-------|-------|
| Number of employees | 2 488 | 2 958 | 3 458 | 3 493 |
| <i>Index</i> | 100 | 119 | 139 | 140 |
| Productivity (pieces/employee) | 334 | 330 | 317 | 305 |
| <i>Index</i> | 100 | 99 | 95 | 91 |

Source: CONEBI, sampled Union producers, interested parties' submissions

- (122) The Union industry thus increased the level of employment by 40 % over the period considered. Most of this increase occurred between 2014 and 2016. Employment increased by 1 percentage point between 2016 and the investigation period. Productivity declined by 9 % as a result of employment increasing at a higher pace than production. The trends described in the provisional Regulation remain the same for employment and productivity after the revision.
- (123) In the absence of any other comments with respect to employment and productivity and further to the correction made in recital (121), the Commission confirmed all other conclusions set out in recitals (178) to (180) of the provisional Regulation.

4.4.2.5. Magnitude of the dumping margin and recovery from past dumping

- (124) In the absence of any other comments with respect to the magnitude of the dumping and the recovery from past dumping, the Commission confirmed its conclusions set out in recital (181) and (182) of the provisional Regulation.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

- (125) Following the imposition of provisional measures, the CEIEB, the CCCME and four other exporting producers submitted that the increase of 15 % in the average prices of the Union industry contradicted the Commission's findings that Chinese imports caused price suppression or depression to the Union industry's ability to increase its prices.
- (126) First, the Commission observes that the reference year to measure this increase was 2014, when the Union industry recorded a very low level of profitability and its lowest profit margin over the period considered. Second, in this context, the increase in the average prices reflected the evolution of the average costs of production and did not go beyond it. Third, as stated in recital (185) of the provisional Regulation, such evolution does not necessarily mean that the cost and price of a comparable product increased in the same way as the average cost and price since the product range changes every season. Considering these elements and the findings concerning undercutting, the Commission therefore disagrees with the claim that the increase in the average price of the products sold by the Union industry invalidates the existence of price suppression or depression.

4.4.3.2. Labour costs

- (127) Following the imposition of provisional measures, no comments with respect to labour costs of the sampled Union producers were submitted. Therefore, the Commission confirmed its conclusions set out in recital (186) and (187) of the provisional Regulation.

4.4.3.3. Inventories

- (128) Following the imposition of provisional measures, the CEIEB claimed that the Commission could not, at the same time, define the end of the selling season in mid-July when assessing the conditions for registration and at the end of September when assessing the significance of inventories in its injury analysis. It further submitted that the increase in inventory between 2016 and the investigation period was insignificant.
- (129) The Commission considered that the selling season lasted from March to September. In the registration Regulation, the Commission considered that it was reasonable to assume that a further substantial rise in imports was likely to undermine the remedial effect of the duty given that the deadline for imposing provisional measures was 20 July. Indeed, in this context, it meant that an increase in stocks levels would allow importers to supply the product concerned until the end of the selling season. In the provisional Regulation, based on the same seasonal patterns, the Commission observed that the fact that stocks stood in September of the investigation period at a higher level than in December a year before reflected a continued and significant increase in stocks since stocks levels should normally be low at the end of the selling season. The Commission assessed that there was no contradiction between those two analyses and confirmed the findings outlined in recitals (188) to (191) of the provisional Regulation.

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

- (130) Following the imposition of provisional measures, the CEIEB submitted that the profit margin of the Union industry declined by only 0,4 % between 2016 and the IP when the pace of growth of Chinese imports accelerated which would show that there was no injury. In the same vein, the CCCME and four exporting producers claimed that the level of the profit margin of the Union industry during the IP and its evolution over the period considered did not characterize a situation of material injury.
- (131) Whilst the investigation established the existence of a significant volume of imports at dumped and undercutting prices, it also established the strength in demand in the electric bicycle market which somewhat limited the negative effects on the profit margin of the Union Industry. This observation includes the period between 2016 and the IP, pointed out by the CEIEB, where the sharp increase in imports from the PRC coincided with a relatively small decline in sales of the Union industry due to the continued strength in consumption. Nevertheless, the Commission observed that the profit margin of the Union industry declined in all years but one and was overall at depressed levels. Furthermore, the conclusion of material injury is not based on a single indicator. Other indicators, of which some of financial nature such as cash flow, were analysed together with the evolution of the profit margin to conclude to a situation of material injury. The claim had therefore to be rejected.
- (132) The CCCME further submitted that that the most likely explanation of the decline in profit margin between 2015 and the investigation period was not due to the pressure from Chinese imports but the Union industry's investments to increase its production capacity. The CCCME claimed that that argument had not been considered by the Commission.
- (133) That comment was analysed in section 5.2.3 of the provisional Regulation, notably under recital (221) where the Commission explained that capital expenditure did not have a material impact on the profitability of the Union Industry. In the absence of additional information, the claim was therefore rejected.
- (134) Following final disclosure, the CEIEB assessed that the target profit margin of 4,3 % was not significantly higher than the profit margin during the investigation period of 3,4 % and submitted that the level of profitability of the Union's industry during the investigation period was not evidence of injury.
- (135) As stated in recital (198) of the provisional Regulation, the electric bicycle industry is a structurally cash-intensive business. It is therefore important to see whether the profitability achieved can generate a sufficient cash-flow to sustain the operations of the Union industry. As demonstrated in Table 11 of the provisional Regulation, the cash flow of the Union industry was weak during the investigation period, accounting for a mere 0,6 % of sales turnover. Therefore, when assessing the financial performance of the Union industry as a whole, and not looking at the profitability in isolation, the finding concerning the poor financial performance of the Union industry is maintained.

- (136) Following final disclosure, the CCCME noted that large investments and employment could entail substantially increased fixed costs for the Union producers and have a significant impact on profitability, especially if capacity utilisation was low.
- (137) As regards investments, as shown in recital (197) of the provisional Regulation, during the period considered investments represented no more than 2 % of sales. The Commission considered therefore that the Union industry made no 'large investments' which could have had a significant impact on profitability during the period considered.
- (138) As regards employment, the CCCME argued that the huge capacity increase was closely reflected in a substantial employee growth. It is, however, also clear that the increase in employment was also driven by a significant increase in production.
- (139) The Commission found that, in particular between 2014 and 2016, the employment mirrored the production much more closely than the production capacity. During the investigation period, where the Union sales and production developed negatively despite a growing Union consumption, the Union industry was not able to decrease employment, leading to a decreasing productivity per employee. Such a decreasing productivity and the consequent negative impact on the profitability of the Union industry is however directly linked to the increasing quantities of dumped imports of Chinese electric bicycles during the period considered.
- (140) In the absence of any other comments on profitability, cash flow, investment, return on investments and ability to raise capital, the conclusion set out in recitals (192) to (199) of the provisional Regulation were confirmed.

4.4.4. *Conclusion on injury*

- (141) Following the imposition of provisional measures, the CCCME and four Chinese exporting producers submitted that competition factors had not been addressed in the injury analysis. They claimed that the complaint admitted that imports from the PRC had not been a market issue until 2016, as long as they focused on the low and mid-level segments of the Union market and that the injury analysis should have focused on these specific segments. One importer further claimed that injury, if proven, would essentially affect or focus on the low-end segment of electric bicycles and, based on its own experience, did not exist in the high-end segments of the market.
- (142) Notwithstanding the fact that the CCCME's claims were made on an inaccurate reading of the complaint, the Commission recalls that its conclusions were not based on the complaint but on its own investigation and findings concerning dumping, injury and causality. As established in recital (249) of the provisional Regulation, the investigation has shown that the Union industry is active in all market segments. Such differentiation of the product concerned was therefore not warranted and the claim had to be rejected.
- (143) Following final disclosure, the CCCME argued that the Commission had not described in the provisional Regulation how it characterised the 'entry-level products' mentioned in recital (249) of the provisional Regulation. It also claimed that the impact of any growth in imports from the PRC (also from third countries) in recent years must be assessed having regard to the specific market segments in which those imported electric bicycles were sold.
- (144) In that respect, 'entry-level products' are those electric bicycles which have the basic characteristics in the PCN structure. The definition of 'entry-level products' is different from the alleged differentiation of the market in segments. As stated in recital (42), although several interested parties put forward similar claims concerning segmentation, no one provided evidence that would have justified or allowed for a possible segmentation of the market. In particular, no physical or other objective criteria were provided by any interested party, which would support an analysis based on a segmentation of the market, as described in recitals (45) and (46).
- (145) The CCCME also argued that since the loss of market share of the Union industry mostly affected Union producers other than the complainants, as explained in recital (117), the imports from the PRC and the production of the complainants has allegedly been in largely distinct market segments. However, as already mentioned in recital (118), the injury analysis covers the Union industry as a whole, not only the complainants. It is undisputed that the Union industry suffered a significant loss of market share of 24 percentage points, mainly to Chinese imports, which gained 17 percentage points of market share during the period considered.

- (146) The CEIEB disagreed with the Commission's conclusion on injury. It claimed that the Union industry had performed extremely well with the exception of retention of market share. The CEIEB further argued that indicators of capacity, utilisation, sales volumes and employment had developed positively throughout the period considered and that the Commission's negative findings were based on inconsistent and shorter periods of analysis. In particular, the CEIEB claimed that for sales the period analysed was 2016-IP, while for capacity utilisation the period was 2014-2016.
- (147) The CCCME and four exporting producers submitted that the statement made in recital (205) of the provisional Regulation that all of the indicators cited there 'developed negatively' was false and misleading. Those interested parties claimed that the indicator of 'growth' in terms of both production and sales, and the sales in terms of both value and volume, was substantially positive over the period considered. Further, it was claimed that the Union industry 'capacity' increased substantially and that both profitability and prices had also increased during the period considered. The CCCME added that contrary to had been stated in recitals (204) and (205) of the provisional Regulation, performance indicators and notably profitability were not depressed during the period considered. Finally, the CCCME claimed that since the complainant itself had admitted that the imports from the PRC did not start to grow and become competitive until 2016, a low profit margin in 2014 could only have been the commercial fault of the Union producers themselves.
- (148) The Commission recalls that the purpose of its injury analysis is to assess the level of injury suffered by the Union industry. It involves an assessment of the relevance of each performance indicator, their relationships and evolution in and within the period considered. A mere comparison of the end points of each indicator taken separately cannot reflect the economic trends at work in the Union industry. In that regard, the finding concerning the indicator of growth was explained in recitals (177) and (200) of the provisional Regulation and relied on the substantial and growing divergence between the evolution of consumption and the evolution of the sales of the Union industry which translated into a very significant loss of market share. As explained in recitals (201) to (203), the impact of this divergence spread over time on production, stocks, capacity, capacity utilisation, and employment level. In addition, as explained in recital (204), the profit margin remained at an admittedly low level and on a declining trend in all years but one. Furthermore, considering that the electric bicycles business is cash intensive and relies on bank financing, the analysis of the financial position must take into account the translation of profits into operating cash flows which was insufficient and well below profit margins. Overall, the Commission therefore confirmed that the trends referred to earlier in this recital characterised a depressed and negative situation and confirmed its conclusion that the Union industry suffered material injury.
- (149) Finally, the Commission disagreed with the CCCME's claim that the low profit margin of the Union Industry in 2014 could only be its commercial fault since the complainant had admitted that imports from the PRC did not start to grow and become competitive until 2016. The Commission assessed that that claim was based on an inaccurate reading of the complaint and, in any case, that it was contradicted by the investigation's findings which showed that imports from the PRC had a significant market share of 18 % in 2014 and had already doubled in volume by 2016. The claims of the CCCME had therefore to be rejected.
- (150) The CEIEB as well as two importers claimed that the findings of material injury centrally relied on the Commission's assessment that the Union industry had lost market share to imports without considering that such loss was attributable to structural flaws such as the failure to recognise potential opportunities at the right time, make earlier investments in production capacity, unappealing products and inadequate sales channels.
- (151) First the Commission observed that those statements seemed to contradict the claims of the CCCME and Chinese exporting producers who stated that the market of electric bicycles in the Union was dominated by the Union industry, that imports of Chinese electric bicycles had just gradually caught up in quality and competitiveness and eventually that the most likely cause of injury was an excessive investment in production capacity of the Union's industry.
- (152) The Commission's further noted that the CEIEB claimed both that the Union industry did extremely well during the period considered (as stated in recital (146)) and that its business model and management was affected by structural flaws and other shortcomings stated in recital (151) of such a scale that it would explain why the sales of the Union industry grew by only 20 % over the period considered when imports from the PRC increased by 250 %.

- (153) In that context, the Commission assessed that in order to be considered, such claim should have been precisely specified and quantified. In any event, the Commission recalled that whilst the loss of market share was an important element of its injury analysis, the latter was not limited to it. In this regard, the Commission refers to the analysis of other injury indicators and its finding of undercutting, all of which play into its assessment of the overall injury analysis. The Commission therefore rejected that claim.
- (154) Following final disclosure, the CEIEB submitted that the Commission had stated in recital (115) of the General Final Disclosure Document that the mere existence of undercutting was enough to satisfy the condition of materiality and expressed its disagreement. The Commission nevertheless fails to see such statement under recital (115), which refers to 'the analysis of other injury indicators and its finding of undercutting, all of which play into its assessment of the overall injury analysis'. The argument was therefore dismissed.
- (155) Further to the imposition of provisional measures, the CCCME and four exporting producers claimed that the evolution of the non-confidential indexed indicators of the sampled Union's producers substantially undermined the Commission's conclusion that the Union industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.
- (156) As is the standard practice of the Commission and was set out in recital (166) of the provisional Regulation, the Commission considered the microeconomic injury indicators using the verified data of the sampled Union producers. Those indicators contributed to the finding of material injury but cannot be read as, in themselves, making up a complete material injury finding (or, for that matter, replace the overall injury determination carried out by the Commission). As for macroeconomic injury indicators, they were established for the whole Union industry. The argument was therefore rejected.
- (157) In the absence of any further comments, the Commission confirmed its conclusions on injury set out in recitals (200) to (206) of the provisional Regulation.

5. CAUSATION

5.1. Effects of the dumped imports

- (158) In the absence of comments and taking into account the revision of the market share of the Union industry under recitals (113) to (114) and of the undercutting margins under recitals (99), the Commission confirmed its conclusions set out in recitals (209) of the provisional Regulation.

5.2. Effects of other factors

5.2.1. Imports from third countries

- (159) One unrelated importer claimed that while the absolute level of imports from the PRC during the period considered was well above the volume of imports from other countries, the relative increase of imports from each country should also be considered. In particular, that interested party pointed out that imports from Switzerland had increased by 3 000 % during the period considered. The importer claimed that imports from countries other than the PRC had an impact in the market that cannot be merely considered as marginal as stated in recital (215) of the provisional Regulation.
- (160) The Commission observed that imports from Switzerland had a market share of 1 % during the investigation period. In addition, the importer did not explain how its observations could invalidate the Commission's finding that imports from all countries other than the PRC did not attenuate the causal link between the dumped imports from the PRC and the injury suffered by the Union industry as reasoned in recitals (210) to (214) of the provisional Regulation. The claim was therefore rejected.

5.2.2. Performance by the Union industry

- (161) Following the imposition of provisional measures, the CCCME and four exporting producers submitted that many Union producers in Central Europe imported parts from the PRC, assembled and sold electric bicycles in the Union. It added that the price of electric bicycles produced by those companies appear to be relatively low, which might be another cause of the injury suffered by the Union producers who produce high-end electric bicycles.

- (162) The Commission recalls that the geographic scope of its investigation is the Union's market, not parts thereof. The investigation showed that Union producers of electric bicycles were active in all segments and that some sampled producers had production units located in Member States situated in Central European countries. In any event, the claim was not substantiated and was rejected.
- (163) Furthermore, the CCCME and four exporting producers submitted that the poor performance of the Union industry might have been caused by the management mistakes by the Union producers.
- (164) The Commission refers to its reply under recital (151). That claim did not provide any new element or was further substantiated and was therefore rejected.

5.2.3. *Incentives for sales of electrical bicycles on the Union market*

- (165) The CCCME and four exporting producers claimed that subsidies on the Union market might have favoured the sales of cheaper Chinese electric bicycles and called on the Commission to further investigate the impact of subsidies on the purchase patterns of electric bicycles on the Union market.
- (166) The impact of subsidies to promote the use of electric bicycles is a distinct matter from the finding of undercutting and injury from Chinese imports. Again, the investigation has shown that the Union industry is active in all market segments. Therefore, even if the alleged subsidies were relevant to this assessment, they would not explain the increase of Chinese bicycles to the detriment of the cheaper bicycles produced in the Union but for the fact the Chinese bicycles are dumped. That claim was therefore rejected.
- (167) In the absence of any further comments, the Commission confirmed its conclusions set out in recitals (210) to (222) of the provisional Regulation.

5.3. **Conclusion on causation**

- (168) The Commission confirmed its conclusions on causation set out in recitals (223) to (226) of the provisional Regulation.

6. UNION INTEREST

6.1. **Interest of Suppliers**

- (169) In recital (228) of the provisional Regulation, the Commission mistakenly indicated that it had received a letter of support from CONEBI in favour of the measures, when the submission was made on behalf of the Association of the European Two-Wheeler Parts' and Accessories' Industry ('COLIPED') which brings together national associations of parts suppliers.
- (170) In the absence of any other comment, the Commission confirmed its conclusions set out in recitals (228) to (230) of the provisional Regulation.

6.2. **Interest of the Union industry**

- (171) In the absence of comments, the Commission confirmed its conclusions set out in recitals (231) to (234) of the provisional Regulation.

6.3. **Interest of unrelated importers**

- (172) Throughout the investigation, 31 importers, of which 19 belonged to the CEIEB, expressed their opposition to the imposition of measures. 13 of these companies (for which the volume of imports was known) represented altogether 10 % of the total imports from the PRC in the investigation period.
- (173) As explained in recital (81), six companies manufacturing the like product were excluded from the definition of the Union industry and reclassified as unrelated importers. Those companies expressed their support for the measures. Their imports represented close to 12 % of the total imports from the PRC during the investigation period.

- (174) After the imposition of provisional measures, the CEIEB submitted that the opening of the investigation had caused extensive and diverse injury to a large number of importers.
- (175) Upon the publication of the registration Regulation, the CEIEB conducted a declarative survey with sixty-five importers. The survey found that 21 % would not continue operations if definitive duties were imposed, 33 % had already stopped imports of electric bikes from the PRC but had still not found an alternative solution, 39 % had to increase the price of their products as a result of the investigation and 37,5 % had been affected financially by the initiation of the dumping investigation.
- (176) The Commission observed that this survey took place in May 2018. At the time, the information available in the complaint and in the registration Regulation indicated a potential duty of 189 %.
- (177) Yet, the Commission noted that a majority of the importers surveyed indicated that they would continue their activity in case definitive duties were imposed. Likewise, a majority had found an alternative source of supply or continued to import from the PRC.
- (178) In recital (238) of the provisional Regulation, the Commission had indicated that the largest importers had been able to source suitable electric bicycles and/or had potential alternative sources of supply outside the PRC, including the Union industry. That finding was corroborated by the survey of the CEIEB and further confirmed by subsequent hearings with the CEIEB and other importers.
- (179) Furthermore, the Commission observed that six importers representing a large volume of imports supported the imposition of measures, which confirmed the capacity of importers to adapt their activity to the imposition of measures.
- (180) On balance, the Commission therefore concluded that the imposition of measures could have an adverse effect on small importers, but that the negative impact of the imposition of duties would be mitigated by the availability to source suitable bicycles in the Union industry, in other third countries and in the PRC at fair prices.
- (181) Following the final disclosure, the CEIEB made a correction to its initial submission and indicated that its survey was not conducted upon publication of the registration Regulation but was made available online as of 22 June 2018 and had remained accessible online since that date.
- (182) The CEIEB further claimed that its survey did not confirm that the majority of importers would continue its business despite the imposition of duties and referred to the information submitted during the hearing held on 5 October 2018. The CEIEB also submitted that it never provided any evidence that the majority of them had successfully found alternative supply chains without any negative impact on their businesses.
- (183) On the basis of the survey presented by CEIEB, the Commission observed that 21 % of respondents indicated that they would stop their activity if duties were imposed. This means that the majority of respondents believed, at the time, that it was not a likely outcome. Furthermore, during the hearing of 5 October 2018, the CEIEB submitted information on behalf of 15 importers, of which 4 declared that they would not continue their activity if definitive measures were imposed. Those 4 importers represented 8 % of the total turnover of the 15 importers presented. The Commission recalls that it sampled 5 unrelated importers on the basis of the largest volume of imports into the Union. On the basis of that representative sample, the Commission drew its conclusions in relation to the impact of measures on importers. In this particular regard, none of the sampled importers indicated that it would be forced to cease its activities in the event of the imposition of definitive measures.
- (184) In the same logic, the Commission concluded that if 33 % of respondents to the CEIEB survey declared that they had stopped imports of electric bikes from the PRC but had still not found an alternative solution, the majority continued importing from the PRC or had found an alternative source of supply. In addition, during the hearing with the CEIEB on 5 October 2018, 12 importers (representing 96 % of the turnover of the 15 importers presented) had already adapted their supply chain or were in the process of doing so. The same observation applies to the sampled importers verified by the Commission and presumably to the importers who brought their support in favour of the imposition of measures.
- (185) The Commission therefore confirmed its findings in recitals (177) to (179).
- (186) The CEIEB further submitted that the Commission did not assess adequately the difficulty and cost involved in the adaptation of the supply chain of importers caused by the imposition of measures and disregarded the situation of small importers.

- (187) The Commission disagrees with that claim and makes reference to recital (180) of this Regulation and recital (242) of the provisional Regulation where the adverse effect of the imposition of measures on small importers was clearly stated. In addition, in recital (243) of the provisional Regulation, the Commission concluded that the imposition of measures was not in the interest of importers. The Commission maintains, however, the finding that this negative impact is mitigated by the possibility to source suitable electric bicycles from the Union industry, from other third countries and from the PRC at fair, non-injurious prices, and that it does not outweigh the positive effect of measures on the Union Industry.
- (188) In the absence of any further comments, the Commission confirmed its conclusions set out in recital (243) of the provisional Regulation.

6.4. Interest of users

- (189) The CCCME, four Chinese exporting producers and two importers claimed the imposition of measures would reduce consumer choice, increase prices and play against environmental policies designed to encourage the use of electric bicycles.
- (190) The CCCME questioned the Commission's provisional conclusion that the Union industry is active in all segments of the market and claimed it was not supported by any evidence from the Commission.
- (191) Two importers claimed that the Union industry did not have the production capacity to fill the demand and that it was unsure whether alternative sources of supply could fill the gap.
- (192) The Commission recalled that the verification of sampled producers confirmed that the Union industry was active in all segments of the market, including entry-level products.
- (193) In addition, as stated in recital (249) of the provisional Regulation, it is expected that the measures will amplify and diversify the supply of electric bicycles from the Union Industry and alternative sources of supply by restoring competition on a level playing field while preserving the supply of imports from the PRC at fair prices.
- (194) Furthermore, the level of capacity utilisation of the Union industry, the possibility to easily convert existing production lines for traditional bicycles to electric bicycles, and the speed at which the Union industry was able to expand its production capacity between 2014 and 2016 in an adverse context show that it has the potential, resources and skills to adjust to potential gaps in supply.
- (195) The Commission reiterates that the imposition of measures on conventional bicycles did not reduce consumer choice, but increased the diversity of suppliers and of their countries of origins. The same market development is expected in the case of electric bicycles.
- (196) With regards to the impact of the measures on prices, the Commission refers to recitals (250) and (251) of the provisional Regulation and in particular that the interest of the consumer could not be reduced to the price impact of bringing imports from the PRC to non-injurious levels.
- (197) The claims had therefore to be rejected.
- (198) In the absence of any further comments, the Commission confirmed its conclusions set out in recitals (244) to (252) of the provisional Regulation.

6.5. Other interests

- (199) In the absence of any further comments, the Commission confirmed its conclusions set out in recital (253) of the provisional Regulation.

6.6. Conclusion on Union interest

- (200) In summary, none of the arguments put forward by interested parties demonstrate that there are compelling reasons against the imposition of measures on imports of the product concerned.

- (201) Any negative effects on the unrelated importers cannot be considered disproportionate and are mitigated by the availability of alternative sources of supply, whether from third countries or from the Union industry. The positive effects of the anti-dumping measures on the Union market, in particular on the Union industry, outweigh the potential negative effect on the other interest groups.
- (202) In the absence of any further comments, the Commission confirms its conclusions set out in recitals (254) to (255) of the provisional Regulation.

7. DEFINITIVE ANTI-DUMPING MEASURES

- (203) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned.

7.1. Injury elimination level

- (204) For the purpose of determining the level of these measures, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Union producers, without exceeding the dumping margins found.
- (205) Following the imposition of provisional measures, an exporting producer submitted that the Commission's methodology to calculate the non-injurious price of the Union producers was flawed. It claimed that by deducting the average profit during the investigation period and adding the target profit, the Commission disregarded the different profit levels achieved by the Union producers for different models. This interested party claimed that the non-injurious price should be calculated by deducting from the actual prices the average profit per PCN before adding the target profit.
- (206) The Commission recalls that the basic Regulation does not provide any specific methodology to calculate the injury elimination level. Furthermore, the Commission's determination concerns the like product sold by the Union industry. In this respect, it is perfectly acceptable to remove the average profit of the Union industry from its average sales prices to determine the average cost of production of the like product and then add the target profit to calculate the injury elimination level. The Commission has consistently used this methodology in the past and holds significant discretion when carrying out this assessment.
- (207) In this investigation, the injury is assessed for all product types as a whole. Indeed, all injury indicators including the profitability and the target profit are expressed as an average for all product types of the product concerned. When establishing the non-injurious price, this is done with a view to remove the injury from the Union industry caused by the dumped imports as a whole. In order to remove that injury, it is sufficient if the non-injurious price is established by uniformly increasing the sales price of all product types by the difference between the actual profit during the investigation period and the target profit, thereby allowing the Union industry to achieve the target profit. It is not necessary to individually assess the profitability situation for each individual product type.
- (208) The argument was therefore rejected.
- (209) The complainant disagreed with the target profit used by the Commission for calculating the non-injurious price. It submitted that the target profit should not be the average profit from the Union industry but the average profit from the companies not injured by Chinese imports in 2015. The complainant argued since the target profit is the reasonable profit that the Union producers could achieve in the absence of injury caused by dumped/subsidised imports, the Commission could not by definition take as reference point the profitability of Union producers already materially injured by dumped/subsidised imports. As an alternative, the complainant submitted that the target profit could be determined by reference with the target profit of traditional bicycles (8 %) adjusted upwards by 1,5 % to reflect additional technology, higher added value and additional investment requirements.
- (210) The Commission recalls that the target profit is the profit that the Union industry as a whole can achieve in the absence of injurious dumping. As a consequence, it cannot be established on the basis of the profit achieved by a selected number of Union producers. The argument had therefore to be rejected. As far as the alternative

claim (target profit used in the investigation concerning traditional bicycles adjusted upwards), the Commission recalls that each investigation is carried out on the basis of the specific facts of the case concerning the product concerned and not on facts established in investigations concerning other products. In this particular case, the Commission confirmed that the target profit used was appropriate and that there was no reason for it to resort to a target profit of another product. Thus, the claim had to be rejected.

- (211) After final disclosure, the complainant reiterated its claims and submitted that in other cases the Commission had deviated from its standard methodology to establish the target profit by reference to relevant circumstances. As already outlined in recital (210), the Commission recalls that each case is assessed on the basis of its specific facts. In this particular case, the Commission concluded that there was no particular circumstance which would justify the use of the profit achieved by certain producers only, as requested by the complainant. That claim was therefore rejected.
- (212) Finally, the Commission notes that, as outlined in recitals (59) to (63), it took into account certain costs incurred by the sampled Union producers to adjust the non-injurious price of the Union industry. The injury elimination level was adjusted accordingly, leading to a reduction of 3 % - 5 % to the injury margin. As described in recital (72), said adjustment was subject to a claim from Giant following the final disclosure. That claim was accepted and the resulting decrease of the underselling margin was disclosed without any further comment.
- (213) Taking into account the adjustment made under recital (212) and in the absence of other comments concerning the injury elimination level, the methodology described in recitals (257) to (262) to the provisional Regulation was confirmed.

7.2. Price undertaking offer

- (214) Following the disclosure one Chinese exporting producer, Wetsen Corporation, submitted a price undertaking offer.
- (215) Wetsen Corporation was not sampled, and although it had requested individual examination, that request along with all other requests for individual examination was rejected.
- (216) The price undertaking offer was rejected for a number of reasons, which was communicated to Wetsen Corporation in a separate letter. The reasons were as follows:
- first, Wetsen Corporation has a related party outside the PRC who also manufactures electric bicycles;
 - second, the price undertaking offer fixed the Minimum Import Price ('MIP') only for three major types of electric bicycles which did not cover all the types exported to the Union during the investigation period; and,
 - third, as the proposed MIP per type was an average of sales prices within that type, it would have allowed sales of higher priced electric bicycles at injurious prices by Wetsen Corporation while seemingly complying with the MIP.

7.3. Definitive measures for the PRC

- (217) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on the imports of the product concerned at the level of the lower of the dumping and the injury margins found, in accordance with the lesser duty rule. In this case, except for one Chinese exporting producer, the definitive anti-dumping duty rate should accordingly be set at the level of the injury margins found.
- (218) It is noted that an anti-subsidy investigation was carried out in parallel with the anti-dumping investigation. Pursuant to Article 24(1) of Regulation (EU) 2016/1037 of the European Parliament and of the Council on protection against subsidised imports from countries not members of the European Union ⁽¹²⁾, in view of the use of the lesser duty rule and the fact that the definitive subsidy rates are lower than the injury elimination level, it is appropriate to impose a definitive countervailing duty at the level of the established definitive subsidy rates and then impose a definitive anti-dumping duty up to the relevant injury elimination level.

⁽¹²⁾ OJ L 176, 30.6.2016, p. 55.

- (219) In case of Yadea Technology Group Co., Ltd ('Yadea'), a company-specific injury margin ⁽¹³⁾ was established in the parallel anti-subsidy investigation on the basis of the information provided by Yadea. The Commission therefore considered it appropriate to use Yadea's company-specific injury margin as opposed to the injury margin for cooperating companies in the anti-dumping investigation when considering the combined effect of anti-dumping and countervailing duties.
- (220) Also, in the case of Yadea, the exporting producer with a dumping margin lower than the injury elimination level, the definitive countervailing duty was established at the level of the established definitive subsidy rate and a definitive anti-dumping duty was imposed at the level of the relevant dumping margin reduced by the amount of the countervailing duty. That reduction was necessary because in a situation where the normal value is established on the basis of Article 2(7)(a) of the basic Regulation, the imposition of a cumulated duty reflecting the level of subsidisation and the full level of dumping may result in offsetting the effects of subsidisation twice ('double-counting'). In accordance with Article 18 of the basic Regulation, the non-cooperating companies in the anti-dumping investigation (although cooperating in the parallel anti-subsidy investigation), are subject to the residual dumping margin and injury margin.
- (221) Following final disclosure, the acceptance of a claim from Giant described in recitals (72) and (212) as well as a change of the countervailing duties in the parallel anti-subsidy investigation led to a change in the anti-dumping duties. That change was disclosed to interested parties and was not subject to any further comments in the framework of the anti-dumping investigation.
- (222) Therefore, the rates at which the definitive anti-dumping duty will be imposed are set as in Table 6 as follows:

Table 6

Definitive measures

| Company | Dumping margin | Subsidy rate | Injury elimination level | Counter-vailing duty | Anti-dumping duty |
|--|----------------|--------------|--------------------------|----------------------|-------------------|
| Bodo Vehicle Group Co., Ltd. | 86,3 % | 15,1 % | 73,4 % | 15,1 % | 58,3 % |
| Giant Electric Vehicle (Kunshan) Co., Ltd; | 32,8 % | 3,9 % | 24,6 % | 3,9 % | 20,7 % |
| Jinhua Vision Industry Co., Ltd and Yongkang Hulong Electric Vehicle Co., Ltd. | 39,6 % | 8,5 % | 18,8 % | 8,5 % | 10,3 % |
| Suzhou Rununion Motivity Co., Ltd. | 100,3 % | 17,2 % | 79,3 % | 17,2 % | 62,1 % |
| Yadea Technology Group Co., Ltd | 48,1 % | 10,7 % | 62,9 % | 10,7 % | 37,4 % |
| Other co-operating companies in the anti-dumping investigation (with the exception of the companies subject to the parallel countervailing duty rate for all other companies Implementing Regulation (EU) 2019/72 ⁽¹⁾) (Annex I) | 48,1 % | 9,2 % | 33,4 % | 9,2 % | 24,2 % |
| Other co-operating companies in the anti-dumping investigation, subject to the parallel countervailing duty for all other companies Implementing Regulation (EU) 2019/72 (Annex II) | 48,1 % | 17,2 % | 33,4 % | 17,2 % | 16,2 % |
| Non-cooperating companies in the anti-dumping investigation, but cooperating in the parallel anti-subsidy investigation and listed in the Annex I of Implementing Regulation (EU) 2019/72 (Annex III) | 100,3 % | 9,2 % | 79,3 % | 9,2 % | 70,1 % |
| All other companies | 100,3 % | 17,2 % | 79,3 % | 17,2 % | 62,1 % |

⁽¹⁾ OJ L 16, 18.1.2019, p. 98.

⁽¹³⁾ The company has not submitted company specific information to calculate an individual dumping margin.

- (223) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during that investigation with respect to those companies. Those duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of the product concerned originating in the PRC and produced by those companies and thus by the specific legal entities mentioned. Imported products concerned produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from those rates and shall be subject to the duty rate applicable to 'all other companies'.
- (224) Any claim requesting the application of those individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁴⁾ with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, this Regulation will accordingly be amended by updating the list of companies benefiting from individual anti-dumping duty rates.
- (225) In cases where the countervailing duty has been subtracted from the anti-dumping duty in order to avoid double-counting, the collection of the countervailing duty aims at offsetting both the effects of the countervailable subsidy and the dumping margin (up to the level of the subsidy rate). As a consequence, a refund of duty paid can only be granted if it is shown that such duty exceeds the actual subsidy rate and the corresponding dumping margin. Therefore, refund investigations under Article 21 of Regulation (EU) 2016/1037 should also consider the particular situation of the exporting producer in relation to the actual dumping margin prevailing during the refund investigation period.
- (226) Should the exports by one of the companies benefiting from lower individual anti-dumping duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13 (1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. That investigation may, *inter alia*, examine the need for the removal of individual duty rates and the consequent imposition of a countrywide duty.
- (227) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) hereof. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (228) In order to ensure a proper enforcement of the anti-dumping duty, the 'all other companies' duty rate should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the investigation period unless the latter comply with the conditions set out in Article 3.
- (229) In order to ensure equal treatment between any new exporters and the cooperating companies not included in the sample, mentioned in Annex I and Annex II to this Regulation, provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise be entitled to a review pursuant to Article 11(4) of the basic Regulation.
- (230) In view of the recent case-law of the Court of Justice ⁽¹⁵⁾, it is appropriate to provide for the rate of default interest to be paid in case of reimbursement of definitive duties, because the relevant provisions in force concerning customs duties do not provide for such an interest rate, and the application of national rules would lead to undue distortions between economic operators depending on which Member State is chosen for customs clearance.

7.4. Retroactivity

- (231) As specified in recital (5), on 3 May 2018 the Commission made imports of the product concerned originating in the PRC subject to registration on the basis of a request by the Union industry. That request has since been withdrawn and therefore the matter has not been further examined.

⁽¹⁴⁾ European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

⁽¹⁵⁾ Judgment in *Wortmann*, C-365/15, EU:C:2017:19, paragraphs 35 to 39.

7.5. Definitive collection of the provisional duties

- (232) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected.
- (233) The definitive duty rates are lower than the provisional duty rates. Thus, the amounts secured in excess of the definitive anti-dumping duty rate should be released.
- (234) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of cycles, with pedal assistance, with an auxiliary electric motor, originating in the People's Republic of China. The product concerned currently falls within CN codes 8711 60 10 and ex 8711 60 90 (TARIC code 8711 60 90 10).

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 and manufactured by the companies listed below shall be as follows:

| Country | Company | Definitive anti-dumping duty | TARIC additional code |
|----------------------------|---|------------------------------|-----------------------|
| People's Republic of China | Bodo Vehicle Group Co., Ltd. | 58,3 % | C382 |
| | Giant Electric Vehicle (Kunshan) Co., Ltd; | 20,7 % | C383 |
| | Jinhua Vision Industry Co., Ltd and Yongkang Hulong Electric Vehicle Co., Ltd | 10,3 % | C384 |
| | Suzhou Rununion Motivity Co., Ltd | 62,1 % | C385 |
| | Yadea Technology Group Co., Ltd | 37,4 % | C463 |
| | Other co-operating companies in the anti-dumping investigation (with the exception of the companies subject to the parallel countervailing duty rate for all other companies Implementing Regulation (EU) 2019/72 (Annex I) | 24,2 % | |
| | Other co-operating companies in the anti-dumping investigation, subject to the parallel countervailing duty rate for all other companies Implementing Regulation (EU) 2019/72 (Annex II) | 16,2 % | |
| | Non-cooperating companies in the anti-dumping investigation, but cooperating in the parallel anti-subsidy investigation and listed in the Annex I of Implementing Regulation (EU) 2019/72 (Annex III) | 70,1 % | |
| | All other companies | 62,1 % | C999 |

3. The application of the individual anti-dumping duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of electric bicycles sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply. The default interest to be paid in case of reimbursement that gives rise to a right to payment of default interest shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by one percentage point.

5. In cases where the countervailing duty has been subtracted from the anti-dumping duty for certain exporting producers, refund requests under Article 21 of Regulation (EU) 2016/1037 shall also trigger the assessment of the dumping margin for that exporting producer prevailing during the refund investigation period.

6. Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission, paragraph 2 may be amended by adding the new exporting producer to the appropriate annex with the cooperating companies not included in the sample and thus subject to the appropriate weighted average anti-dumping duty rate. A new exporting producer shall provide evidence that:

- it did not export to the Union the product described in paragraph 1 during the investigation period between 1 October 2016 to 30 September 2017,
- it is not related to any of the exporters or producers in the People's Republic of China which are subject to the measures imposed by this Regulation, and
- it has actually exported to the Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union.

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2018/1012 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

Registration of imports resulting from Implementing Regulation (EU) 2018/671 making imports of electric bicycles originating in the People's Republic of China subject to registration shall be discontinued. No definitive anti-dumping duty will be levied retroactively for registered imports.

Article 4

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 January 2019.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

| Company Name | Province | TARIC additional code |
|---|-----------|-----------------------|
| Acetrikes Bicycles (Taicang) Co., Ltd. | Jiangsu | C386 |
| Active Cycles Co., Ltd. | Jiangsu | C387 |
| Aigeni Technology Co., Ltd. | Jiangsu | C388 |
| Alco Electronics (Dongguan) Limited | Guangdong | C390 |
| Changzhou Airwheel Technology Co., Ltd. | Jiangsu | C392 |
| Changzhou Bisek Cycle Co., Ltd. | Jiangsu | C393 |
| Changzhou Rich Vehicle Technology Co., Ltd. | Jiangsu | C395 |
| Changzhou Sobowo Vehicle Co., Ltd. | Jiangsu | C397 |
| Changzhou Steamoon Intelligent Technology Co., Ltd. | Jiangsu | C398 |
| Cycleman E-Vehicle Co., Ltd. | Jiangsu | C400 |
| Dongguan Benling Vehicle Technology Co., Ltd. | Guangdong | C401 |
| Dongguan Honglin Industrial Co., Ltd and Melton Industrial (Dong Guan) Co., Ltd | Guangdong | C402 |
| Foshan Lano Bike Co., Ltd. | Guangdong | C405 |
| Foshan Zenith Sports Co., Ltd. | Guangdong | C406 |
| Guangzhou Symbol Bicycle Co., Ltd. | Guangdong | C410 |
| Hangzhou Fanzhou Technology Co., Ltd. | Zhejiang | C411 |
| Jiangsu Imi Electric Vehicle Technology Co., Ltd. | Jiangsu | C415 |
| Jiangsu Lvneng Electrical Bicycle Technology Co., Ltd. | Jiangsu | C416 |
| Jiangsu Stareyes Bicycle Industrial Co., Ltd. | Jiangsu | C417 |
| Jiaxing Onway Ev Tech Co., Ltd. | Zhejiang | C418 |
| Jinhua Enjoycare Motive Technology Co., Ltd. | Zhejiang | C419 |
| Jinhua Feirui Vehicle Co., Ltd. | Zhejiang | C420 |
| Jinhua Jobo Technology Co., Ltd. | Zhejiang | C421 |
| Jinhua Suntide Vehicle Co., Ltd. | Zhejiang | C422 |
| Jinhua Zodin E-Vehicle Co., Ltd. | Zhejiang | C424 |
| Kenstone Metal (Kunshan) Co., Ltd. | Jiangsu | C425 |
| Komda Industrial (Dongguan) Co., Ltd. | Guangdong | C426 |
| Kunshan Sevenone Cycle Co., Ltd. | Jiangsu | C427 |
| Nantong Tianyuan Automatic Vehicle Co., Ltd. | Jiangsu | C429 |
| Ningbo Bestar Co., Ltd. | Zhejiang | C430 |

| Company Name | Province | TARIC additional code |
|---|-----------|-----------------------|
| Ningbo Lvkang Vehicle Co., Ltd. | Zhejiang | C431 |
| Ningbo Nanyang Vehicle Co., Ltd. | Zhejiang | C432 |
| Ningbo Oner Bike Co., Ltd. | Zhejiang | C433 |
| Ningbo Roadsan New Energy Technology Co., Ltd. | Zhejiang | C435 |
| Ningbo Zixin Bicycle Industry Co., Ltd. | Zhejiang | C437 |
| Pronordic E-Bikes Limited Company | Jiangsu | C438 |
| Shenzhen Shenling Car Co., Ltd. | Guangdong | C442 |
| Sino Lithium (Suzhou) Electric Technology Co., Ltd. | Jiangsu | C443 |
| Skyland Sport Tech Co., Ltd. | Tianjin | C444 |
| Suzhou Guoxin Group Fengyuan Imp & Exp. Co., Ltd. | Jiangsu | C446 |
| Tianjin Luodeshengda Bicycle Co., Ltd. | Tianjin | C449 |
| Tianjin Upland Bicycle Co., Ltd. | Tianjin | C450 |
| Easy Electricity Technology Co., Ltd. | Tianjin | C451 |
| Ubchoice Co., Ltd. | Guangdong | C452 |
| Wettsen Corporation | Shandong | C454 |
| Wuxi Shengda Bicycle Co., Ltd. and Wuxi Shengda Vehicle Technology Co.,Ltd | Jiangsu | C458 |
| Wuxi United Mobility Technology Inc | Jiangsu | C459 |
| Xiangjin (Tianjin) Cycle Co., Ltd. | Tianjin | C462 |
| Yong Qi (China) Bicycle Industrial Corp | Jiangsu | C464 |
| Yongkang Juxiang Vehicle Co, Ltd. | Zhejiang | C466 |
| Yongkang Lohas Vehicle Co., Ltd. | Zhejiang | C467 |
| Yongkang Mars Vehicle Co., Ltd. | Zhejiang | C468 |
| Zhejiang Apollo Motorcycle Manufacturer Co., Ltd. | Zhejiang | C469 |
| Zhejiang Baoguilai Vehicle Co., Ltd. | Zhejiang | C470 |
| Zhejiang Goccia Electric Technology Co., Ltd. | Zhejiang | C472 |
| Zhejiang Jsl Vehicle Co., Ltd. | Zhejiang | C473 |
| Zhejiang Kaiyi New Material Technology Co., Ltd. | Zhejiang | C474 |
| Zhejiang Lianmei Industrial Co., Ltd. | Zhejiang | C475 |
| Zhejiang Tuer Vehicle Industry Co., Ltd. | Zhejiang | C477 |
| Zhejiang Xingyue Vehicle Co., Ltd., Zhejiang Xingyue Overfly Electric Vehicle Co., Ltd. and Zhejiang Xingyue Electric Vehicle Co., Ltd. | Zhejiang | C478 |
| Zhongxin Power (Tianjin) Bicycle Co., Ltd. | Tianjin | C480 |

ANNEX II

| Company Name | Province | TARIC additional code |
|---|-----------|-----------------------|
| Aima Technology Group Co., Ltd. | Tianjin | C389 |
| Beijing Tsinova Technology Co., Ltd. | Beijing | C391 |
| Changzhou Hj Pedal Co., Ltd. | Jiangsu | C394 |
| Changzhou Ristar Cycle Co., Ltd. | Jiangsu | C396 |
| Cutting Edge Power Vehicle Int'l TJ Co., Ltd. | Tianjin | C399 |
| Eco International Elebike Co., Ltd. | Jiangsu | C403 |
| Everest International Industries Ltd. | Jiangsu | C404 |
| Geoby Advance Technology Co., Ltd. | Jiangsu | C407 |
| Guangdong Commercial Trading Imp. & Exp. Corp., Ltd. | Guangdong | C408 |
| Guangdong Shunde Junhao Technology Development Co., Ltd. | Guangdong | C409 |
| Hangzhou Morakot E-Bike Manufacture Co., Ltd. | Zhejiang | C412 |
| Hangzhou TOP Mechanical And Electrical Technology, Co. Ltd. | Zhejiang | C413 |
| Hua Chin Bicycle & Fitness (H.Z.) Co., Ltd. | Guangdong | C414 |
| Jinhua Yifei Electric Science And Technology Co., Ltd. | Zhejiang | C423 |
| Nanjing Jincheng Machinery Co., Ltd. | Jiangsu | C428 |
| Ningbo Pugonying Vehicle Technology Co., Ltd. | Zhejiang | C434 |
| Ningbo Shenchima Vehicle Industry Co., Ltd. | Zhejiang | C436 |
| Shandong Eco Friendly Technology Co., Ltd. | Shandong | C439 |
| Shanghai Promising Int'l Trade & Logistics Co., Ltd. | Shanghai | C440 |
| Shenzhen SanDin Cycle Co., Ltd. | Guangdong | C441 |
| Suzhou Dynavolt Intelligent Vehicle Technology Co., Ltd. | Jiangsu | C445 |
| Suzhou Joydeer E-Bicycle Co., Ltd. | Jiangsu | C447 |
| Taioku Manufacturing (Jiangsu) Co., Ltd. | Jiangsu | C448 |
| Universal Cycle Corporation (Guang Zhou) | Guangdong | C453 |
| Wuxi Bashan E-Vehicle Co., Ltd. | Jiangsu | C455 |
| Wuxi Merry Ebike Co., Ltd. | Jiangsu | C456 |
| Wuxi METUO Vehicle Co., Ltd. | Jiangsu | C457 |
| Wuyi Simino Industry & Trade Co., Ltd. | Zhejiang | C460 |
| Wuyi Yuema Leisure Articles Co., Ltd. | Zhejiang | C461 |

| Company Name | Province | TARIC additional code |
|--|-----------|-----------------------|
| Yongkang Aijiu Industry & Trade Co., Ltd. | Zhejiang | C465 |
| Zhejiang Enze Vehicle Co., Ltd. | Zhejiang | C471 |
| Zhejiang Luyuan Electric Vehicle Co., Ltd. | Zhejiang | C476 |
| Zhongshan Qiangli Electronics Factory | Guangdong | C479 |

ANNEX III

| Company Name | Province | TARIC additional code |
|---|----------|-----------------------|
| Changzhou Fujiang Vehicle Co. Ltd | Jiangsu | C484 |
| Jinhua Lvbao Vehicles Co. Ltd | Zhejiang | C486 |
| Suzhou Leisger Vehicle Co. Ltd | Jiangsu | C487 |
| Zhejiang Hangpai Electric Vehicle Co. Ltd | Zhejiang | C488 |