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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2019/71

of 9 November 2018

amending Annex I to Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Annex III to Regulation (EU) No 1307/2013 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 ⁽¹⁾, and in particular Article 58(7) thereof,

Having regard to Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payment to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 ⁽²⁾, and in particular Article 7(3) thereof,

Whereas:

- (1) According to Article 11(1) and without prejudice to Article 11(3) of Regulation (EU) No 1307/2013, Member States shall reduce the amount of direct payments to be granted to a farmer for a given calendar, pursuant to Chapter 1 of Title III of that Regulation, by at least 5 % for the part of the amount exceeding EUR 150 000. In accordance with Article 7(2) of that Regulation, the estimated product of reduction shall be made available as additional support for measures under rural development.
- (2) Lithuania notified the Commission by 1 August 2018 both of its decision to reduce the amount of direct payments and the estimated product of reduction for the calendar year 2019.
- (3) It is therefore necessary to adapt Annex III to Regulation (EU) No 1307/2013 and Annex I to Regulation (EU) No 1305/2013 so that the annual net ceilings for direct payments reflect the decision taken by Lithuania. It is also necessary to adapt Annex I to Regulation (EU) No 1305/2013 so that the annual breakdown by Member State of the Union support for rural development equally reflects that decision.
- (4) Annex I to Regulation (EU) No 1305/2013 and Annex III to Regulation (EU) No 1307/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) No 1305/2013 is amended in accordance with Annex I to this Regulation.

⁽¹⁾ OJ L 347, 20.12.2013, p. 487.⁽²⁾ OJ L 347, 20.12.2013, p. 608.

Article 2

Annex III to Regulation (EU) No 1307/2013 is amended in accordance with Annex II to this Regulation.

Article 3

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 9 November 2018.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX I

Annex I to Regulation (EU) No 1305/2013 is amended as follows:

(1) the entry for Lithuania is replaced by the following:

Lithuania	230 392 975	230 412 316	230 431 887	230 451 686	230 472 391	247 213 599	264 151 386	1 663 526 240'
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(2) the entry for the Total EU-28 is replaced by the following:

Total EU-28	5 264 723 001	18 149 536 729	18 649 599 495	14 337 026 697	14 346 899 509	14 656 460 137	14 675 251 797	100 079 497 365'
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(3) the entry for the Total is replaced by the following:

Total	5 298 853 700	18 183 668 706	18 683 732 774	14 371 161 305	14 381 035 473	14 690 597 483	14 709 390 553	100 318 439 994'
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ANNEX II

In Annex III to Regulation (EU) No 1307/2013, the entry for Lithuania is replaced by the following:

Lithuania	417,9	442,5	467,1	475,3	483,3	517,0'
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COMMISSION IMPLEMENTING REGULATION (EU) 2019/72**of 17 January 2019****imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 21 December 2017, the European Commission ('the Commission') initiated an anti-subsidy investigation with regard to imports into the Union of electric bicycles originating in the People's Republic of China ('the PRC', 'China' or 'the country concerned'). The initiation was based on Article 10 of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ('the basic Regulation'). It published a Notice of initiation in the *Official Journal of the European Union* ('Notice of initiation') ⁽²⁾.
- (2) The Commission initiated the investigation following a complaint lodged on 8 November 2017 by the European Bicycle Manufacturers Association ('EBMA' or 'the complainant') on behalf of Union producers representing more than 25 % of the total Union production of electric bicycles. The complaint contained evidence of subsidisation and of a resulting injury that was sufficient to justify the initiation of the investigation.
- (3) Prior to the initiation of the anti-subsidy investigation, the Commission notified the Government of China ('GOC') ⁽³⁾ that it had received a properly documented complaint, and invited the GOC for consultations in accordance with Article 10(7) of the basic Regulation. The GOC accepted the offer for consultations, which were held on 18 December 2017. During the consultations, due note was taken of the comments submitted by the GOC. However, no mutually agreed solution could be reached.
- (4) On 18 July 2018, the Commission imposed a provisional anti-dumping duty on imports of the same product originating in the PRC ⁽⁴⁾ ('the anti-dumping Regulation') in an investigation which had been initiated by Notice published on 20 October 2017 ⁽⁵⁾ ('the parallel anti-dumping investigation').
- (5) The injury, causation and Union interest analyses performed in the present anti-subsidy investigation and the parallel anti-dumping investigation are *mutatis mutandis* identical, since the definition of the Union industry, the representative Union producers and the investigation period are the same in both investigations. All the relevant elements pertaining to these aspects have been taken into account also in the present investigation.
- (6) The GOC, the China Chamber of Commerce for Import and Export of Machinery and Electronic products ('CCCME'), the Collective of European Importers of Electric Bicycles ('CEIEB'), the latter both representing several interested parties, submitted comments after the initiation of the proceeding.
- (7) These parties argued that the reasons for which the Commission granted confidential treatment to the identity of some of the interested parties supporting the complaint were both insufficient and unfounded. They added that some Union producers import complete electric bicycles from the PRC and thus, in light of Article 9(1) of the

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ OJ C 440, 21.12.2017, p. 22.

⁽³⁾ The term 'GOC' is used in this Regulation in a broad sense, including the State Council, as well as all Ministries, Departments, Agencies and Administrations at central, regional or local level.

⁽⁴⁾ OJ L 181, 18.7.2018, p. 7.

⁽⁵⁾ OJ C 353, 20.10.2017, p. 19.

basic Regulation, may be precluded from being considered as being part of the Union Industry. They pointed out that confidential treatment of the identity of some of the interested parties precludes the exporting producers from properly examining the standing in this case. In a similar vein, they argued that the complaint does neither contain a list of all known Union producers of the like product, nor the volume and value produced by these producers.

- (8) The Commission rejected this claim. The Commission recalled that Article 9(1) of the basic Regulation does not preclude considering some Union producers as part of the domestic industry just because they import the product concerned. Moreover, the Commission was satisfied with the level of support expressed by the Union industry for the initiation of the case at hand. In addition, the complaint contained a list of known producers in the Union ⁽⁶⁾, as well as their total production volume ⁽⁷⁾. Interested parties were, accordingly, able to assess the list of known Union producers of the like product.
- (9) This information allowed the GOC, the CCCME and the CEIEB to identify that two companies listed as Union producers are also importing electric bicycles from the country concerned. It is therefore clear that these interested parties could fully exercise their rights of defence in this respect.
- (10) The claims were therefore rejected.
- (11) The CCCME further argued that the complaint lacked the necessary level of sufficient evidence to result in the initiation of an investigation. The CCCME gave four reasons to support this claim.
- (12) First, the import data, based on Chinese export statistics obtained from Chinese customs, together with the adjustments made to it to filter out the product subject to this investigation, should not be kept confidential and its source should be duly examined by the Commission.
- (13) Second, certain information in the complaint such as, for instance, the alleged overcapacity in the relevant sector in the PRC, is misleading as they relate not only to the electric bicycles sector but electric bicycles and bicycles together. Similarly, the value of the Union's electric bicycles market would be overestimated as it covers all light electric vehicles and not only electric bicycles.
- (14) Third, while the complaint focuses on claims of subsidisation of the Chinese electric bicycles market, it never examines subsidies existing in Europe.
- (15) Fourth, according to the CCCME, the complaint made a series of unjustified claims that are harmful to the electric bicycles industry in the PRC, alleging that it is the Union producers who drive the innovation in this business and that the Chinese producers are merely replicating the status quo of the Union-developed electric bicycles technology.
- (16) The Commission carried out an examination of the complaint in accordance with Article 10 of the basic Regulation, coming to the conclusion that the requirements for initiation of an investigation were met, namely that the adequacy and accuracy of the evidence presented by the complainant was sufficient. According to Article 10(2) of the basic Regulation, a complaint shall contain such information as is reasonably available to the complainant on the factors indicated therein. On the basis of the evidence provided, the Commission deemed that requirement satisfied. In this respect, none of the aspects raised by CCCME was dispositive for the Commission to have initiated the investigation into the alleged injurious subsidisation.
- (17) First, regarding the Chinese import data, the Commission refers to Section 3.2 of Implementing Regulation (EU) 2018/671 ('the registration Regulation') ⁽⁸⁾ and to section 4.3.1 of the present Regulation, where that argument is sufficiently addressed.
- (18) Second, regarding the overcapacity in China, it is indeed relevant to examine overcapacities for electric bicycles and bicycles together, since production capacity for bicycles can be converted to electric bicycles with little cost or effort (see recital (634), and there is evidence on record that this is indeed regularly done by companies producing both products.
- (19) Finally, the elements concerning innovation and replication or subsidies in the EU had no weight on the Commission's assessment underlying the initiation of this case, as they do not fall within the factors considered for this purpose.

⁽⁶⁾ Complaint, Annex 10.

⁽⁷⁾ Complaint, Annex 9.

⁽⁸⁾ OJ L 113, 3.5.2018, p. 4.

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

1.2. Registration of imports

- (21) On 31 January 2018, the complainant submitted a request for registration of imports of electric bicycles from the PRC under Article 24(5) of the basic Regulation. On 3 May 2018, the Commission published the registration Regulation making imports of electric bicycles from the PRC subject to registration as of 4 May 2018 onwards.
- (22) Responding to the request for registration, interested parties submitted comments that were addressed in the registration Regulation. The Commission confirmed that the complainants submitted sufficient evidence justifying the need to register imports. In particular, imports and market shares from the PRC had sharply increased. The comments were therefore rejected.

1.3. Investigation period and period considered

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

1.4. Interested parties

- (24) In the Notice of initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the GOC, the known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.
- (25) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.5. Sampling

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

1.5.1. Sampling of Union Producers

- (27) In its Notice of initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the highest representative sales volumes of the like product in the investigation period whilst ensuring a spread in product types and a geographical spread.
- (28) This sample consisted of four Union producers. The sampled Union producers accounted for 60 % of the total production volume and 58 % of total sales of the Union industry. The Commission invited interested parties to comment on the provisional sample.
- (29) In light of the above, the Commission confirmed that the sample is representative of the Union industry.

1.5.2. Sampling of importers

- (30) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of initiation.
- (31) Twenty-one unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic Regulation, the Commission selected a sample of five unrelated importers on the basis of the largest volume of imports into the Union. In accordance with Article 27(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample.
- (32) In light of the above, the Commission concluded that the sample is representative of the cooperating importers.

1.5.3. Sampling of exporting producers

- (33) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of initiation. In addition, the Commission requested the authorities of the GOC to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (34) Seventy-eight exporting producers/group(s) of exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 27(1)(b) of the basic Regulation, the Commission selected the following sample of five groups of exporting producers on the basis of the volume of the product concerned referred to in recital (60) below exported to the Union also taking into consideration the level of investments relating to the product concerned during the investigation period and the geographical spread. This is considered to be the largest representative volume of exports to the Union which could reasonably be investigated within the time available:
- Bodo Vehicle Group Co., Ltd. (Bodo),
 - Giant Electric Vehicle (Kunshan) Co., Ltd. (Giant),
 - Jinhua Vision Industry Co., Ltd. and Yongkang Hulong Electric Vehicle Co., Ltd. (Jinhua Vision Group),
 - Suzhou Rununion Motivity Co., Ltd. (Rununion Group),
 - Yadea Technology Group Co., Ltd. (Yadea Group).
- (35) The sampled groups of exporting producers ('the sampled exporting producers') represented 43 % of the total imports of the product concerned to the Union.
- (36) In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the GOC, were consulted on the selection of the sample. Comments on the proposed sample were received from the complainant and three exporting producers, one included, two not included in the sample.
- (37) The complainant observed that Tianjin and Jiangsu are the provinces with the largest production of electric bicycles. In this regard, the complainant argued that the proposed sample underrepresented the Tianjin-based companies and proposed to insert another exporting producer in the sample.
- (38) The Commission observed that two companies within the sampled exporting producers or group of companies were based in Tianjin. Therefore, the Commission considered that the companies based in the Municipality of Tianjin were sufficiently covered.
- (39) One cooperating exporting producer, which was not sampled, requested to be included in the sample. Its request was based on three elements. First, the company exported to the Union via a related trader. Second, the company imported a large amount of input materials. Third, including the company would result in a higher geographical spread of the sample.
- (40) The Commission did not consider the first two elements to be a criterion for selecting a sample, which should be based in accordance with Article 27(1) on the largest representative volume of exports of the product subject to an investigation that can be investigated within the time available. In addition, among the companies which made themselves known during the sampling exercise there are several selling into the Union using a related trader and were also exporting input material. Moreover, the Commission already considered sufficient the geographical spread reached with the proposed sample, covering three of the most important regions for the electric bicycles production, therefore the request was rejected.
- (41) One exporting producer, which was sampled, requested to be excluded from the sample. Its request was based on three elements. First, the company exported a lower volume than the other four sampled groups. Second, they restated downwards their level of investments, clarifying that the amount considered by the Commission was inclusive of investments in other products. Third, they are present in a geographical area which is already covered by other companies in the sample.
- (42) The Commission based its selection not only on the export volumes to the European Union, also taking into consideration indicia of the alleged subsidisation, according to the information available on the cooperating companies' last available Annual Accounts and the geographical spread, during the investigation period. The exporting producer in question, considering all these factors together, was considered to be already represented by the selected sample.

- (43) The Commission therefore decided to retain the proposed sample as the final sample.

1.6. Individual examination

- (44) Two non-sampled exporting producers formally requested individual examination under Article 27(3) of the basic Regulation by providing a reply to the anti-subsidy questionnaire intended for exporting producers. One of them is a group of two related companies, whereas the other producer does not have related companies involved in the product concerned. However, the examination of such an additional number of requests, beside the five groups of companies sampled, would be unduly burdensome and cannot be reasonably carried out during the time available for this investigation. The Commission further noted that this investigation is conducted in parallel to the anti-dumping investigation on the same product concerned, and also overlaps with other investigations carried out by the Commission at the same time. The Commission therefore decided not to grant any requests for individual examination and informed accordingly the companies concerned.
- (45) One exporting producer, Wettzen Corporation, reiterated that its situation should have been examined individually and an individual subsidy amount and injury margin could have been calculated for it. This company claimed that it would be unfair and unreasonable that the subsidy and injury margin applied to it would be based on data from the sampled companies.
- (46) The Commission rejected these comments as it considered that the selected sample is already representative as shown in recital (35) as it is composed of five groups of producers, consisting of 11 different legal entities. Consequently, the sample is compliant with Article 27(1)(b) of the basic Regulation, the Commission confirmed that in the time available for the investigation, it could not have conducted the analysis for an additional company. The Commission noted that, in any event, such cooperating exporting producer may request an accelerated review pursuant to Article 20 of the basic Regulation.

1.7. Questionnaire replies and verification visits

- (47) A questionnaire was sent to the GOC. It included specific questionnaires for the China Development Bank ('CDB'), China Export Import Bank ('EXIM Bank'), Bank of China ('BOC'), Agricultural Bank of China ('ABC'), China Construction Bank ('CCB'), Industrial and Commercial Bank of China ('ICBC') and China Export & Credit Insurance Corporation ('Sinosure'). Those banks and Institutions had been specifically referred to in the complaint (on the basis of, *inter alia*, findings made by the Commission in previous investigations) as public bodies or bodies directed and entrusted granting subsidies to encouraged industries, including electrical bikes producers.
- (48) In addition, the GOC was asked to forward the specific questionnaire for financial institutions to any other financial institution that provided loans or export credits to the sampled exporting producers, or to the buyers of the sampled exporting producers (in the context of export buyer credits) as identified by the sampled exporting producers themselves. The Commission requested the exporting producers to provide the GOC with the relevant list of financial institutions to be contacted. The GOC was also asked to gather any responses provided by these financial institutions and to send them directly to the Commission.
- (49) Furthermore, the questionnaire for the GOC included specific questionnaires for those producers of input materials (i.e. batteries, engines and other bicycles parts whether already assembled or not) which are partially/fully State-owned ('SOEs') or private companies operating under government direction. In this regard, the GOC was also asked to forward this specific questionnaire for producers of input material to any other producer that provided input material to the sampled exporting producers as identified by the sampled exporting producers themselves. The Commission requested the exporting producers to provide the GOC with the relevant list of entities to be contacted. The GOC was also asked to gather any responses provided by these companies and to send them directly to the Commission.
- (50) One supplier of input material, Bafang Electric (Suzhou) Co., Ltd. ('Bafang') came forward on its own initiative and asked to be provided a questionnaire for producers of input material. This company provided input material to three of the five sampled exporting producers. Therefore, the Commission forwarded to Bafang the specific questionnaire for producers of input materials.
- (51) Questionnaires were also sent to the five sampled exporting producers' groups, to the sampled Union producers and unrelated importers.

- (52) The Commission received questionnaire replies from the GOC. Those comprised replies to the specific questionnaire from EXIM Bank, ABC, BOC, ICBC and Sinosure. The Commission also received questionnaire replies from the five sampled exporting producers' groups, from the Chinese input supplier mentioned in recital (50), and from the sampled Union producers and from the sampled unrelated importers.
- (53) The Commission sought and verified all information deemed necessary for the determination of subsidy, resulting injury and Union interest.
- (54) A verification visit took place at the premises the Chinese Ministry of Commerce, during which officials from other relevant ministries also participated ('verification visit at the GOC'). Moreover, representatives from the following financial institutions were present during this verification visit:
- Export Import Bank of China, Beijing, China,
 - Industrial and Commercial Bank of China, Beijing, China,
 - Agricultural Bank of China, Beijing, China,
 - Bank of China, Beijing, China,
 - China Export & Credit Insurance Corporation, Beijing, China.
- (55) Furthermore, verification visits pursuant to Article 26 of the basic Regulation were carried out at the premises of the following companies:

Sampled Union producers

- Accell Group (Heerenveen, the Netherlands),
- Eurosport DHS SA (Deva, Romania), and their related company Prophete GmbH & Co. KG (Rheda-Wiedenbrück, Germany),
- Derby Cycle Holding GmbH (Cloppenburg, Germany),
- Koninklijke Gazelle NV (Dieren, The Netherlands);

Sampled exporting producers in the PRC

- Yadea Group
 - Yadea Technology Co., Ltd., Wuxi, China,
 - Tianjin Yadea Industry Co., Ltd., Tianjin, China,
 - Wuxi Yadea Import and Export Co., Ltd., Wuxi, China,
 - Wuxi Xingwei Vehicle Fittings Co., Ltd., Wuxi, China,
 - Jiangsu Yadea Technology Development Co., Ltd., Wuxi, China;
- Giant Group
 - Giant (China) Co., Ltd., Kunshan, China,
 - Giant Electric Vehicle (Kunshan) Co. Ltd., Kunshan, China,
 - Giant (Tianjin) Co., Ltd., Tianjin, China,
 - Giant (Kunshan) Co., Ltd., Kunshan, China,
 - Kunshan Giant Light Metal Co., Ltd., Kunshan, China;
- Jinhua Group
 - Jinhua Vision Industry Co., Ltd, Jinhua, China,
 - Yongkang Hulong Electric Vehicle Co., Ltd., Yongkang, China,
 - Kunshan Youheng Machinery co., Ltd., Kunshan, China;
- Rununion Group
 - Suzhou Rununion Motivity Co., Ltd., Suzhou, China,
 - Suzhou Kaihua Electric Appliance Plastic Factory, Suzhou, China;
- Bodo Group
 - Bodo Vehicle Group Co., Ltd., Tianjin, China,
 - Tianjin Xinbao Vehicle Co., Ltd., Tianjin, China;

Supplier to the Chinese exporting producers

— Bafang (Suzhou) Electric Motor Co., Ltd., Suzhou, China;

Sampled unrelated importers in the Union:

— BHBikes Europe S.L. (Vitoria, Spain),

— Bizbike Bvba (Wielsbeke, Belgium),

— Hartmobile B.V. (Amsterdam, the Netherlands),

— NEOMOUV S.A.S. (La Fleche, France),

— Stella Fietsen B.V. (Nunspeet, the Netherlands).

- (56) The Commission properly informed all the companies above of the results of the verification visits.

1.8. Non-imposition of provisional measures

- (57) Given the complexity of the investigation and the number of interested parties the Commission decided not to impose provisional measures in the present case. On 24 September 2018, the Commission informed all interested parties that no provisional countervailing duties would be imposed on imports into the Union of electric bicycles originating in the PRC and that the investigation would continue.
- (58) The Commission continued seeking and verifying all information it deemed necessary for its definitive findings.
- (59) On 31 October 2018, the Commission disclosed to all interested parties the essential facts and considerations on the basis of which it intended to impose a definitive anti-subsidy duty on imports of electric bicycles into the Union, and invited all parties to comment within 25 days. Through such disclosures, the Commission further informed interested parties of the results of its verification visits, including the instances where the Commission had to use facts available.

2. PRODUCT CONCERNED AND LIKE PRODUCT**2.1. Product concerned**

- (60) The product concerned is cycles, with pedal assistance, with an auxiliary electric motor, originating in the PRC, currently falling within CN codes 8711 60 10 and ex 8711 60 90 (TARIC code 8711 60 90 10) ('the product concerned' or 'electric bicycles' or 'e-bikes').
- (61) This definition covers various types of electric bicycles.

2.2. Like product

- (62) The investigation showed that the following products have the same basic physical characteristics as well as the same basic end uses:
- (a) the product concerned;
 - (b) domestic market China;
 - (a) the product produced and sold in the Union by the Union industry.
- (63) Those products are therefore considered like products within the meaning of Article 2(c) of the basic Regulation.

2.3. Claims regarding product scope

- (64) In their comments following the initiation of the investigation, the GOC and the CCCME contested the Commission's intention to consider all electric bicycles as one single product. In particular, they argued that speed electric bicycles (electric bicycles with a speed of more than 25 km/h and up to 45 km/h) should be excluded from the scope of the investigation. They claimed that while the engine of standard electric bicycles has a maximum power ⁽⁹⁾ of 250 W, the engine of speed electric bicycles can have a higher power of typically 350 – 500 W.
- (65) These interested parties argued that speed electrical bicycles have significantly different characteristics and intended uses, and also significantly different prices. From the consumers' perspective, speed electric bicycles are not interchangeable with all the other electric bicycles covered by this investigation.

⁽⁹⁾ Maximum continuous rated power.

- (66) According to the GOC and the CCCME, there are several reasons for which speed electric bicycles are different from other electric bicycles. First, the raw materials and components are different. For instance, the engine for speed electric bicycles has a higher power rating and the materials for electric bicycles higher strength and quality.
- (67) Second, the costs and prices would be significantly different. Since there are stricter requirements for the quality and strength of the parts used to produce speed electric bicycles, the cost of producing speed electric bicycles is higher than that of ordinary electric bicycles, which in turn causes a final higher sales price.
- (68) Third, the CN codes are different. Since 1 January 2017, ordinary electric bicycles have been classified under CN code 8711 60 10 and speed electric bicycles under CN code 8711 60 90. Before 2017, ordinary electric bicycles were classified under (ex) CN code 8711 90 10 and speed electric bicycles under (ex) CN code 8711 90 90.
- (69) Fourth, speed electric bicycles are regarded as motor vehicles (vehicle category L1e-B), so drivers are required to have a licence and to wear helmets. There are no such requirements for ordinary electric bicycles. These requirements will substantially constrain who can purchase and operate the speed electric bicycles.
- (70) Fifth, the types of consumers for the speed electric bicycles are different. Normally, purchasers of ordinary electric bicycles are mainly office workers or elderly persons who appreciate the additional power assist, while purchasers of speed electric bicycles are mostly young people using these electric bicycles for more strenuous or sporting activities.
- (71) The complainant argued that all electric bicycles share key common characteristics. In particular, both are cycles designed to pedal, equipped with an auxiliary electric motor for pedal assistance. Moreover, all electric bicycles are subject to the same test procedures under the European Standard EN 15194. On this basis, the complainant concluded that they form one single product for the purpose of the present investigations.
- (72) The complainant also pointed out that due to the fact that the auxiliary motor assistance cut-off speed could be easily changed from 25 km/h to 45km/h and vice-versa, as this is primarily a question of software programming and not actual physical differences.
- (73) During the investigation, an importer claimed that electric bicycles falling under the L1e-A category should be excluded from the product scope of the investigation. The L1e-A category covers electric bicycles with an auxiliary motor support of up to 25 km/h, but with an engine power of up to 1 kW. Allegedly, L1e-A category electric bicycles are not produced in the Union, and not specifically mentioned in the complaint. The importer further claimed that L1e-A category electric bicycles cannot have caused injury to the Union industry, since the first L1e-A category electric bicycle was sold on the Union market more than eight weeks after the complainant lodged the complaint.
- (74) The Commission took all these comments into account. It noted that the product scope of the complaint indeed covered all cycles, with pedal assistance, with an auxiliary electric motor. The product scope of the complaint contains no limitation on the vehicle classification. The Commission therefore concluded that L1e-A category electric bicycles are covered by the complaint. It was also clear from the website of the importer mentioned in recital (73) that L1e-A electric bicycles have all the benefits of a regular electric bicycle but with more power.
- (75) With regard to speed electric bicycles, it is claimed that they have a significantly higher cost of production and sales price. This, as such, is not a reason for excluding a product from the product scope, since the product scope commonly includes goods sold at different prices. This factor is however taken into account in the price comparisons and calculation of the injury margin.
- (76) As regards the different uses and consumer perception, it is argued that normal electric bicycles are predominantly sold to elderly people, recreational cyclists, and also office workers, while speed electric bicycles are mostly used for more strenuous activities such as commuting. However, since office workers are likely to use their normal electric bicycle for driving from their home to the work place, this use is very similar to the use of commuting for speed electric bicycles. The Commission therefore concluded that the intended use and consumer perception overlap to a significant extent, and therefore do not warrant a product exclusion.

- (77) With regard to both claims for exclusion, the Commission concluded that speed electric bicycles and the L1e-A category bicycles share the same physical characteristics with other electric bicycles and thus fall within the product scope. While the Commission acknowledged that there are different product types within the general category of the product concerned, this cannot per se lead to exclusion from the product scope. Different customs classification within the same general category of the product concerned is also not a criterion which per se would lead to exclusion. It is indeed very common in anti-dumping and anti-subsidy investigations that the product concerned encompasses a range of customs codes. Finally, requirements relating to the after sale use of the product concerned or the like product do not affect the basic physical characteristics that define that product for the purpose of anti-subsidy investigations. In the same vein, the product scope is not defined by categories of consumers that will be opting for one product type or the other. The claims were therefore rejected.
- (78) One importer claimed that electrical tricycles should be removed from the product scope of the investigation. It alleged that it is not clear whether the investigation actually covered all types of cycles (including bicycles, tricycles and quadricycles) or only bicycles, because the title of the Notice of initiation stated that the anti-subsidy proceeding concerns import of electric bicycles.
- (79) The Commission noted that the product scope of the investigation is, however, not defined by the title of the Notice of initiation, but by section of the Notice '2. Product under investigation'. This section clearly defines that the product under investigation covers 'cycles'. The term 'cycles' is not limited to bicycles with 2 wheels, but also includes tricycles and quadricycles. Since bicycles are by far the most common type of cycle, the title referred to bicycles, without excluding other types of cycles from the scope of the investigation. Therefore, this claim was rejected.
- (80) The importer further claimed that the investigation specifically focused on bicycles. The Commission disagreed with this claim. It had collected information covering all types of electric cycles. Union producers and exporting producers were required to indicate the number of wheels for all products they produced and sold on the Union market. It is therefore clear that tricycles were separately identified and investigated throughout the investigation. As bicycles are undisputedly the most common type of cycles, it is not surprising that the term e-bikes/electric bikes is generally used to refer to all types of electric cycles, in the investigation as well as in the market. This does not mean that other types of cycles were disregarded during the investigation.
- (81) The Commission therefore concluded that speed electric bicycles, L1e-A category electric bicycles and electric tricycles share the same basic physical characteristics and properties as well as end-uses with other types of electric cycles, and therefore cannot be excluded from the product scope of the investigation.
- (82) Following disclosure, three Chinese exporting producers, one importer and the CCCME reiterated their claim to exclude electric bicycles with an auxiliary motor pedal assistance of up to 45 km/h ('speed electric bicycles').
- (83) 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.
- (84) 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.
- (85) 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 placed 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-subsidy measures.
- (86) The Commission pointed out that recital (72) does not only refer to consumer alteration of the software but to software programming in general. In addition, the same recital clearly refers 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 (85). The argument was therefore rejected.

- (87) 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.
- (88) 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 ⁽¹⁰⁾. 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.
- (89) The CCCME submitted that the reasoning set out in recital (77) 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.
- (90) The complainant submitted 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.
- (91) 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.
- (92) 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).
- (93) 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 (71).
- (94) 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

⁽¹⁰⁾ 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.

exclude speed electric bicycles from the product scope. 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.

- (95) In the absence of any other comments with respect to the product scope, the Commission confirmed the conclusions set out in recitals (74) to (81).

3. SUBSIDISATION

3.1. Introduction: Presentation of government plans, projects and other documents

- (96) Before analysing the alleged subsidisation in the form of specific subsidies or subsidy programmes (sections 3.5 and following below) the Commission assessed government plans, projects and other documents, which were relevant for more than one of the subsidies or subsidy programmes. It found that all subsidies or subsidy programmes under assessment form part of the implementation of the GOC's central planning for the reasons outlined below.
- (97) The 13th Five Year Plan for National Economic and Social Development of the PRC ('the 13th Five Year Plan'), which covers the period 2016-2020, highlights the strategic vision of the GOC for improvement and promotion of key industries, such as the electric bicycles industry.
- (98) It emphasizes the role of technological innovation in the economic development of the PRC, as well as the continued importance of 'green' development principles. According to its chapter 5, one of the main development lines is to promote the upgrading of the traditional industrial structure, as was already the case in the 12th Five Year Plan. This idea is further elaborated in chapter 22, which explains the strategy to modernize the traditional industry in the PRC by promoting its technological conversion. In this respect, the 13th Five Year Plan states that companies will be supported to *'comprehensively improve in areas such as product technology, industrial equipment, environmental protection and energy efficiency'*.
- (99) In particular, Part V (Chapters 22 to 24) aims at developing an optimised modern industrial system with the objective of making China a 'manufacturing powerhouse' by 2025. In order for emerging industries to boost the economy, the plan 'encourages' the development and promotes the use of new-energy vehicles and encourages the development of all-electric vehicles. More in detail, Chapter 23 on the development of strategic emerging industries indicates that the GOC *'will support the development of next generation information technology, new-energy vehicles, [...], green and low-carbon technology, [...]'*. In addition, the GOC will *'spur innovation and industrial application in emerging cutting-edge fields such as [...] systems for high-efficiency energy storage and distributed energy, [...], environmental protection [...]'*.
- (100) The 13th Five Year Plan includes the 'new-energy vehicles' among the six 'strategic industries' for China and 'will work to ensure that the value-added of strategic emerging industries reaches 15 % of China's GDP'. In particular, in Chapter 23 the GOC engages to:
- *'Promote the use of new-energy vehicles';*
 - *'Develop all-electric vehicles and hybrid electric vehicles with a focus on making advancements in key technological areas such as battery energy density and battery temperature adaptability';*
 - *'Facilitate the development of a network of charging facilities and services that are compatible with each other and come under unified standards';*
 - *'Improve policies to provide continuous support in this regard';*
 - *'Ensure the cumulative total production and sales figures for new-energy vehicles in China reach five million';*
 - *'Strengthen efforts to recover and dispose of used batteries from new energy vehicles'.*
- (101) The Light Industry Development Plan (2016-2020), ('Light Industry Development Plan'), prepared by the GOC to implement the 13th Five Year Plan and Made in China 2025, also identifies the bicycles and battery industry as key industries.

- (102) The bicycles and electric bicycle industry requires 'Technology Reformation Engineering' through the 'Industrialization of new-material bicycle, technical transformation of the intelligent, environment-friendly and efficient electric bicycle production line and crucial parts'. In particular, it also recommends to 'Promote the bicycle industry to develop in a lightweight, diversified, fashionable and intelligent direction. Speed up the R&D and application of high-strength light material, transmission, drive system, new energy, intelligent sensing technology and Internet of Things technology. Focus on developing diversified bicycles suitable for fashionable and casual purposes, exercise and fitness, long-distance country crossing and high-performance folding, and the electric bicycle complied with standard and intelligent electric bicycle with lithium ion battery'.
- (103) The Light Industry Development Plan also lists some concrete policy measures to promote the key industries, such as electric bicycles and battery industries, as described in the next three recitals.
- (104) The first set of measures concerns the increase of market access reform, mainly through a simplification of the administrative steps (i.e. cancel unnecessary approvals, reduce and standardise the fees and approval process). Moreover, the GOC lists the industries fields and business where investment is prohibited or limited (i.e. investment catalogues, see recital (126).
- (105) The second set of measures concerns the increase of finance tax policy support:
- 'Give full play to the leading role of the development fund for medium and small sized enterprises, lead the medium and small sized enterprises to increase the investment on technology innovation, structure adjustment, energy-conservation and emission reduction, implement various preferential policies, perfect service system for medium and small sized enterprises'.
 - 'Implement the accelerating depreciation policy for fixed assets, guide enterprises to increase investment on advanced equipment'.
 - 'Give play to the role of special funds of cleaning production, guide the application of production technology and promotion of cleaning production technology in key industries'.
 - 'Implement preferential policies of relevant tax and fee, reduce enterprises cost of "five social insurance and one housing fund", reasonably adjust the policy of consumption tax'.
 - 'Encourage enterprises to increase the R&D investment of green products, give top priority to the products with green product certificate in governments purchasing'.
- (106) The third set of measures concerns the increase of financial policy support, in particular:
- 'Implement the financial policy that supports the development of medium and small sized enterprises, further explore the financial channels of medium and small sized enterprises, perfect the credit guarantee system of medium and small sized enterprises'.
 - 'Accelerate the development of financial products and services to support popular entrepreneurship and innovation in light industry field'.
 - 'Increase financial support for technology transformation and equipment update of the enterprises'.
 - 'Encourage banking financial institutions to develop the loan services using as guarantees also intangible assets, including: their own brands, the special rights to use the trademarks, to support brands construction in the light industry field'.
 - 'Further play the role of policy and development finance, support the financial institutions, by the mode of syndicated loan, export credit, project financing, to set up a financial service platform of international R&D, production system, brands promotion for the enterprises'.
 - 'Increase the support of export credit insurance to brand enterprises, encourage the commercial banks to actively carry out the financing business of the export credit insurance policy'.
- (107) Light Industry Development plans are also developed at local level. It is the case for the Tianjin Municipal Light Industry and Textile Development Plan for the 12th Five-Year (2011-2015), which advocated the creation of four National-level Light industrial bases in the Province: 'The City of Tianjin shall construct a national-level bicycles production and export base. By taking the "China bicycle kingdom" industrial park in the district of Wuqing, and (electro-) bicycle industrial park in the district of Binhai as the core, we shall intensively develop the manufacturing industries of (electro-) bicycle, spare parts, etc.'.

- (108) Similarly, the 13th Five Year Plan of Tianjin for Industry Economic Development sets clear support goals for the bicycle and electric bicycle industries including the parts industries, such as:
- ‘Emphatically develop the bicycle industry’;
 - ‘Accelerate construction of characteristic industrial bases including [...] bicycle production, in Jinghai District and Wuqing District’;
 - ‘Accelerate enterprise transformation and upgrading. Vigorously implement brand strategy, lead enterprises to intensify technological innovation and product popularization, and strengthen and promote the market positions of competitive products including bicycles. Promote annexation and reorganization of enterprises and comprehensively improve innovative capacity and product added value of middle and small-sized enterprises and private enterprises’;
 - ‘Accelerate the construction of featured parks, including bicycle industrial parks in Quqing and Jinghai’;
 - ‘Emphatically develop energy storage battery’; and
 - ‘Expand areas with distinctive advantages. Take lithium-ion battery as core to promote the development of supercapacitor and high-performance power battery’.
- (109) More specifically, the 13th Five Year Plan for Bicycle and Electric Bicycle Industry (‘the 13th Bicycle Plan’), issued by the China Bicycle Association (‘CBA’) includes the bicycles among the ‘emerging industries’: ‘the emerging industries have been promoted to the level of national strategy, such as, new energy, new material, internet, energy conservation and environmental protection, and information technology, so it has become an inevitable trend for traditional industries to enter the mid-end and high-end community. Especially after the Fifth Plenary Session put forward to “promote the low-carbon development of traffic and transportation and encourage the green travel by bicycle”, the bicycle industry will certainly enjoy the new historic opportunities for development.’
- (110) The 13th Bicycle Plan sets measurable goals to be attained by the GOC by 2020 in the bicycle industry: ‘the revenue from main businesses of the above-scale enterprises in the whole industry will achieve the annual average growth rate 6 %, and exceed RMB 200 billion by 2020. The export scale of bicycles and spare parts will keep stable and the export of electric bicycles will be dramatically increased. The industry integration will be further strengthened, and the contribution of leading enterprises to the output volume will exceed 50 %. The industry will nurture, jointly construct and improve 3-5 industry clusters and characteristic regions. The proportion of mid-end and high-end bicycle and lithium battery electric bicycle will increase year.’
- (111) Furthermore, the 13th Bicycle Plan envisages that ‘one to two international famous brands will be built’. Beside the existing awards already obtained by electric bicycles producers (e.g. China Famous Brand, China Well-known Trademark, Light Industry Brand Cultivation System, Advantageous Light Industry Brand and Industry Brand Cultivation Demonstration Enterprise recognition) the plan also envisages to improve the ‘Brand Cultivation System’ and carry out the ‘Brand Value Quantification and Assessment’.
- (112) Also, one of the main tasks listed in 13th Bicycle Plan is to ‘Continue promoting the development of diverse, branded and high-end bicycles in the industry, and gradually increase the proportion of people travelling by bicycle and the proportion of mid-end and high-end bicycles; realize the lightweight, lithium battery and smart electric bicycles, and constantly improve the market share of lithium battery bicycles and the export proportion of electric bicycles’.
- (113) In addition, the 13th Bicycle Plan also lists the enhancement of ‘the export proportion and pricing rights of independent brands of electric bicycles’ as a main goal.
- (114) In the Catalogue of Investment Projects subject to Government Verification and Approval GOC signals an increased prioritisation of alternative energy vehicles, including electric bicycles: ‘Production capacity that increases the number of traditional fuel-powered vehicles shall be strictly controlled such that in principle new manufacturers of traditional fuel-powered vehicles shall no longer be verified and approved for construction. Efforts shall be made to actively guide the healthy and orderly development of alternative energy vehicles.’

- (115) Asymmetrically, the GOC adds the fuel-fired mopeds in the list of *'outdated products'* in the Catalogue for Guiding Industry Restructuring (2011 Version, 2013 Amendment).
- (116) However, the efforts of the GOC are not limited to the electric bicycles but also embrace their parts, namely engines, control unit and batteries.
- (117) The 13th Bicycle Plan explicitly established the link between the development of electric bicycles and their parts, by recommending to *'Continuously expand the application of aluminium alloy, magnesium alloy, titanium alloy and other light alloys, carbon fiber and other composites in the finished bicycles and parts. Improve the ability to making complete bicycles independently through enhancing the quality and level of parts. Further better the comprehensive performance of four major electric components, namely, controller, battery, motor and charger, with an aim to develop the efficient, energy-saving, safe and reliable electric system of electric bicycle'*.
- (118) In addition, the 13th Bicycle Plan envisages that during the '13th five-year' period, *'breakthroughs will be achieved in the following key technologies'*:
- *'1. Promotion and application of high-strength and lightweight materials';*
 - *'2. Precision processing technology of transmission components in bicycle';*
 - *'3. Comprehensive performance improvement of electric control system in electric bicycle';*
 - *'4. Comprehensive performance improvement of lead-acid battery and lithium-ion battery';*
 - *'5. Application and promotion of torque sensing technology';*
 - *'6. Application and promotion of digital technology, internet of things technology and intelligent technology'.*
- (119) The link between the development of electric bicycles and their parts was already set in the 12th Five Year Plan for Bicycles and Electric Bicycles industry. The document extensively refers to the integration of *'production chains'* and the need to *'speed up the research and development of industry common key technology'*.
- (120) More specifically, the 12th Bicycles Plan lists among the main goals of the industry development during the 12th Five-Year Period:
- *'the industry integration will be further strengthened';*
 - *'a professional division of labor mechanism with upstream and downstream, spare parts of finished vehicles and production, learning and research will be formed'.*
- (121) The 12th Bicycles Plan also lists the key technological innovations to be achieved during the 12th Five Year period. These include, *inter alia*,
- *'the application of lithium ion battery';*
 - *'the application of permanent magnet, high-speed and brush electric machines in electric bicycles';*
 - *'the application of microcomputer control technology in electric bicycles'.*
- (122) A further indication of subordination of the development of upstream components to the development of the downstream industry of electric bicycles can be retrieved in the Notice of the Suzhou Municipal Government General Office of circulating the Administrative Measures on the Special Fund of the Municipal Industry and Economic Upgrading (SU FU BAN 2014-137) and the related Notice on application for year 2016 Suzhou Municipal Fiscal Special Fund Program. In particular, Article A3.1 of the latter lists among the conditions to obtain the grant: *'The products have features like great market potential, high driving force and "filling the gap" in the industrial chain.'*
- (123) The 13th Five Year Plan explicitly refers to the GOC support to the development of *'high-efficiency energy storage'* in Chapter 23 (see also recital (97)).
- (124) The Light Industry Development Plan (2016-2020), also lists the battery industry among the *'key industries'*. Beside the general policy measures discussed in recitals (96) to (107), the plan recommends as well the implementation of the *'Specifications of Lead Battery Industry'*.
- (125) The Tianjin Municipal Light Industry and Textile Development Plan for the 13th Five-Year (2016-2020) makes the link between the support to the electric bicycle production and their parts: *'We shall promote application of new*

materials including composite materials, light alloy, low alloy steel in production of bicycles and electric bicycles. We shall propel application of microcomputer control technique, newly energetic batteries and efficient electrical machines in electrical batteries.'

- (126) Bicycles parts and in specific battery and light metals for frames are part of the list of 'encouraged industries' in the Catalogue of the Guidance of Foreign Investment Industries (Revised 2017). In particular, the list includes:

- '96. R & D and manufacture of new materials for aviation, aerospace, automobile and motorcycle light and environment-friendly (special aluminium, Aluminium-magnesium alloy materials, motorcycle aluminium alloy frame, etc.).'
- '236. High-tech green battery manufacturing: power nickel-metal hydride batteries, zinc-nickel batteries, zinc-silver batteries, lithium-ion Batteries, solar cells, fuel cells, etc. (except for new energy vehicles, energy-powered battery)'.

- (127) Similarly, the Catalogue of Priority Industries for Foreign Investment in Central and Western China promotes foreign investment in industry related to electric bicycles parts which include: (i) the production of aluminium alloy materials and products, (ii) the production of servo motors and driving devices, (iii) the R&D and manufacturing of the special equipment for producing lithium batteries and other lithium products, (iv) the development and manufacturing of lightweight materials such as high-strength.

- (128) Lithium batteries are part of the 'encouraged' list in the Catalogue for Guiding Industry Restructuring ((2013 Amendment) (2011 Version) (Issued by Order No. 9 of the National Development and Reform Commission)).

- (129) The following documents also identify the electric bicycles industry as a strategic, prioritized and/or encouraged industry:

- **Made in China 2025** of the State Council (Decision No.28 of 2005) includes the 'green development' among its guiding principles. The document lists the strategic tasks to implement by 2025, including intensifying the 'efforts in research and development of advanced energy-saving and environmental protection technology, process and equipment', strengthening the 'research and development of green product, generalise techniques of light weight, low power consumption and easy recovery, constantly promote energy efficiency of terminal energy-using products including motor, boiler, internal combustion engine and electric appliance, [...] and energetically promote green and low-carbon development of new material industry, new energy industry, high-end equipment industry [...]'.

- **Decision No. 40** of the State Council on Promulgating and Implementing the 'Temporary Provisions on Promoting the Industrial Structure Adjustment' ('Decision No. 40'). This Decision states that the 'Guidance Catalogue for the Industrial Structure Adjustment' ⁽¹¹⁾, which is an implementing measure of Decision No. 40 is an important basis for guiding investment directions. It also guides the GOC to administer investment projects, and to formulate and enforce policies on public finance, taxation, credit, land, import and export ⁽¹²⁾. Although electric bicycles are not explicitly mentioned in Decision No. 40, by means of it the State Council instructs all Chinese financial institutions to provide credit support and promises the implementation of 'other preferential policies on the encouraged projects'. At the same time, the *Guidance Catalogue for the Industrial Structure Adjustment* in Chapter XIX lists the batteries and lightweight material as encouraged industries. As to its legal nature, the Commission noted that Decision No. 40 is an Order from the State Council, which is the highest administrative body in the PRC. In that regard, the decision is legally binding for other public bodies and the economic operators ⁽¹³⁾.

- **The National Outline for the Medium and Long-term Science and Technology Development (2006 – 2020)** supports the development of key fields and priority themes, and encourages financial and fiscal support to these key fields and priorities.

- (130) In conclusion, according to the information available, the electric bicycle industry and its parts (namely battery, engine, control units and light metal components) are thus regarded as key/strategic industries, whose development is actively pursued by the GOC as a policy objective.

⁽¹¹⁾ Guidance Catalogue for the Industrial Structure Adjustment, (2011 Version).

⁽¹²⁾ Chapter III, Article 12 of Decision No. 40.

⁽¹³⁾ See Council Implementing Regulation (EU) No 215/2013, OJ L 73, 15.3.2013, recital 182 (Organic coated steel).

3.2. Claims

3.2.1. Claims by the GOC

- (131) The GOC first indicated that it was unable to identify the 13th Five-Year Plan for the Bicycle and Electric Bicycle Industry and that therefore it was not in a position to provide any comments on the plan.
- (132) The GOC also indicated in its reply to the questionnaire that CBA is only an industrial association, organized voluntarily by producers of bicycles, electric bicycles and their spare parts. The GOC also claimed that CBA is not a government department.

3.2.2. Claims made by the China Bicycles Association

- (133) CBA claimed to be an independent body with no control from the GOC. In support, they referred to the 'Overall Plan for Decoupling Chambers of Commerce and Administrative Organs' issued by the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council.
- (134) CBA also claimed that the 13th Five Year Bicycles Plan was confidential.

3.2.3. Claims made by Giant Group

- (135) Following disclosure Giant Group claimed that one of its related companies was merely producing the like product but did not export electrical bicycles to the Union. Therefore any subsidy received by the latter cannot be automatically considered as being a subsidy granted to a product that was released for free circulation in the Union causing injury to the Union industry. Any benefit of such subsidy granted was also not passed on to the related company that was exporting the product concerned to the Union. Giant Group thus claimed that any subsidy received by the company producing the like product did not benefit the exports and it should therefore be excluded from the calculation of the amount of subsidisation of the exporting company.

3.2.4. Claim rebuttals

Existence and confidentiality of the 13th Bicycle Plan

- (136) The Commission considered that the 13th Bicycle Plan should have been identified by the GOC and that it should not be considered as limited based on the following facts:
- The CBA published a press release on its public website informing that the 13th Five Year Bicycle Plan was officially adopted on 14 June 2016 (<http://www.china-bicycle.com/News/View/b8da75cd-607f-4d84-8412-a487e07a0b78>). This was also reported by other websites such as Xuenshu.com (<https://www.xuenshu.com/zgzc/201607/21087310.html>).
 - In the press release, CBA disclosed a summary of the plan to the general public: 'Chairman Ma Zhongchao put forward requirements for the development of the industry during the "13th Five-Year Plan" period: the core of the "13th Five-Year Plan" is transformation and upgrading, and the goal is to change from big to strong, and the means is to create a golden opportunity for the development of the industry. The period became a golden development period. To this end, the industry needs to firmly grasp the following points: First, grasp the strategic positioning of the industry's "13th Five-Year" development; second, lead the transformation of the development mode with the transformation of the development concept [...].'
 - The 13th Bicycle Plan was submitted in the open version of the Complaint and made publicly available as of 21 December 2017. However, until the verification visit held in September 2018 at the GOC premises, neither CBA nor the GOC made any claims about the confidentiality of the plan. On the contrary, the GOC informed the Commission that the plan could not be identified, despite the fact that its approval was made public on CBA's website and despite the fact that in June 2016 the CBA was still under the GOC influence, since the 'Overall Plan for Decoupling Chambers of Commerce and Administrative Organs' had not yet entered into force.
 - The previous 12th Bicycles Plan was a public document, although having a similar nature to the 13th Bicycles Plan. Furthermore, none of these documents contained any company specific data.
- (137) Finally, CBA did not provide any evidence on the confidential nature of the 13th Bicycle Plan.

Alleged independence of CBA from the GOC

- (138) The Commission collected a number of elements leading to the conclusion that the CBA had a strong link to the GOC in particular during 2016, when the Bicycles Plan was approved:
- Article 3 of CBA's Articles of Association (publicly available on CBA's website: <http://www.china-bicycle.com/information/?cid=33>) provides that *'The purpose and tasks of this association are: [...] implement the national industrial policy and assist the government departments to strengthen the industry, [...] play a role as a bridge and link between the government and enterprises, and strive to serve the enterprise, the industry, and the government, and promote the sustainable and healthy development of the industry.'* Article 4 strengthens this link and provides that: *'This Council accepts the business guidance and supervision of the State-owned Assets Supervision and Administration Commission of the State Council, the Ministry of Civil Affairs and the competent business unit of the society.'*
 - CBA's website (<http://www.china-bicycle.com/information/?cid=11>) indicates that: *'The association is guided and managed by the State Administration of the State Council, the State-owned Assets Management Committee of the State Council, the China Light Industry Association and the Ministry of Civil Affairs of the Company Registration Administration.'*
 - The *'Overall Plan for Decoupling Chambers of Commerce and Administrative Organs'* issued by the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council was adopted on 8 July 2015. However, it envisages a pilot project in 2016 and the extension to other industry associations and a full entry into force only in 2017. Therefore on this basis, the Commission concluded that when the 13th Bicycle Plan was approved in 2016, CBA was under the management of the State Council and entrusted to implement government policy and could therefore not be considered as an independent body.
- (139) Based on the above, the Commission rejected the claims relating to the existence and confidentiality of the 13th Bicycle Plan and on the independence of CBA.
- (140) As far as Giant Group's claim is concerned, the Commission considered that the various legal entities that produce and sell electric bicycles are all part of the same group. This was not contested by the Giant Group. Therefore, the specific role of the recipient (as directly exporting the product concerned or not during the investigation period) was considered irrelevant provided that it was related to the exporting producer and that it received benefits relating to the product under investigation. It was not contested by Giant Group that such benefits were indeed received. The Commission considered that the benefits received by the legal entities of the same group that are involved in the production and sales of electric bicycles are aggregated at group level and apportioned where relevant. On this basis, this claim had to be rejected.

3.3. Partial non-cooperation and use of facts available**3.3.1. Preferential lending**

- (141) The Commission requested the GOC to forward specific questionnaires to six state-owned banks identified in the complaint as well as any other financial institution that provided loans or export credits to the sampled exporting producers.
- (142) The GOC claimed that it had contacted the above-mentioned financial institutions. However, only four state-owned banks specifically mentioned by the complainant responded to the questionnaire.
- (143) According to the GOC, it had no authority to demand information from the state-owned banks that did not reply to the questionnaire, as they operate independently of the GOC. The GOC also considered that the Commission had imposed an unreasonable burden on it and that there was insufficient guidance as for how to submit the requested information and how to prepare the non-confidential versions of the replies.
- (144) The Commission disagreed with this view. First, the information requested from State-owned entities is available to the GOC for all entities where the GOC is the main or major shareholder. Indeed, according to the Law of the People's Republic of China on State-Owned Assets of Enterprises ⁽¹⁴⁾, State-owned assets supervision and administration agencies established by the State-owned Assets Supervision and Administration Commission of the State Council and local people's governments perform the duties and responsibilities of the capital contributor of

⁽¹⁴⁾ Law of the People's Republic of China on State-Owned Assets of Enterprises, Decree No. 5 of the President of the People's Republic of China, 28 October 2008, Article 11 & 12.

a State-invested enterprise on behalf of the government. Such agencies are thus entitled to receive returns on assets, to participate in major decision making and to select managerial personnel of State-invested enterprises. Furthermore, according to Article 17 of the above mentioned Law on State-owned Assets, State-invested enterprises shall accept administration and supervision by governments and relevant governmental departments and agencies, accept public supervision, and be responsible to capital contributors.

- (145) In addition, the GOC also has the necessary authority to interact with the financial institutions even when they are not State-owned, since they all fall under the jurisdiction of the Chinese banking regulatory authority. For example, according to Articles 33 & 36 of the Banking Supervision Law ⁽¹⁵⁾, the CBRC has the authority to require all financial institutions established in the PRC to submit information, such as financial statements, statistical reports and information concerning business operations and management. The CBRC can also instruct financial institutions to disclose information to the public. In this respect, the Commission failed to understand why the GOC could not ask these financial institutions to reply to the specific questionnaire prepared by the Commission for the purpose of this investigation. The GOC was not asked to collect, review and produce the requested information. The GOC was only asked to assist the Commission in getting the necessary information from the financial institutions.
- (146) Furthermore, although they provided some general explanations on the functioning of their loan approval and risk management systems, none of the cooperating State-owned banks provided specific information concerning loans provided to the sampled exporting producers, arguing that they were bound by statutory and regulatory requirements and contractual clauses with respect to the confidentiality of the information related to the sampled exporting producers.
- (147) Therefore the Commission did not consider that it had imposed an unreasonable burden on the GOC. From the start, the Commission limited its investigation to those financial institutions that had provided loans to the sampled exporting producers. The Commission also considered that the questionnaire contained sufficient guidance on how to submit the requested information and how to prepare the non-confidential versions of the replies. The GOC did also not specify which specific instructions in the questionnaire were allegedly not understood. For the sake of clarity, the Commission merely requested the GOC's assistance to obtain the necessary information from the financial institutions and yet these failed to co-operate. It thus considered that requests to GOC were reasonable and the guidance was sufficient.
- (148) Furthermore, the Commission asked the cooperating banks to contact the sampled exporting producers with regard to their permission to grant access to company-specific information held by banks. However, despite the explicit request by the Commission, neither the GOC nor any of the cooperating banks did so.
- (149) The Commission had also asked the sampled exporting producers to grant access to company-specific information held by all banks, State-owned and private, from which they received loans. Although the sampled exporting producers gave their agreement to provide access to the bank data pertaining to them, the banks refused to provide the required detailed information claiming that such information was confidential and could not be released.
- (150) The Commission only received information on the corporate structure and ownership from the four State-owned banks mentioned in recital (52) but not the above mentioned information concerning loans provided to the sampled exporting producers. In addition, the Commission did not receive any information from any of the other financial institutions which had provided loans to the sampled exporting producers. One of these banks, EXIM, refused to provide its Articles of Association, arguing that this was confidential information, and provided therefore only partial information on its corporate governance.
- (151) Likewise, no specific information on risk assessments, internal loan approval process or the creditworthiness assessment of the loans granted to the sampled exporting producers was provided to the Commission, as explained in the recitals (146) to (150) above. Such information was, however, necessary to determine whether loans were provided at preferential rates to the sampled exporting producers. As such documents are typically internal to the relevant banks, they cannot be supplied through the questionnaire replies of the sampled exporting producers.
- (152) Since the Commission had no information in relation to most of the State-owned banks which provided loans to the sampled exporting producers, and no company-specific information on the loans provided by the cooperating banks, it considered that it had not received crucial information relevant to this aspect of the investigation.

⁽¹⁵⁾ Law of the People's Republic of China on Regulation of and Supervision over the Banking Industry, Order No. 58 of the President of the People's Republic of China, 31 October 2006.

- (153) Therefore, given the degree of non cooperation, the Commission informed the GOC that it may have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through preferential lending and granted the GOC a time period to comment.
- (154) The GOC did not submit any comments as regards the application of Article 28(1) of the basic Regulation.
- (155) Therefore, the Commission had to partially rely on facts available when examining the existence and the extent of the alleged subsidisation granted through preferential lending.

3.3.2. *Export credit insurance*

- (156) The Commission requested the GOC to forward a specific questionnaire to Sinasure. Sinasure provided a questionnaire reply.
- (157) However, it responded only partially to the specific questionnaire concerning export credit insurance provided to the sampled exporting producers. Furthermore, Sinasure failed to provide the supporting documentation requested concerning its corporate governance, such as its Annual Report or its Articles of Association, arguing that this was confidential information.
- (158) Sinasure also did not give any specific information about the export credit insurance provided to the electric bicycle industry, the level of its premiums or detailed figures relating to the profitability of its export credit insurance business.
- (159) In the absence of such information, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.
- (160) As outlined in recital (144), it is the Commission's understanding that the information requested from State-owned entities is available to the GOC for all entities where the GOC is the main or major shareholder. This is also the case for Sinasure, which is a fully State-owned entity. Therefore, the Commission informed the GOC that it may have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through export credit insurance and granted the GOC a time period to comment.
- (161) The GOC did not submit any comments as regards the application of Article 28(1) of the basic Regulation.
- (162) The Commission thus had to rely partially on facts available for its findings concerning export credit insurance.

3.3.3. *Provision of inputs for less than adequate remuneration*

- (163) The Commission requested the GOC to send a questionnaire, provided by the Commission, to the domestic suppliers of parts (namely engines, batteries and control units) of the sampled exporting producers. To this end, the Commission also requested all sampled exporting producers to provide the GOC with a list of their domestic suppliers.
- (164) While the sampled exporting producers communicated to the GOC the list of their domestic suppliers, the GOC refused to send any questionnaire to these suppliers. The GOC claimed that this would represent an unduly burden for them. They also claimed that since these companies act independently from the GOC, their intervention would not have delivered any result.
- (165) The Commission disagreed with this view. First, it considered that the burden of dispatching a questionnaire already prepared to a contact list already provided was not significant, especially considering the suggested possibility of using electronic mail. Second, the Commission considered that the authorities would have had a major impact in convincing not directly investigated companies to cooperate in order to establish the situation of the market in China. Indeed, in the Commission's view, the companies receiving a request from the GOC to cooperate in the investigation would have been more effective than if the same companies were to receive a letter from the Commission. In any case, the Commission considered that the information that can be provided by the suppliers to the electric bicycles industry is essential in determining whether the electric bicycles industry received inputs for less than adequate remuneration. The Commission therefore considered that information should be collected in this regard and that the GOC would be best placed to do so or, at the very least, facilitate the process as requested by the Commission. It would also be in the interest of the electric bicycles industry in China to rebut the allegations in the complaint that they would indeed receive inputs for a less than adequate remuneration. The arguments of the GOC in this respect were therefore rejected.

- (166) The GOC also refused to provide a full list of domestic input suppliers and their ownership structure claiming that this was confidential information. In this respect, the Commission observes that the basic Regulation provides for ways to protect confidential information. Also, the GOC did not indicate which of the known suppliers were State-owned entities and which were privately owned. The GOC explained that it had no authority to demand such information from companies that did not reply to the questionnaire, as they would operate independently of the GOC. However, it is the Commission's understanding that the information requested from State-owned entities is available to the GOC for all entities where the GOC is the main or major shareholder. Also, when requesting a business licence or its renewal, companies need to provide information on their shareholding to the Administration of Industry and Commerce. In this context, the information on shareholding would thus be available to the GOC. Additionally, the GOC failed to provide information on pricing.
- (167) Only one producer of electric engines and supplier of batteries, Bafang, which had provided inputs to the sampled exporting producers came forward and requested to be sent a specific questionnaire intended for suppliers. This supplier also submitted a questionnaire reply. No other supplier of input materials came forward.
- (168) In sum, the Commission considered that it lacked important information concerning three aspects: first, information on the ownership and governance structure of the input suppliers. Without such information the Commission could not determine whether these producers are public bodies or not. Second, company-specific information from the input suppliers, such as e.g. information on the price setting of the inputs provided to the sampled exporters. Third, information concerning the market structure. The information that should have been provided by the domestic suppliers of inputs is, however, necessary in order to determine whether inputs had been provided for less than adequate remuneration to the sampled exporting producers. Furthermore, such information could only be provided by the suppliers of inputs themselves, and could thus not be supplied through the questionnaire replies of the sampled exporting producers. The information concerning the market structure was also essential and the GOC was best placed to provide such information or at the very least to help the Commission obtain it from the input suppliers.
- (169) Therefore, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.
- (170) Therefore, the Commission informed the GOC that it may have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through the provision of inputs for less than adequate remuneration and granted the GOC a time period to comment. The GOC did not provide any comments.
- (171) Giant claimed that the Commission has misconstrued Article 28 of the basic Regulation. It claimed that Article 28 refers to non cooperation of interested parties and that engine and battery providers are not interested parties. It also claimed that there is no allegation that Giant failed to cooperate and that it provided all information concerning its purchases of engines and batteries. Furthermore it claimed that the Commission should have contacted suppliers directly instead of relying on the GOC to carry out tasks of the investigating authority; i.e. send questionnaires to suppliers of input material.
- (172) In this regard, it should first be noted that it is not disputed that Giant cooperated fully with the investigation and that it provided all requested information. However, as mentioned in recitals (163) to (167) and summarized in recital (168), it is recalled that the GOC did not cooperate to the best of its abilities so that the the Commission lacked important information concerning several aspects of this part of the investigation, namely information on the ownership and governance structure of the input suppliers, and information concerning the market structure and behaviour since the GOC failed to provide an adequate questionnaire reply and also company-specific information from the input suppliers since the GOC failed to forward the relevant questionnaire to a contact list of input material suppliers. As far as the dispatching of the questionnaire is concerned, reference is made to recitals (164) and (165) where this issue is already addressed. In any case, since the GOC should undoubtedly be considered as an interested party in this proceeding, it was considered that the Commission did not misconstrue Article 28 of the basic Regulation when considering that the GOC was partially cooperating and when using facts available in those matters where, as a consequence of partial cooperation of the GOC, the Commission lacked important information to be provided by the GOC directly and by suppliers of input material after receiving the relevant questionnaire from the GOC. On this basis, this claim had to be rejected.

- (173) The Commission had therefore to rely also on facts available for its findings concerning the provision of electric engines and batteries for less than adequate remuneration in accordance with Article 28(1).

3.4. Subsidies and subsidy programmes within the scope of the current investigation

- (174) On the basis of the information contained in the complaint, the Notice of initiation and the replies to the Commission's questionnaire, the alleged subsidisation through the following subsidies by the GOC were investigated:

- (a) Provision of preferential loans and directed credits by State policy banks and State-owned commercial banks.
- (b) Preferential Export credit insurance.
- (c) Grant Programmes:
 - grant programmes such as 'Famous Brand Programme', 'Famous Chinese Trademark', 'Excellent brand enterprises', 'Top Tax-Payer', 'AAA Enterprise', 'China Far-famed Brand' and local programmes such as the 'Science and Technology Progress Medal of Shandong Province' or 'Famous Product of Jiangsu Province';
 - grants for technological achievements, such as technology innovation grants, high-tech industrial development grants, technological upgrading and transformation grants and product energy efficiency grants, subsidies for the cultivation of talent with high-technical ability, subsidies for new high-tech products, prizes for progress in science and technology, other technology-related subsidies;
 - corporate development grants such as grants to encourage reforming shareholding system or Stock Exchange listing, industrial development funds;
 - employment subsidy funds and training funds and regional grants to support the economic development such as 'One Million Skilled Talent Training Benefit Plan', the 'Post-doctor policy' and other schemes aimed at improving the competence of the enterprises' employees and reducing their labour costs;
 - funds by local governments of several Chinese provinces e.g. programs sponsored by Tianjin such as export assistance grant provided by the city of Tianjin; export brand development fund provided by the city of Tianjin;
 - science and technology fund for Tianjin Binhai New Area and Tianjin Economic and Technological Development Area;
 - enterprise technology centers (Tianjin City and Jinnan District); Tianjin Cycle Industry Park Development Assistance Fund and Tianjin Binhai New Area Special Development and Construction Assistance Fund;
 - *ad hoc* grants provided by municipal/Provincial authorities, such as patent funds, science and technology funds and awards, business development funds, export promotion funds.
- (d) Government revenue that is otherwise due or forgone or not collected including:
 - Preferential income tax treatment and tax-offset for Research and Development and preferential income treatment to enterprises located in specific development areas;
 - Enterprise Income Tax (EIT) reduction-benefits for high and new technology enterprises;
 - Withholding tax reduction for dividends from foreign-invested Chinese enterprises and their non-Chinese parent companies.
- (e) Revenue foregone through Indirect Tax and Import Tariff Programmes:
 - VAT exemptions and import tariff rebates for the use of imported equipment and technology;
 - Import tariff waivers for processing trade.
- (f) Government provision of goods and services for less than adequate remuneration (LTAR):
 - provision of land for less than adequate remuneration;
 - provision of power (e.g. electricity or gas) for less than adequate remuneration to preferred industries;
 - provision of input materials (i.e. batteries, engines and other bicycles parts whether already assembled or not) for less than adequate remuneration.

3.5. Preferential financing and insurance: loans

- (175) According to the information provided by the five sampled exporting producers, 18 financial institutions located within the PRC had provided loans, credit lines or bank acceptances to them. Of these 18 financial institutions, 11 were State-owned banks ⁽¹⁶⁾. The 7 remaining financial institutions were either privately owned or their ownership could not be determined given the non cooperation described in recitals (141) to (155). Only four State-owned banks filled in the specific questionnaire destined to banks (or other financial institutions), despite a request to the GOC to contact all relevant financial institutions which had provided loans to the sampled exporting producers and provide them with the relevant questionnaires.

3.5.1. State-owned banks acting as public bodies

- (176) The Commission ascertained whether the State-owned banks were acting as public bodies within the meaning of Articles 3 and 2 (b) of the basic Regulation. In this respect, the applicable test to establish that a State-owned undertaking is a public body is as follows ⁽¹⁷⁾: *‘What matters is whether an entity is vested with authority to exercise governmental functions, rather than how that is achieved. There are many different ways in which government in the narrow sense could provide entities with authority. Accordingly, different types of evidence may be relevant to showing that such authority has been bestowed on a particular entity. Evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority, particularly where such evidence points to a sustained and systematic practice. It follows, in our view, that evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions. We stress, however, that, apart from an express delegation of authority in a legal instrument, the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority. Thus, for example, the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority. In some instances, however, where the evidence shows that the formal indicia of government control are manifold, and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority.’* In the present case, the conclusion that the State-owned banks are vested with authority to exercise governmental functions is based on formal indicia of government control and evidence showing that it has been exercised in a meaningful way.
- (177) The Commission sought information about State ownership as well as formal indicia of government control in the State-owned banks. It also analysed whether control had been exercised in a meaningful way. For this purpose, the Commission had to partially rely on facts available due to the refusal of the GOC and the State-owned banks to provide evidence on the decision making process that had led to the preferential lending.
- (178) In order to carry out this analysis, the Commission first examined information for the three State-owned banks that had filled in the specific questionnaire and were available for a meeting with the Commission staff.

3.5.1.1. Cooperating state-owned banks

- (179) The following four State-owned banks provided a questionnaire reply: EXIM, ABC, ICBC and BOC. As explained in the recital (150) EXIM did not however submit its comprehensive Articles of Association, arguing that this was confidential information. Also, the Commission was unable to verify the submitted information since all these banks only agreed to meet the Commission officials at the premises of the GOC, but did not allow an on-spot verification visit at the premises of the banks.

Ownership and formal indicia of control by the GOC

- (180) Based on the information received in the questionnaire reply and during the verification visit of the GOC, the Commission established that the GOC held, either directly or indirectly, more than 50 % of the shares in each of these financial institutions.

⁽¹⁶⁾ See recital (179) for the cooperating state-owned banks and recitals (210) for the names and the data concerning the non-cooperating state-owned banks.

⁽¹⁷⁾ WT/DS379/AB/R (US – Anti-Dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US - Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9 - 4.10, 4.17 - 4.20 and WT/DS437/AB/R (United States - Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92.

- (181) Concerning the formal indicia of government control of the four cooperating State-owned banks, the Commission qualified all of them as ‘key State-owned financial institutions’. In particular, the notice ‘Interim Regulations on the Board of Supervisors in Key State-owned Financial Institutions’ states that: ‘The key State-owned financial institutions mentioned in these Regulations refer to State-owned policy banks, commercial banks, financial assets management companies, securities companies, insurance companies, etc. (hereinafter referred to as State-owned financial institutions), to which the State Council dispatches boards of supervisors’.
- (182) The Board of Supervisors of the key State-owned financial institutions is appointed according to the ‘Interim Regulations of Board of Supervisors of State-owned Key Financial Institutions’. Based on Articles 3 and 5 of these Interim Regulations, the Commission established that Members of the Board of Supervisors are dispatched by and accountable to the State Council, thus illustrating the institutional control of the State on the cooperating state-owned banks’ business activities. In addition to these generally applicable indicia, the Commission found the following with respect to the three State-owned banks:

EXIM

- (183) EXIM was formed and operates in accordance with ‘The Notice of Establishing Export-Import Bank of China’ issued by the State Council, as well as the Articles of Association of EXIM. According to its Articles of Association ⁽¹⁸⁾, the State directly nominates the management of EXIM. The Board of Supervisors is appointed by the State Council in accordance with the ‘Interim Regulations on the Boards of Supervisors in Key State-owned Financial Institutions’ (State Council Decree No. 282) and other laws and regulations, and it is responsible to the State Council.
- (184) The Articles of Association also mention that the Party Committee of EXIM plays a leading and political core role to ensure that policies and major deployment of the Party and the State are implemented by EXIM. The Party’s leadership is integrated into all aspects of corporate governance.
- (185) The Articles of Association further state that EXIM is dedicated to supporting the development of foreign trade and economic cooperation, cross-border investment, the One Belt One Road Initiative, cooperation in international capacity and equipment manufacturing. Its scope of business includes short-term, medium-term and long-term loans as approved and in line with the State’s foreign trade and ‘going out’ policies, such as export credit, import credit, foreign contracted engineering loans, overseas investment loans, Chinese government foreign aid loans and export buyer loans.

ABC

- (186) As mentioned in Article 137 of ABC’s Articles of Association, the GOC, in its capacity of main shareholder holding 79,62 %, has the power to appoint all of the Directors in the Board of Directors. The same applies to the Board of Supervisors according to Article 204 of the Articles of Association.
- (187) Moreover, according to ABC’s Articles of Association, the Board of Directors determines the strategy of the bank, decides on the budget of the bank, takes investment decisions, appoints the President and the Board Secretary of the bank, and establishes and monitors the risk management system of the bank. This non-exhaustive list of responsibilities illustrates the institutional control of the State on ABC’s daily business.
- (188) The Commission also found that State-owned financial institutions, including ABC, ICBC and BOC, have changed their Articles of Associations in 2017 to increase the role of the China Communist Party (‘CCP’) at the highest decision-making level of the banks.
- (189) These new Articles of Association stipulate that:
- the Chairman of the Board of Directors shall be the same person as the Secretary of the Party Committee;
 - the CCP’s role is to ensure and supervise the Bank’s implementation of policies and guidelines of the CCP and the State; as well as to play a leadership and gate keeping role in the appointment of personnel (including senior management); and
 - the opinions of the Party Committee shall be heard by the Board of Directors for any major decisions to be taken.

⁽¹⁸⁾ EXIM submitted only an abstract of its Articles of Association, but not the comprehensive version of it.

BOC

- (190) As mentioned in Article 125 of the Articles of Association, the GOC, in its capacity of main shareholder holding 64,63 %, has the power to appoint both the executive and the non-executive Directors of the bank, which constitute the Board of Directors.
- (191) Moreover, according to BOC's Articles of Association, the Board of Directors decides, *inter alia*, the financial institution's strategic principles, business plans and major investment plans, appoints or dismisses senior staff such as the President and Secretary of the Board, the Vice President, and other senior management personnel. The Board further decides on the implementation of resolutions at the shareholders' meeting, and approves corporate governance policies. This non-exhaustive list of responsibilities illustrates the institutional control of the State on BOC's daily business.
- (192) In addition, the new stipulations concerning the role of the CCP mentioned in recitals (189) above also apply to BOC:
- Evidence showing that the Government exercised meaningful control over the conduct of those institutions.

ICBC

- (193) As mentioned in Article 115 of the Articles of Association, the GOC, in its capacity of main shareholder holding 69,31 %, has the power to appoint both the executive and the non-executive Directors of the bank, which constitute the Board of Directors.
- (194) Moreover, according to ICBC's Articles of Association, the Board of Directors decides, *inter alia*, the business plan, investment proposal and development strategies of the Bank, appoints or dismisses senior staff such as the President and Secretary of the Board, the Vice President, and other senior management personnel. The Board further decides on the implementation of resolutions at the shareholders' meeting, and formulates the basic management systems. This non-exhaustive list of responsibilities illustrates the institutional control of the State on ICBC's daily business.
- (195) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of the four cooperating State-owned banks with respect to their lending policies and assessment of risk, where they provided loans to the electric bicycle industry. The following regulatory documents have been taken into account in this respect:
- Article 34 of the Law of the PRC on Commercial Banks ('Bank law');
 - Article 15 of the General Rules on Loans (implemented by the People's Bank of China);
 - Decision No. 40 of the State Council on Promulgating and Implementing the Temporary Provisions on Promoting Industrial Structure Adjustments ('Decision No. 40');
 - Implementing Measures of the China Banking Regulatory Commission ('CBRC') for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBRC [2017] No.1);
 - Implementing Measures of the CBRC for Administrative Licensing Matters relating to Foreign-funded Banks (Order of the CBRC [2015] No.4);
 - Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBRC [2013] No.3).
- (196) Reviewing these regulatory documents, the Commission found that financial institutions in the PRC are operating in a general legal environment that directs them to align themselves with the GOC's industrial policy objectives when taking financial decisions, for the reasons outlined below.
- (197) With respect to EXIM, its public policy mandate is established in the notice of establishing the Import Export Bank of China as well as in its Articles of Association.
- (198) At the general level, Article 34 of the Bank law, which applies to all financial institutions operating in China, provides that '*Commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State*'. Although Article 4 of the Bank Law states that '*Commercial banks shall, pursuant to law, conduct business operations without interference from any unit or individual. Commercial banks shall independently assume civil liability with their entire legal person property*', the investigation showed that Article 4 of the Bank law is applied subject to Article 34 of the Bank law, i.e. where the State establishes a public policy the banks implement it and follow State instructions.

- (199) In addition, Article 15 of the General Rules on Loans provides: 'In accordance with the State's policy, relevant departments may subsidize interests on loans, with a view to promoting the growth of certain industries and economic development in some areas'.
- (200) The publicly available information further confirmed that the above provisions are applied in practice. For example the 2016 annual report of ICBC states inter alia that '*Bank actively implemented national policies, further supported the supply-side structural reform, [...]The Bank continued to bolster the government's key programs and significant construction projects, and proactively aligned with the national development strategies on the "four regions" (western regions, northeastern regions, eastern regions and central regions) and the "three supporting belts" (the "Belt and Road" initiative, the coordinated development of the Beijing-Tianjin-Hebei region and the development of the Yangtze River Economic Zone)*' ⁽¹⁹⁾.
- (201) The Commission also found that the China Banking and Regulatory Commission ('CBRC') has far-reaching approval authority over all aspects of the management of all financial institutions established in the PRC (including privately owned and foreign owned financial institutions), such as ⁽²⁰⁾:
- approval of the appointment of all managers of the financial institutions, both at the level of headquarters and at the level of local branches. Approval of the CBRC is required for the recruitment of all levels of management, from the most senior positions down to branch managers, and even includes managers appointed in overseas branches as well as managers responsible for support functions (e.g. the IT managers); and
 - a very long list of administrative approvals, including approvals for setting up branches, for starting new business lines or selling new products, for changing the Articles of Association of the bank, for selling more than 5 % of their shares, for capital increases, for changes of domicile, for changes of organizational form, etc.;
 - the Bank law is legally binding. The mandatory nature of the Five Year Plans and of Decision No. 40 has been established above in section 3.1. The mandatory nature of the CBRC regulatory documents derives from its powers as the banking regulatory authority. The mandatory nature of other documents is demonstrated by the supervision and evaluation clauses which they contain.
- (202) On that basis, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of the cooperating State-owned banks whenever those were providing loans to the electric bicycle industry.
- (203) The Commission also sought concrete proof of the exercise of control in a meaningful way on the basis of concrete loans. During the investigation, the cooperating State-owned banks maintained that in practice they had used appropriate credit risk assessment policies and models when granting the loans at issue.
- (204) However, no concrete examples relating to the sampled exporting producers were provided. As also explained in recitals (144) to (155) the four cooperating State-owned banks refused to provide information, including their specific credit risk assessments, related to the sampled exporting producers for regulatory reasons and contractual reasons even though the Commission had provided them with a written consent from the sampled exporting producers waiving their confidentiality rights.
- (205) In the absence of concrete evidence of creditworthiness assessments of the banks, the Commission examined the overall legal environment as set out above in recitals (195) to (202), in combination with the behaviour of the four cooperating State-owned banks with regard to the loans provided to the sampled exporting producers. This behaviour apparently contrasted with their official stance expressed during the verification visit at the GOC, as in practice they failed to provide any evidence that they are acting based on thorough market-based risk assessments.
- (206) The verification visits revealed that with the exception of one exporting producer which did not have any outstanding bank loans during the IP, loans were provided to the four remaining groups of sampled exporting producers at interest rates close to the People's Bank of China ('PBOC') benchmark or interbank reference interest rates, regardless of the companies' financial and credit risk situation. Hence, the loans were provided below

⁽¹⁹⁾ ICBC Annual report 2016, p.22.

⁽²⁰⁾ According to the Implementing Measures of the CBRC for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBRC [2017] No. 1), Implementing Measures of the CBRC for Administrative Licensing Matters relating to Foreign-funded Banks (Order of the CBRC [2015] No. 4), Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBRC [2013] No. 3).

market rates when compared to the rate corresponding to the risk profile of the four sampled exporting producers. In addition, one sampled exporting producer had received new loans with similar conditions as the maturing loans on the same day that the old loans were repaid. Thus the arrangement was functioning *de facto* as a system of revolving loans. Furthermore, three out of the five sampled exporting producers benefitted from bank acceptances against a standard fee of 0,05 % regardless of the companies' financial and credit risk situation.

- (207) The Commission therefore concluded that the GOC has exercised meaningful control over the conduct of the cooperating State-owned banks with respect to their lending policies and assessment of risk concerning the electric bicycle industry.

Conclusion on cooperating financial institutions

- (208) The Commission found that the legal framework set out above is being implemented by the four co-operating State-owned financial institutions in the exercise of governmental functions with respect to the electric bicycle sector, thereby acting as public bodies in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law.

3.5.1.2. Non-cooperating State-owned banks

- (209) As set out in section 3.3 above, none of the other State-owned banks which provided loans to the sampled exporting producers replied to the specific questionnaire. Therefore, in line with the conclusions reached in recitals (141) to (155)(153) above, the Commission decided to use facts available to determine whether those State-owned banks qualify as public bodies.
- (210) In the anti-subsidy investigation on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China ⁽²¹⁾, the Commission established that the following banks which had provided loans, credit lines or bank acceptances to the five sampled groups of exporting producers in this investigation were partially or fully owned by the State itself or by State-held legal persons: China Merchants Bank, Shanghai Pudong Development Bank, Bank of Ningbo, Everbright bank, Bank of Communications, China Construction Bank, Bohai Bank and Citic Bank. Since no information has been provided indicating otherwise, the Commission maintained the same conclusion in the present investigation.
- (211) The Commission further established, absent any information from the financial institutions at issue indicating otherwise, GOC ownership and control based on formal indicia for the same reasons as set out above in section 3.5.1.1 In particular, and absent any evidence indicating otherwise, managers and supervisors in the non-cooperating State-owned bank are assumed to be appointed by the GOC and accountable to the GOC in the same manner as in the cooperating State-owned banks.
- (212) With regard to the exercise of control in a meaningful manner, and in the absence of any other information, the Commission considered that the findings concerning the four cooperating financial institutions are also representative for the non-cooperating State-owned financial institution. The normative framework analyzed in section 3.5.1.1 above applies to them in an identical manner. Thus, absent any indication to the contrary, and on the basis of facts available, the lack of concrete evidence of creditworthiness assessments is valid in the same manner as for the four cooperating State-owned banks.
- (213) Moreover, the Commission observed that the majority of loan contracts provided to the sampled exporting producers had all similar conditions and that the lending rates which had been agreed were also similar and partly overlapped with the rates provided by the four cooperating State-owned banks.
- (214) The Commission therefore considered that the findings for the cooperating State-owned banks constituted the facts available under Article 28 of the basic Regulation for assessing the other State-owned banks, due to those similarities in loan conditions and lending rates and the representativeness of the three financial institutions that were verified.
- (215) On that basis, the Commission concluded that each of the other State-owned banks, which provided loans to one of the sampled exporting producers, is a public body within the meaning of Articles 3 and 2 (b) of the basic Regulation.

⁽²¹⁾ OJ L 176, 30.6.2016, p. 55, recital (132).

3.5.1.3. Conclusion on State-owned financial institutions

- (216) In light of the above considerations the Commission found that all State-owned Chinese financial institutions that provided loans to the sampled groups of cooperating exporting producers are public bodies within the meaning of Articles 3 and 2 (b) of the basic Regulation.
- (217) In addition, even if the State-owned financial institutions were not to be considered as public bodies, they can be considered entrusted and directed by the GOC to carry out functions normally vested in the government, within the meaning of Article 3 (1)(a)(iv) of the basic Regulation for the same reasons as set out in recitals (218) to (222) below. Thus, their conduct would be attributed to the GOC in any event as explained in section 3.5.1

3.5.2. Entrustment and direction of private financial institutions and institutions whose ownership is not known

- (218) The following financial institutions were considered to be privately owned, based on publicly available information: Mizuho Bank (and Mizuho Corporate Bank), Bank of Tokyo Mitsubishi UF and Minsheng Bank. For the following financial institutions, in the absence of cooperation and in the absence of sufficient publicly available information the Commission could not ascertain whether they were State owned or privately owned: Zhejiang Jinhua Chengtai Rural Commerce Bank, Zhejiang Yongkang Rural Commerce Bank and Pufa Bankwere. Following a conservative approach, the Commission analysed the latter in the same manner as privately owned financial institutions and they are referred hereafter as 'privately owned financial institutions'. The Commission analysed whether these privately owned financial institutions had been entrusted or directed by the GOC to grant subsidies to the electrical bicycles sector within the meaning of Article 3(1)(a)(iv) of the basic Regulation.
- (219) According to the WTO Appellate Body Report 'United States – Countervailing duty investigation on Dynamic Random Access Memory (DRAMS) from Korea' ⁽²²⁾; 'entrustment' occurs where a government gives responsibility to a private body and 'direction' refers to situations where the government exercises its authority over a private body. In both cases, the government uses a private body as a proxy to effectuate the financial contribution, and 'in most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement' ⁽²³⁾. At the same time, Article 3(1)(a)(iv) of the basic Regulation does not allow Members to impose countervailing measures to products 'whenever the government is merely exercising its general regulatory powers' ⁽²⁴⁾ or where government intervention 'may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market' ⁽²⁵⁾. Rather, entrustment and direction implies 'a more active role of the government than mere acts of encouragement' ⁽²⁶⁾.
- (220) The normative framework concerning the electric bicycle industry mentioned above in recitals (195) to (202) applies to all financial institutions in the PRC, including privately owned financial institutions. To illustrate this, the Bank Law and the various orders of the CBRC cover all Chinese-funded and foreign-invested banks under the management of the CBRC.
- (221) Furthermore, the investigation showed that the majority of the loan contracts of the sampled exporting producers had similar conditions, and that the lending rates provided by the private financial institutions were similar in most of the cases and partly overlapped with the rates provided by the publicly owned financial institutions.
- (222) In the absence of any divergent information received from the private financial institutions, the Commission therefore concluded that, in so far as the electric bicycle is concerned, all financial institutions (including private financial institutions) operating in China under the supervision of the CBRC have been entrusted or directed by the State in the sense of Article 3(1)(a)(iv), first indent of the basic Regulation to pursue governmental policies and provide loans at preferential rates to the electric bicycle industry.
- (223) After disclosure several interested parties contested the view that the Chinese private banks are 'entrusted' or 'directed' by the GOC.

⁽²²⁾ WT/DS/296 (DS296 United States – Countervailing duty investigation on Dynamic Random Access Memory (DRAMS) from Korea), Appellate Body Report of 21 February 2005, para. 116.

⁽²³⁾ Appellate Body Report, DS 296, para. 116.

⁽²⁴⁾ Appellate Body Report, DS 296, para. 115.

⁽²⁵⁾ Appellate Body Report, DS 296, para. 114, agreeing with the Panel Report, DS 194, para. 8.31. on that account.

⁽²⁶⁾ Appellate Body Report, DS 296, para. 115.

- (224) First, one party claimed that despite the Article 34 of the Chinese Bank Law referred to in recital (198), the law does not oblige banks to align with the GOC's industrial policy objectives. They claimed that the Article 34 is a general statement without practical implications, and that state industrial policies merely play a guiding and not a decisive role. The same party also referred to Article 41 of the Chinese Bank Law to support their argument that the GOC cannot force private banks to any specific course of action. Furthermore, they rejected that 'lending rates provided by the private financial institutions were similar in most of the cases and partly overlapped with the rates provided by the publicly owned financial institutions' as set out in recital (221) as a valid indicator for entrustment or direction. In sum, the party claimed that the evidence available is insufficient to show entrustment or direction.
- (225) Second, this party claimed that the CBRC's approval authority over the appointment of managers and administrative actions explained in the recital (200) does not result in an explicit or affirmative action of delegation or command.
- (226) Third, the same party claimed that the mere fact that private parties act in a not commercially reasonable manner is not enough to establish entrustment or direction.
- (227) Fourth, several interested parties argued that the Commission had not conducted an individual assessment per financial institution and that any entrustment or direction cannot be demonstrated without conducting a verification at the financial institutions concerned.
- (228) Finally one party claimed that the Commission had mixed up the notions of 'entrustment' and 'direction'.
- (229) As regards the first, second and third claim the Commission would like to recall that there was no cooperation from the financial institutions or the GOC and consequently no evidence or divergent information had been provided that contradicted the conclusions reached in recitals (175) to (222) above. In fact, the Chinese Banking Law has to be examined in view of the totality of the evidence available, which indicates that those statements are more than mere acts of encouragement. Also as regards the fourth claim, due to the non cooperation, none of the financial institutions could be individually assessed. Moreover, the publicly available information from the Chinese banks contradicts the claim that there is no proof of entrustment or direction and that the GOC cannot force private banks for any course of action. Indeed, those private banks are directed by the GOC to achieve the public policy objectives of supporting certain encouraged sectors by providing preferential lending. Moreover, in the absence of information to the contrary, as pointed out in recital (221) above, the Commission established that private banks applied similar conditions and interest rates as those of the public banks. This is an indication that private banks followed the government lending policy enshrined in the the Bank Law and the various orders of the CBRC. Finally, the claim that the Commission had mixed up the notions of entrustment and direction was not substantiated or explained in any further details. The Commission however noted that the 'entrustment' and 'direction' standards are not mutually exclusive, since in both cases, the government uses a private body as a proxy to effectuate a financial contribution. Therefore these claims had to be rejected.

3.5.3. Specificity

- (230) As demonstrated in recitals (195) to (202), several regulatory documents which are specifically targeted at companies in the electric bicycle sector, direct the financial institutions to provide loans at preferential rates to the electric bicycle industry. On the basis of these documents it is demonstrated that the financial institutions only provide preferential lending to a limited number of industries/companies which comply with the relevant policies of the GOC.
- (231) The Commission therefore concluded that subsidies in the form of preferential lending are not generally available but are specific within the meaning of Article 4(2)(a) of the basic Regulation. Moreover there was no evidence submitted by any of the interested parties suggesting that the preferential lending is based on objective criteria or conditions in the sense of Article 4(2)(b) of the basic Regulation.
- (232) After disclosure several interested parties claimed that the preferential lending is not specific to the electric bicycle industry and it should not be considered as countervailable. They argued that the Commission should have demonstrated the specificity on the basis of positive evidence. One of these parties further claimed that the 13th Five-Year plan mentions in fact a wide range of industries other than electric bicycles and that it does not set out or direct any subsidies but it only encourages the development of the industries mentioned therein. This party also claimed that it cannot be concluded that the banks are compelled to grant loans at preferential rates.

- (233) The Commission would like to recall that first, as stated in recital (220), the normative framework concerning the electric bicycle industry applies to all financial institutions in the PRC and provides, among others, that *Commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State*. Second, as laid down in recitals (96) to (139) the provisions of not only the 13th Five-Year plan but also of several other government plans lay down specific government policies in order to support the electric bicycle industry. Further, due to the absence of cooperation the GOC and any of the financial institutions this was the only information available on which basis the Commission could draw its conclusions in accordance with Article 28 of the basic Regulation. In addition, none of the interested parties provided any evidence in order to support these claims. Finally, the Commission noted that the 13th Five-Year Plan, when examined in its proper context, cannot be deemed as a mere act of encouragement, and also its public support objectives are not limited to most industries in China, but specifically to certain industries. Therefore the claims were rejected.

3.5.4. Benefit and calculation of the subsidy amount

- (234) For the calculation of the amount of the countervailable subsidy the Commission assessed the benefit conferred on the recipients during the investigation period. According to Article 6(b) of the basic Regulation, the benefit conferred on the recipients is the difference between the amount of interests that the company pays on the preferential loan and the amount that the company would pay for a comparable commercial loan obtainable on the free market.
- (235) In this regard, the Commission noted a number of specificities on the Chinese electric bicycle market. As explained in sections 3.5.1 to 3.5.3 above, the loans provided by Chinese financial institutions reflect substantial government intervention and do not reflect rates that would normally be found in a functioning market.
- (236) The sampled groups of exporting producers differ in terms of their general financial situation. Each of them benefitted from different types of loans during the investigation period with variances in respect of e.g. maturity, collateral, guarantees and other attached conditions. For those two reasons, each exporting producer had a different average interest rate based on its own set of loans received.
- (237) The Commission assessed individually the financial situation of each sampled group of exporting producers in order to reflect these particularities. In this respect, the Commission followed the calculation methodology for preferential lending established in the anti-subsidy investigation on hot rolled flat steel products originating in the PRC ⁽²⁷⁾ and explained in the recitals below. As a result, the Commission calculated the benefit from the preferential lending practices for each sampled group of exporting producers on an individual basis, and allocated such benefit to the product concerned.

3.5.4.1. Credit ratings

- (238) In the anti-subsidy investigation on hot rolled flat steel products originating in the PRC ⁽²⁸⁾, the Commission already determined that domestic credit ratings awarded to Chinese companies were not reliable, based on a study published by the International Monetary Fund (IMF) ⁽²⁹⁾, showing a discrepancy between international and Chinese credit ratings, which is confirmed with the findings of this investigation concerning the sampled exporting producers. Indeed, according to the IMF, over 90 % of Chinese bonds are rated AA to AAA by local rating agencies. This is not comparable to other markets, such as the Union or the US. For example, less than 2 % of firms enjoy such top-notch ratings in the US market. Chinese credit rating agencies are thus heavily skewed towards the highest end of the rating scale. They have very broad rating scales and tend to pool bonds with significantly different default risks into one broad rating category ⁽³⁰⁾.
- (239) In addition, foreign rating agencies, such as Standard and Poor's and Moody's, typically apply an uplift over the issuer's baseline credit rating based on an estimate of the firm's strategic importance to the Chinese government

⁽²⁷⁾ OJ L 176, 30.6.2016, p. 55, chapter 3.4.4, recitals (152) to (244).

⁽²⁸⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁹⁾ IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

⁽³⁰⁾ Livingston, M. Poon, W.P.H. and Zhou, L. (2017). *Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry*, in *Journal of Banking & Finance*, p. 24.

and the strength of any implicit guarantee when they rate Chinese bonds issued overseas ⁽³¹⁾. Another international rating agency, Fitch, for example clearly indicates, where applicable, that such guarantees are a key driver underlying its credit ratings of Chinese companies ⁽³²⁾.

- (240) During the investigation, the Commission found further information to complement this analysis. First, the Commission determined that the State can exercise influence over the credit rating market as credit rating agencies are at least partly State-owned. Thus, according to two studies published in 2016, there were around 12 credit rating agencies active on the Chinese market, a majority of which are State-owned. In total, 60 % of all rated corporate bonds in China had been rated by a State-owned ratings agency ⁽³³⁾.
- (241) The GOC confirmed that, during the IP, there were 12 credit rating agencies active on China's bond market, among which 10 domestic rating agencies. There were also 2 Sino-foreign joint venture credit rating agencies.
- (242) Second, there is no free entrance on the Chinese credit rating market. It is essentially a closed market, since rating agencies need to be approved by the China Securities Regulatory Commission ('CSRC') or the PBOC before they can start operations ⁽³⁴⁾. During the investigation period, foreign rating agencies were not allowed as such to operate on the Chinese domestic market, since the credit rating market was included in the 'restricted' category of the GOC's Catalogue of Industries for Guiding Foreign Investment, and foreign credit rating agencies were prohibited from issuing domestic bond ratings. The PBOC announced mid-2017 that overseas credit rating agencies would be allowed to carry out credit ratings on part of the domestic bond market, under certain conditions, but this was not yet applicable during the investigation period ⁽³⁵⁾. Nevertheless, in the meantime, foreign agencies did establish joint ventures with some local credit rating agencies, which provide credit ratings for domestic bond issues. However, these ratings follow Chinese rating scales and are thus not comparable with international ratings, as explained above.
- (243) Furthermore, the investigation found that the sampled exporting producers, had obtained their credit ratings, if any, only from their lending banks and not by any credit rating agency.
- (244) In view of the situation described in recitals (238) to (243) above, the Commission concluded that Chinese credit ratings do not provide a reliable estimation of the credit risk of the underlying asset.

Giant group

- (245) For the purpose of the current investigation, the Giant group in China consisted of one exporting producer and three companies providing inputs. Additionally, one related company in China was producing electrical bicycles, but not exporting the product concerned to the Union market. Other group companies were not considered for this investigation, as they were not involved in the production and sale of electrical bicycles. The headquarters of the group are located in Taiwan, and there is no holding company within China exercising control over all the companies operating in the PRC.

⁽³¹⁾ Price, A.H., Brightbill T.C., DeFrancesco R.E., Claeys, S.J., Teslik, A. and Neelakantan, U. (2017). *China's broken promises: why it is not a market-economy*, Wiley Rein LLP, p. 68.

⁽³²⁾ For a concrete example, see Reuters. (2016). *Fitch Rates Shougang's USD Senior Notes Final 'A'* <https://www.reuters.com/article/idUSFit982112>, (accessed on 21 October 2017).

⁽³³⁾ Lin, L.W. and Milhaupt, C.J. (2016). *Bonded to the State: A Network Perspective on China's Corporate Debt Market*. Columbia Law and Economics Working Paper No. 543, p. 20; Livingstone, M. Poon, W.P.H. and Zhou, L. (2017). *Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry*, in *Journal of Banking & Finance*, p. 9.

⁽³⁴⁾ See Tentative Measures for the Administration of the Credit Rating Business Regarding the Securities Market Promulgated by Chinese Securities Regulatory Commission, Order of the China Securities Regulatory Commission [2007] No. 50, 24 August 2007; and Notice of the People's Bank of China on Qualifications of China Cheng Xin Securities Rating Co., Ltd. and other Institutions Engaged in Corporate Bond Credit Rating Business, Yinfa [1997] No. 547, 16 December 1997.

⁽³⁵⁾ See 'Announcement of PBOC on Issues concerning the Credit Rating Business Carried out by Credit Rating Agencies on the Interbank Bond Market', effective on July 1, 2017.

- (246) The Giant Group presented itself in a generally profitable financial situation according to its own financial accounts. The exporting producer of the Giant Group was profitable during the investigation period but incurred losses in 2014. Two other investigated group companies also incurred losses during the investigation period. The other financial indicators, such as the debt to assets ratio or the interest coverage ratio did not indicate any significant structural problems regarding these company's debt repayment abilities. The Giant Group had loans nominated in RMB, USD, EUR and JPY granted by Chinese financial institutions. It also secured necessary funds from three banks through bank acceptances.
- (247) The credit ratings the exporting producer of the Giant Group presented to the Commission were not from any recognised credit rating agencies but had been obtained only from Chinese state-owned financial institutions. These ratings varied between AA+ and BBB+ during the investigation period. In light of the overall distortions of Chinese credit ratings mentioned in recitals (238) to (243) above and in absence of ratings from any credit rating agencies, the Commission concluded that these ratings were not reliable.
- (248) As mentioned in section 3.5.1 above, the Chinese lending financial institutions did not provide any credit-worthiness assessment. Hence, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the Giant Group were at market level.
- (249) In absence of reliable and coherent credit ratings for the Giant group, and the specific profitability situation discussed in recital (246), the Commission considered that the overall financial situation of the group corresponds to a BB rating, which is the highest rating that does no longer qualify as 'investment grade'. 'Investment grade' means that bonds issued by the company are judged by the credit rating agency as likely enough to meet payment obligations that banks are allowed to invest in them. Therefore, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.
- (250) The premium expected on bonds issued by firms with this rating (BB) was then applied to the standard lending rate of the PBOC in order to determine the market rate.
- (251) That mark-up was determined by calculating the relative spread between the indices of US AA rated corporate bonds to US BB rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the benchmark interest rates as published by the PBOC at the date when the loan was granted ⁽³⁶⁾, and for the same duration as the loan in question. This was done individually for each loan provided to the company.
- (252) As for loans denominated in foreign currencies in the PRC, the same situation in respect of market distortions and the absence of valid credit ratings applies, because these loans are granted by the same Chinese financial institutions. Therefore, as found before, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.
- (253) After disclosure, Giant Group contested the application of BB rating as the benchmark for the overall financial situation of the group. It claimed that the Commission did not indicate prior to disclosure that there would be a requirement that only credit ratings issued by independent, specialised credit rating agencies such as Standard & Poor's, Moody's or Fitch would constitute acceptable evidence and never requested that such evidence should be provided. Giant also claimed that the chosen benchmark should reflect the market conditions prevailing in China and argued that a more suitable benchmark should be based on Taiwan or Hong Kong. It also claimed that the Commission failed to sufficiently explain why Giant does not qualify for an investment grade credit rating despite its positive financial indicators and noted that as a global group with its mother company listed on the Taiwan stock exchange, the information on the group's creditworthiness is publicly available.
- (254) As explained in the recitals (238) to (244) the investigation established that the Chinese credit ratings do not provide a reliable estimation of the credit risk of the underlying asset. Neither could the company provide any coherent and reliable credit ratings during the investigation. It is recalled that, due to the non cooperation by the financial institutions, the Commission could not verify the reliability of the credit rating procedures applied by them, including vis-à-vis the exporting producer in question. Therefore, the Commission considered that it was

⁽³⁶⁾ In case of fixed interest loans. For variable interest rate loans, the PBOC benchmark rate during the IP was taken.

appropriate to use the BB benchmark as explained in the recitals (245) to (252) above. Therefore this claim was rejected. In this regard, it is also recalled that the questionnaire sent to the exporting producers indeed included the requirement to provide their credit ratings and the companies were requested to provide complete information within the set deadline, which was also clearly indicated in the questionnaire. However, no other information of the company's creditworthiness than the one already analysed by the Commission was provided. The claim that the Commission never requested this information to be provided was therefore also rejected.

- (255) As regards the claim that the Commission should have chosen a benchmark based on Taiwan or Hong Kong appear to be based on premises that US was chosen as the benchmark for the interest rates. This is not correct. As explained in detail in recital (251) above the relative spread, not the interest rate as such, was calculated between the indices of US AA rated corporate bonds and US BB rated corporate bonds based on Bloomberg data for industrial segments. Also, as further explained in recital (293) below, this relative spread is country neutral. Therefore this claim was rejected.

Jinhua Vision Group

- (256) For the purpose of the current investigation, the Jinhua Vision Group consisted of two exporting producers, one of which ceased its activities during the IP and one company providing inputs to the exporting producers. Other group companies were not considered for this investigation, as they were not involved in the production and sale of electrical bicycles. The headquarters of the Group are located in Jinhua, China.
- (257) The two exporting producers in the Jinhua Vision Group reported different profit situations. Jinhua Vision Co., Ltd. was generally profitable during the IP, while Yongkang Hulong Electric Vehicle Co., Ltd. presented losses in 2017 and ended its operation in 2018. Furthermore, other financial indicators, such as the debt to assets ratio did not indicate any significant structural problems regarding these companies' debt repayment abilities. Both exporting producers of the Jinhua Vision Group had loans nominated in RMB granted by Chinese financial institutions.
- (258) The Commission noted that Jinhua Vision Co., Ltd. has been awarded credit ratings of A by both financial institutions providing loans to them (of which one is State-owned). In addition, Yongkang Hulong Electric Vehicle Co., Ltd. has been awarded credit ratings of BBB+ from one of the State-owned financial institutions granting loans to Jinua Vision Co., Ltd. and a credit rating of A from another financial institution. In light of the overall distortions of Chinese credit ratings mentioned in recitals (238) to (243) above and the specific profitability discussed in recital (257) above, the Commission concluded that these ratings were not reliable.
- (259) Consequently, the Commission considered that the overall financial situation of the group justified the application of the general benchmark awarding the highest grade of 'Non-investment grade' bonds, as explained in recitals (248) to (252). Therefore, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.
- (260) After disclosure, Jinhua Vision Group and also the CCCME, (the latter on a general level) contested the application of BB rating as the benchmark for the financial situation of the company. It claimed that it is unreasonable to use BB rated corporate bonds to determine an appropriate benchmark without proper consideration of the financial situation of the company.
- (261) The exporting producer concerned did not provide further evidence which would support a different credit rating. Therefore, this argument was rejected for the same reasons as the ones contained in recitals (254) and (255) above.

Yadea group

- (262) For the purpose of the current investigation, the Yadea Group in China consisted of two producers (ie Yadea Group Co., Ltd. and Tianjin Yadea Co., Ltd.), one exporting trader (ie Wuxi Yadea Export-Import Co., Ltd.) and two companies providing inputs to one of the producers (i.e. Jiangsu Yadea Technology Development Co., Ltd and Wuxi Xingwei Vehicle Fittings Co., Ltd.). Other group companies were not considered for this investigation, as they were not involved in the production and sale of electrical bicycles. The headquarters of the Group are located in Wuxi, China.
- (263) The two producers of the Yadea Group presented themselves in a generally profitable financial situation according to their own financial accounts. However, when looking at the operating profit, Yadea Group Co., Ltd. presented a negative profitability in 2017. Its overall profit was only driven by long-term equity investment income in 2017.

- (264) Although requested to do so, Yadea Group did not provide any information on its credit rating.
- (265) While none of the companies of the Yadea Group producing the product concerned had loans during the investigation period, the group secured necessary funds from four private and State-owned banks through bank acceptances.
- (266) In light of the overall distortions of Chinese credit ratings mentioned in recitals (238) to (243) above, and the specific profitability discussed in recital (263) the Commission considered that the overall financial situation of the group justified the application of the general benchmark awarding the highest grade of 'Non-investment grade' bonds, as explained in recitals (248) to (252). Therefore, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.

Rununion Group

- (267) For the purpose of the current investigation, the Rununion Group consisted of one exporting producer; *i.e.* Suzhou Rununion Motivity Co., Ltd. and one company leasing the land to the exporting producer; *i.e.* Suzhou Kaihua Electric Appliance Plastic Factory. Other group companies were not considered for this investigation, as they were not involved in the production and sale of electrical bicycles. All group companies are located in China.
- (268) While the exporting producer appeared financially healthy as it was profitable in 2016 and 2017, the situation of its related company was different *i.e.* loss-making in 2016. The accumulated losses of that company were over 20 times superior to its paid-up capital.
- (269) During the investigation period, the exporting producer secured necessary funds from two State-owned banks through bank acceptances. Such bank acceptances accounted for over 25 % of its balance sheet total. The related company leasing the land Suzhou Kaihua Electric Appliance Plastic Factory, secured its necessary funds through a loan from a related company.
- (270) Furthermore, other financial indicators, such as the debt to assets ratio or the interest coverage ratio did not indicate any significant structural problems regarding these companies' debt repayment abilities.
- (271) The Commission noted that Suzhou Rununion Motivity Co., Ltd had been awarded a credit rating of BBB+ by one Chinese State-owned financial institution, whereas Suzhou Kaihua Electric Appliance Plastic Factory did not provide any credit rating. In light of the overall distortions of Chinese credit ratings mentioned in recitals (238) to (243) above, and the specific profitability discussed in recitals (268) to (270), the Commission concluded that this rating was not reliable.
- (272) Consequently, the Commission considered that the overall financial situation of the group justified the application of the general benchmark awarding the highest grade of 'Non-investment grade' bonds, as explained in recitals (236) to (240). Therefore, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.
- (273) After disclosure, Rununion Group contested the application of BB rating as the benchmark for the financial situation of the company. It claimed that it is unreasonable to use the BB rated corporate bonds to determine an appropriate benchmark without proper consideration of the financial situation of the company.
- (274) The exporting producer concerned did not provide further evidence which would support a different credit rating. Therefore, this argument was rejected for the same reasons as the ones contained in recitals (254) and (255) above.

Bodo Group

- (275) For the purpose of the current investigation, the Bodo Group consisted of one exporting producer; *i.e.* Bodo Vehicle Group Co., Ltd. ('Bodo') and one company (Tianjin Xinbao Vehicle Industry Co., Ltd or 'Xinbao') which served as a guarantor for a number of loans. Other group companies were not considered for this investigation, as they were not involved in the production and sale of electrical bicycles. All group companies are located in China.
- (276) While both companies appeared financially viable during the period considered, Xinbao was loss-making in 2017.

- (277) During the investigation period, the exporting producer secured necessary funds from a private Chinese financial institution through a financial leasing and from two State-owned banks through loans and bank acceptances.
- (278) The loans contracted by Bodo with a State-owned Chinese bank were guaranteed by a company that had a lower credit rating than Bodo itself and the collateral used belonged to another related company, thus casting doubt about the robustness of such guarantee.
- (279) Bodo had been awarded a credit rating of AA by one Chinese State-owned financial institutions, whereas the credit rating of Xinbao deteriorated from A to BBB+ in the IP. In light of the overall distortions of Chinese credit ratings mentioned in recitals (238) to (243) above and the specific profitability discussed in recitals (276) to (278), the Commission concluded that this rating was not reliable.
- (280) In light of the overall distortions of Chinese credit ratings mentioned in recitals (238) to (243) above, and the specific profitability discussed in recitals (276) to (278) The Commission considered that the overall financial situation of the group justified the application of the general benchmark awarding the highest grade of 'Non-investment grade' bonds, as explained in recitals (217) to (221). Therefore, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.
- (281) After disclosure Bodo Group contested the application of BB rating as the benchmark for the financial situation of the company. It claimed that it is unreasonable to use the BB rated corporate bonds to determine an appropriate benchmark without proper consideration of the financial situation of the company.
- (282) The exporting producer concerned did not provide further evidence which would support a different credit rating. Therefore, this argument was rejected for the same reasons as the ones contained in recitals (254) and (255) above.

3.5.4.2. Loans

- (283) As mentioned in recital (234), according to Article 6(b) of the basic Regulation, the benefit conferred on the recipients is the difference between the amount of interest that the company pays on the preferential loan and the amount that the company would pay for a comparable commercial loan obtainable on the free market.
- (284) For loans and financial leasing denominated in RMB, the external benchmark for a comparable commercial loan was determined using the applicable interest rates as set by the People's Bank of China, adjusted with the appropriate mark-up (in order to reflect the BB rating). The mark-up was determined using an average relative spread between bonds issued by 'A' and 'BB' rated companies in the US, based on Bloomberg data for industrial segments. A specific spread was applied for each individual term (3 months, 6 months, 1 year, etc.) and added to the benchmark interest rates. This was done individually for each loan provided to the exporting producer concerned.
- (285) After disclosure, two interested parties claimed that the Chinese financial institution providing financial leasing to a sampled company is privately owned and cannot be regarded as the government body within the meaning of Article 2(b) of the basic Regulation. It also claimed that financial leasing is not a loan as it does not involve the act of borrowing and repaying with interest as it consists only in an act of lease. Furthermore, it claimed that the disclosure of the equated monthly instalment and calculation of the benefit was insufficient.
- (286) In this regard, reference is made to recitals (218) to (229) where it was concluded that all financial institutions (including private financial institutions) operating in China under the supervision of the CBRC have been entrusted or directed by the State in the sense of Article 3(1)(a)(iv), first indent of the basic Regulation to pursue governmental policies and provide loans at preferential rates to the electric bicycle industry.
- (287) As far as the qualification of such type of financial transaction is concerned, it should be noted that the sampled company concerned booked itself part of the costs involved in such transaction as an interest expense and that such financial transaction is also recognised by the credit reference center of the PBOC ('CRCP') as a loan.
- (288) As far as the disclosure is concerned, the Commission considered that it provided detailed explanations concerning the methodology applied to calculate the equated monthly instalment and also provided all formulas used to calculate the benefit received.

- (289) For loans denominated in USD, the external benchmark for a comparable commercial loan was determined using the applicable month specific USD LIBOR interest rates 3 months or 6 months, adjusted with the appropriate mark-up (in order to reflect the BB rating). The mark-up was determined using an average relative spread between bonds issued by 'A' and 'BB' rated companies in the US, based on Bloomberg data for industrial segments. A specific spread was applied for each individual term (3 months, 6 months, 1 year, etc.) and added to the benchmark interest rates. This was done individually for each loan provided to the exporting producer concerned.
- (290) For loans denominated in EUR, the external benchmark for a comparable commercial loan was determined by using the IP average rate of the ICE BofAML Euro High Yield Index. The index consists of securities which have a below investment grade rating (based on an average of Moody's, S&P, and Fitch).
- (291) For loans denominated in JPY currency, there were no data found regarding bonds issued by 'BB' rated companies in the Japanese market for industrial segments. Since Japan has a similar level of economic development as the USA, the Commission therefore considered that the USD average LIBOR rates was the most appropriate proxy for loans nominated in JPY.
- (292) After disclosure, both the CCCME and three out of the five sampled companies contested the Commission's methodology using a relative spread between US AA rated and US BB rated corporate bonds to calculate the benefit on preferential loans. All of them alleged that the Commission should have used an absolute instead of a relative spread between the US AA rated bonds and the US BB rated bonds. The following main reasons were provided:
- The level of the relative spread fluctuates with the level of the base interest rate in the US: the lower the interest rate level is, the higher the resulting mark-up will be.
 - The level of the resulting benchmark fluctuates according to the level of the PBOC benchmark rate to which it is applied. The higher the PBOC benchmark rate, the higher the resulting benchmark will be.
- (293) These arguments brought forward were already presented in the HRF case ⁽³⁷⁾ and also in the tyres case ⁽³⁸⁾. As can be seen from recitals (175) to (187) in the HRF case, the Commission rejected these arguments on the following grounds:
- First, while the Commission recognised that commercial banks usually use a mark-up expressed in absolute terms, it observed that this practice seems mainly based on practical considerations, because the interest rate is ultimately an absolute number. The absolute number is however the translation of a risk assessment that is based on a relative evaluation. The risk of default of a BB-rated company is X % more likely than default of the government or a risk-free company. This is a relative evaluation.
 - Second, interest rates reflect not only company risk profiles, but also country- and currency specific risks. The relative spread thus captures changes in the underlying market conditions which are not expressed when following the logic of an absolute spread. Often, as in the present case, the country- and currency-specific risk varies over time, and the variations are different for different countries. As a result, the risk-free rates vary significantly over time, and are sometimes lower in the US, sometimes in China. These differences relate to factors such as observed and expected GDP growth, economic sentiment, and inflation levels. Because the risk-free rate varies over time, the same nominal absolute spread can signify a very different assessment of the risk. For example, where the bank estimates the company-specific risk of default at 10 % higher than the

⁽³⁷⁾ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China, (OJ L 146, 9.6.2017, p. 17), recitals 175 to 187.

⁽³⁸⁾ Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163, (OJ L 283, 12.11.2018, p. 1), recitals 256 – 258.

risk-free rate (relative estimation), the resulting absolute spread can be between 0,1 % (at a risk-free rate of 1 %) and 1 % (at a risk-free rate of 10 %). From an investor perspective, the relative spread is hence a better measure as it reflects the magnitude of the yield spread and the way it is affected by the base interest-rate level

- Third, the relative spread is also country-neutral. For instance, where the risk-free rate in the US is lower than the risk-free rate in China, the method will lead to higher absolute mark-ups. On the other hand, where the risk-free rate in China is lower than in the US the method will lead to lower absolute mark-ups.
- Furthermore, the use of the relative spread captures changes in the underlying country-specific market conditions which are not expressed when following the logic of an absolute spread, as referred to in recital (292) above.

- (294) For these reasons, that are equally valid for the current investigation, the Commission maintained its position that the relative spread method reflects more adequately the risk premium that a financial institution would apply to the Chinese exporting producers in a non-distorted market, in particular given that the base interest rate in the PRC and the base interest rate in the US have evolved differently over time.
- (295) In addition, Giant Group claimed that the USD average LIBOR rates should not be used as a proxy for loans nominated in JPY and a credit rate should have been used that existed indeed for JPY denominated loans.
- (296) The Commission explained already in the recital (291) why it considered that the USD average LIBOR rates was the most appropriate proxy for loans nominated in JPY. No evidence was provided for similar transactions in the Japanese market either. Therefore this claim is rejected.

3.5.4.3. Credit lines

- (297) The investigation showed that Chinese financial institutions also provided credit lines in connection with the provision of individual loans to each of the sampled exporting producers. These consisted of framework agreements, under which the bank would allow the sampled exporting producer to withdraw up to a certain maximum amount of funds in the form of various debt instruments (loans, documentary bills, trade financing, etc.). Under normal market circumstances, such credit lines would normally be subject to a so-called 'arrangement' or 'commitment' fee to compensate for the bank's costs and risks for opening a credit line as well as to renewal fees charged on a yearly basis for renewing the validity of the credit lines. However, the Commission found that some of the sampled exporting producers benefited from credit lines provided free of charge.
- (298) In accordance with Article 6(d)(ii) of the basic Regulation the benefit thus conferred on the recipients is considered to be the difference between the amount that the exporting producer in question paid for the provision of credit lines by Chinese financial institutions and the amount that would have been paid for a comparable commercial credit line obtainable on the market as benchmark.
- (299) The appropriate benchmark for the arrangement fee was established at 1,5 %, by reference to publicly available data ⁽³⁹⁾ for opening similar credit lines. For credit lines existing before the beginning of the IP and renewed during the IP a renewal fee of 1,25 % was used as a benchmark following the same source. The amount of the arrangement/renewal fee is normally paid yearly. As a consequence the arrangement/renewal fee was not apportioned to the duration of the credit line.
- (300) The level of the fees used as a benchmark was applied *pro rata* to the amount of each credit line in question to obtain the amount of subsidy (minus any fees actually paid).
- (301) After disclosure one exporting producer contested the Commission assessment that the credit line agreements confer benefits to it. The following main reasons were provided:
- First, the credit line agreements are only framework arrangements for future individual loans and, as such, do not grant any benefits to the company. It claimed that the benefits had been calculated from uncommitted / unutilised credit lines.
 - Second, very minor cost is incurred by the bank when entering into the credit line agreements.
 - Third, a credit line agreement without administrative fees is not specific to the electrical bicycles industry.

⁽³⁹⁾ Fees charged by HSBC UK: https://www.business.hsbc.co.uk/.../pdfs/en/bus_bnkg_price_list.pdf.

- Fourth, the Commission has used an inappropriate benchmark in the calculation of the benefits conferred from credit line agreements. The party claimed that the Commission has failed to demonstrate that the benchmark arrangement fee corresponds to the same type of credit line agreements as those that are applicable to this party.

(302) The Commission disagrees with the arguments brought forward for the reasons set out below:

- As regards the first argument, the Commission has only calculated the benefit for those credit lines that are effectively in use and not for uncommitted / unutilised credit lines, as claimed.
- As regards the second argument, the cost incurred to the bank is not a decisive factor when assessing the appropriate benchmark, but rather the prevailing market conditions for obtaining similar credit lines. Furthermore, due to the non cooperation by the financial institutions any actual cost, or comparable fees in China could not be established. Therefore the Commission had to use facts available in accordance with Article 28 of the basic Regulation as explained in the recitals (141) to (155).
- As regards the third argument, due to the non cooperation by the financial institutions, the Commission could not establish to what extent the other sectors have benefited from credit lines provided free of charge or at less than adequate remuneration. It is nevertheless recalled that, as stated in the recital (217), the normative framework concerning the electric bicycle industry applies to all financial institutions in the PRC and provides, inter alia, that *Commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State*. It is also recalled that, as laid down in recitals (98) to (140) the provisions of not only the 13th Five-Year plan but also several other government plans lay down specific government policies in order to support the electric bicycle industry. The Commission concluded on the basis of the information available that this support is narrowed to a selected group of certain encouraged industries, as opposed to being widely available to most economic sectors in the PRC. Therefore these claims were rejected.
- As regards the fourth argument, the Commission recalls that due to the non cooperation by the financial institutions the specificities of the credit line arrangements at the Chinese market could not be verified. Also as explained in the recitals (141) to (155) the Commission had to resort to the facts available in accordance with Article 28 of the basic Regulation, including the best available benchmark for the credit lines fees. Finally, the specificities claimed by this party as regards to its credit lines were only provided following disclosure and therefore well after the time limits set out in the questionnaire to provide such information. Given the very late stage of the proceeding, such information could not be verified anymore. Moreover, such a verification would have required the cooperation by the financial entities at issue, which was also missing.

(303) For the reasons explained above, all claims made in this respect were rejected.

3.5.4.4. Bank acceptances

General

- (304) Bank acceptances are a financial product aimed at developing a more active domestic money market by broadening credit facilities. It is based on the alleged robustness of the Chinese banking sector whereby banks which engage in bank acceptance agreements make an unconditional pledge that they will pay a certain amount on a given date. As a consequence, bank acceptances are a form of credit whereby banks take over supplier account payables from buyers and transfer an agreed amount to the suppliers at an agreed date. By the same date, the buyer shall have transferred the same amount to the bank. The payment date to the bank can correspond to the payment term agreed with the supplier or a date posterior to such date. The investigation found that the repayment date to the bank was in many instances posterior to the supplier payment date. The payment delay was found to be in some cases 4 to 6 months after the due date of the invoice. As a consequence, in addition to serving as a bank guarantee, this financial product in some instances also grants the buyer a longer term of payment, in the form of a *de facto* loan.
- (305) The investigation found that generally the bank acceptances are issued within the framework of a bank acceptance agreement specifying the identity of the bank, suppliers and buyer, the obligations of the bank and buyer and detailing the value per supplier, term and guarantee supplied. Bank acceptances were usually issued on a monthly basis.
- (306) As regards the banks, bank acceptance notes payables are recognized as liabilities to the bank acceptance holder and assets to the sampled exporting producers in their balance sheet. Also, while some bank acceptances were covered by a credit line facility, it appeared that this is not a legal requirement under the Chinese law.

- (307) The supplier of goods, in its quality of bearer of the issued bank acceptance, has the possibility to have the bank acceptance discounted by the issuing bank before the due date of the original invoice or wait for the due date and be paid in full, or use the bank acceptance as a means of payment for its liabilities towards other parties.
- (308) Pending the agreement between buyer and seller, bank acceptances may be mentioned as a standard means of payment in purchase agreements together with other means such as remittance or money order.
- (309) One sampled exporting producer provided comments during the course of the investigation and indicated that bank acceptances cannot be considered as loans on the grounds that loans require the act of borrowing, repaying and the payment of interest while bank acceptances involve a promise of repayment. They further claimed that bank acceptances are a payment method not involving any direct transfer of fund. On the same topic, another exporting producer repeated that there was no transfer of funds and claimed that its accounting records did not report bank acceptances as liabilities to the bank but as liabilities to the suppliers under notes payables. The latter exporting producer also submitted that, in its particular case, the money transferred to the supplier had to be deposited before the due date of the bank acceptance and that the bank was withdrawing the money from its account on the due date of the bank acceptance for the onward payment to the suppliers as agreed with the relevant supplier. Additionally, it also indicated that it did not receive any benefit if the bank acceptance was discounted before the maturity date of the bank acceptance and that it has no knowledge whether the bank acceptance was indeed discounted.
- (310) In this regard, it should first be noted that the CRCP recognises bank acceptances as liabilities towards banks at the same level as loans, letters of credit or trade financing. It should also be noted that the CRCP is fed by the financial institutions which grant various types of loans and that such financial institutions have thus recognised bank acceptances as liabilities to them. Furthermore, the bank acceptance agreements collected during the investigation provide that, should the buyer not make the full payment on the expiry date of the bank acceptances, the bank would treat the amount unpaid as an overdue loan to the bank.
- (311) In addition, the Commission considered that the bank acceptances received by the buyer consist a transfer of fund as the bank acceptances are used as a means of payment at the same level as a money order; i.e. once the bank acceptance is handed out to the supplier, the corresponding invoice is considered to be paid by the company. This is also evidenced by the fact that upon remittance of the bank acceptance to the supplier, the buyer will normally, on the one hand, reduce its account payables to the supplier, and on the other hand, increase its notes payables bank liabilities for a corresponding amount. In this context, it was also considered that the fact that such liabilities are recognised as notes payables to the suppliers and not to the banks in the accounting records of the company is irrelevant. In any case, the audited accounts did not present such liabilities as account payables to the suppliers but rather as notes payables without specifying the identity of the creditor.
- (312) As far as the money flows are concerned, the Commission considered that the comments submitted by the exporting producer concerned were contradictory in so far as, the exporting producer claimed that, on the one hand, it had to transfer its money before the due date of the bank acceptance to ensure the payment to the supplier from its account while, on the other hand it had no knowledge whether notes were discounted, and therefore when the payment was actually taking place. Moreover, no evidence was provided by this party of actual anticipated transfers of funds to the bank. On the basis of the above, these claims had to be rejected.
- (313) Another exporting producer reiterated that it had not received any benefit from the bank acceptance system because, in its case, no payment was made after the maturity date of the invoices or of the bank acceptance. On the same topic, several interested parties claimed that bank acceptances should not be regarded as loans on the grounds that they do not grant longer payment terms to its beneficiaries and claimed that the manner in which domestic law characterizes a certain instruments is not dispositive of its characterization under WTO law.
- (314) In this regard, while the investigation confirmed that in case of this exporting producer all payments were made within the due dates of the invoices or bank acceptances, it is recalled that the bank acceptance system provided all exporting producers a service - at a preferential rate which conferred a countervailable benefit as described in the recitals (323) to (342) below - whereby the liabilities to the suppliers were considered to be paid and transferred to liabilities to the banks which promised to pay the suppliers by the maturity of the bank acceptances. As far as the payment terms are concerned, the evidence available to the Commission shows that, for several exporting producers, the use of bank acceptances indeed effectively extended the payment term of the related invoices and that no interests were accounted for such *de facto* loans. Therefore, even though bank

acceptances may allegedly not be intended to extend payment terms, the evidence at hand demonstrated the contrary. In any case, the Commission considered that the fact that interests are not paid on bank acceptances extending the payment term of the seller, is another indication that the Chinese banking sector is distorted and provides preferential lending to certain key industries. On this basis, these claims had to be rejected.

- (315) Another interested party claimed that the basis for the calculation of the benefit should be reduced by the amount of the deposits that it made as a guarantee for the bank acceptances.
- (316) In this regard, it should first be noted that it is common practice for banks to request guarantees from their clients when granting credit line facilities or loans. Reference is also made to recital (323) below which provides that borrowers in Canada need to have a credit line facility in order to obtain bank acceptances. On this basis, the rates charged on the Canadian market take into consideration the existence of such guarantees. Furthermore, it should be noted that such guarantees are not used by the banks to pay the outstanding debts to suppliers but as a method to secure that the exporting producer will bear its financial responsibility vis-à-vis the bank. The investigation also revealed that such guarantees are not systematically requested by Chinese banks and that they can take various forms including down payments or term deposits bearing interest. Furthermore, the Commission also noted that the fee paid on bank acceptances is calculated on the basis of the face value of the bank acceptances, not an amount reduced by the amount of the guarantee. On this basis, this claim had to be rejected.
- (317) Another interested party claimed that no benefit for the bank acceptance fee should have been calculated as a guarantee for the financial service provided by the Chinese banks on the grounds that banks do not need to fund the notes at their issuance or at their maturity since such payments are funded by the exporting producer in question unless it would become insolvent. As a consequence, the banks would allegedly not run any financial risk as they only act as an intermediary. The same party also claimed that the terms of the contract provide for adequate financial guarantees for the banks.
- (318) In this regard, reference is made to recital (310) which confirms that financial institutions recognise bank acceptances as loans and to recital (304) which provides that banks which engage in bank acceptance agreements make an unconditional pledge that they will pay a certain amount on a given date. Furthermore, considering that bank acceptances may be discounted, banks should make sure that sufficient funds are available between the issuance and the maturity of the bank acceptance. In this regard, it should also be noted that standard credit line facility contracts applicable in the PRC foresee that they can be used for various types of loans including bank acceptances thus confirming the need for the bank to have sufficient funds available. After analysis of the terms of the contracts between the financial institutions and the exporting producers, it was considered that they are inadequate in view of the involvement, unconditional obligations and the financial risk that financial institutions run when engaging in bank acceptance agreements. Consequently the above claim had to be rejected.

Specificity

- (319) As far as specificity is concerned, it was considered that, as mentioned in recital (106) and foreseen by the Light Industry Development Plan, the GOC foresees *'a financial policy that supports the development of medium and small sized enterprises, further explore the financial channels of medium and small sized enterprises, perfect the credit guarantee system of medium and small sized enterprises'*, the bank acceptances are another form of preferential support to encouraged industries such as the electric bicycle sector. Furthermore, such form of support did not take into account the financial situation of the sampled exporting producers as all banks charged a flat fee, which, based on the information on the file, is lower than available international benchmarks and even lower than the premium charged to companies with a poor credit rating such as the sampled exporting producers (see recital (324)).
- (320) Following disclosure, several interested parties repeated the claim made before disclosure that the bank acceptance note system is a generally available financing tool not limited to the electric bicycle industry. Several interested parties also claimed that the Commission had to substantiate its determination of specificity on the basis of positive evidence.
- (321) In this regard, reference is made to recitals (195) to (202) and also more specifically to recital (319) which provide positive evidence concerning the specificity aspects of such preferential policy whereby such financial instrument is not generally available in such terms and therefore specific to a limited number of industries such as the electric bicycle. These claims had therefore to be rejected.

Calculation of the benefit

- (322) For the calculation of the amount of the countervailable subsidy the Commission assessed the benefit conferred on the recipients during the investigation period.
- (323) According to the information available, a bank acceptance system in the form as described in recitals (304) to (308) does not exist in the EU. However, based on the information publicly available such form of credit is available in Canada where bank acceptances are used by corporate borrowers to meet their short-term funding requirements. Bank acceptances in Canada are normally used by companies which do not enjoy the highest credit rating. In order to obtain such bank acceptances, borrowers need to have a credit line facility on which they will draw.
- (324) In order to offer such guarantee, banks normally charge a bank acceptance fee set at the level of the Canadian Dollar Offered Rate ('CDOR') and a stamping fee ranging from a few basis points (bps) to over 100 bps depending on the creditworthiness of the borrowers ⁽⁴⁰⁾.
- (325) Under normal market circumstances, bank acceptances would thus normally be subject to a so-called bank acceptance fee and shall be part of a credit line because a bank acceptance is a direct and unconditional liability of the accepting bank. In the case of the Chinese sampled exporting producers, the bank acceptance fee was set at a flat rate of 0,05 % of the bank acceptances amount regardless of the creditworthiness of each sampled exporting producer and, when existing, credit lines were provided free of charge.
- (326) Following disclosure one exporting producer claimed that the Commission had double counted some adjustment entries and had included entries irrelevant to the issuance of bank acceptance notes in its calculation of the subsidy amount. However, the calculations were based on information provided by the company and verified by the Commission and the alleged errors could not be verified anymore. This claim was therefore rejected.
- (327) Several interested party claimed that bank acceptances should not be regarded as loan on the grounds that they do not grant longer payment terms to its beneficiaries and claimed that the manner in which a Member's domestic law characterizes a certain instruments is not dispositive of its characterization under WTO law.
- (328) Several interested parties claimed that the bank acceptances available in the PRC and in Canada are different instruments. While they are used as a method of payment in the PRC, they are used by corporate borrowers to meet their short-term funding requirements in Canada.
- (329) The Commission disagrees with this statement and considers that bank acceptances are a solution to the short-term funding requirements in both countries. Indeed, through the use of bank acceptances, companies see their payables towards suppliers transformed into payables to banks. Furthermore, the investigation revealed that, in the case of several exporting producers, the bank acceptances extended the payment terms of invoices to which they related, thus improving the short term cash position of the sampled exporting producers. Furthermore, as described on page 1 of the Staff Discussion Paper of the Bank of Canada ⁽⁴¹⁾ ('Bank of Canada document'), there are other likenesses between the Chinese and Canadian bank acceptances which both provide there should be *'a direct and unconditional order from a corporate borrower (client) to draw down against its established line of credit (called a "BA facility") at a Canadian bank. Once the drawdown occurs, the accepting (or lending) bank guarantees the principal and interest by stamping the paper, thus becoming fully liable for the payment upon maturity in case of nonpayment by the underlying corporate borrower.'* In view of the likenesses between both markets, this claim had to be rejected.
- (330) Another interested party further claimed that, contrary to the Chinese system, Canadian banks need to provide the funds on the day when the bank acceptance is issued. On this basis, it claimed that the guarantee fee covers more obligations, costs and risks for the banks than the Chinese system.
- (331) In this regard, it should be noted that the fact that the funds are made available is irrelevant as the Chinese system also provides that the funds need to be made available by the bank, should the holder of the bank acceptance note wish to discount it and have the funds available. The transfer of liability and potential transfer of funds to the holder of the bank acceptance also explain why banks recognize bank acceptances as loans. As far as obligations and risks are concerned, the Commission considered that these are equivalent as the banks need to have the funds available from the day of issuance, they have an unconditional pledge to pay the bank acceptance at the maturity of the bank acceptance in the case of default by the creditor.

⁽⁴⁰⁾ <https://www.bankofcanada.ca/wp-content/uploads/2018/06/SDP-2018-6.pdf>.

⁽⁴¹⁾ See Footnote 40

- (332) One exporting producer claimed that following the Bank of Canada document, credit lines are not a legal requirement for bank acceptances on the Canadian market. In this regard, it is first noted that, the Bank of Canada document does not contain such a statement. On the contrary, it refers in several instances ⁽⁴²⁾ to the existence of an established credit line facility. On this basis, this claim was rejected.
- (333) In accordance with Article 6(c) of the basic Regulation, the benefit thus conferred on the recipients is considered to be the difference between the amount that the company pays for the provision of bank acceptances by Chinese financial institutions and the amount that the company would pay for a comparable bank acceptances obtainable on the Canadian market as benchmark.
- (334) In order to determine the benefit, the Commission compared the bank acceptance fee paid by the sampled exporting producer concerned with the CDOR -which is the recognized Canadian benchmark index for bank acceptances with a term to maturity of one year or less- adjusted with the appropriate mark-up to take account of the creditworthiness of the buyers (stamping fee). In the absence of information on the level of the stamping fee, the same mark-up as the one used for loans denominated in RMB (see recital (284)) was used. Additionally, with an analogy to the situation in Canada and in accordance with Article 6 (d)(ii), a benefit for the credit line facility that should have been in place was also calculated on the basis of the benchmark mentioned above in the recital (299) using the highest amount of bank acceptance liabilities from each individual bank at a given moment in the IP as a basis for the calculation.
- (335) In accordance with Article 6(b) of the basic Regulation, for those bank acceptances that extended the payment term of the liabilities to the suppliers, a benefit was also calculated in the form of a *de facto* interest free short term loan to the sampled exporting producers concerned. In order to determine this benefit, the Commission used the same methodology as that described in recital (284) for loans denominated in RMB.
- (336) Following disclosure, one interested party claimed that the Commission erroneously double counted the benefits by adding the 'bill of acceptance -credit line arrangement fee' and 'bill of acceptance - preferential interest' that should have been paid on the *de facto* loan to the benefit calculated for the bank acceptance fee.
- (337) In this regard, it should be noted that the evidence at hand concerning this particular exporting producer shows that the bank acceptances extended the payment terms of the invoices to which they referred. As a consequence, they were considered as a *de facto* loan. On these grounds, and as explained in recital (335) a benefit was also calculated in the form of a *de facto* interest free short term loan. Furthermore, as explained in recital (334) in analogy with the situation of the Canadian market, regardless of the existence of a *de facto* loan, a benefit for the credit line facility that should have been in place was also calculated. On the basis of the above, this claim had to be rejected.
- (338) Another interested party claimed that calculating a credit line benefit in addition to the guarantee fee amounted to double counting on the grounds that the guarantee fee should be considered sufficient to cover financial cost and risks relating to the issuance of bank acceptance. It also argued that, in the case of a written credit line agreement, it is unfounded to consider that a bank would charge a fee for arranging such credit line. It also claimed that the benchmark for the guarantee fee and credit line fee should stem from the same source.
- (339) In this regard, it is referred to recital (323) which provides that borrowers need to have a credit line facility on which they will draw. Furthermore, as mentioned in recital (318), it is recalled that the credit line facility contracts of several sampled exporting producers foresee that the facility can be used for various types of loans including bank acceptances. Furthermore, the Bank of Canada document also foresees that 'arrangement and agency fees are also applicable to both prime-and BA-based lines of credit'. In analogy with the situation on the Canadian market, it was considered reasonable to integrate a credit line arrangement fee in the calculation of the benefit. As far as the source of the benchmarks is concerned, reference is made to section 3.3.1 and the fact that the Commission had to partially rely on facts available when examining the existence and the extent of the alleged subsidisation granted through preferential lending. In any case, it is considered that the information used is reasonable and reflects standard market conditions.
- (340) One interested party claimed that the Commission did not demonstrate the 'less favourable terms' of other Chinese commercial banks and that it did not justify why an out-of-country benchmark would be appropriate and that it did not make the necessary adjustments to ensure comparability.

⁽⁴²⁾ See namely pages 1, 2 and 7.

- (341) In this regard, it is recalled that, as explained in section 3.3.1, the GOC cooperated only partially as far as preferential lending is concerned and that the Commission had to partially rely on facts available when examining the existence and the extent of the alleged subsidisation granted through preferential lending. In view of such partial cooperation, the Commission missed relevant crucial information and had to base its findings on facts available. On that basis, the Commission found that the Chinese financial market is distorted as State-owned and private financial institutions are entrusted or directed by the State to pursue governmental policies and provide loans at preferential rates to the electric bicycle industry as concluded in recitals (217) and (222). This claim had therefore to be rejected.
- (342) One interested party also claimed that the CDOR is not an appropriate benchmark in view of its financial situation. In this regard, reference is made to the credit rating assessments made for the sampled exporting producers in section 3.5.4.1. On the basis of such assessments, it was considered that all sampled exporting producers should have a BB credit rating. On the basis of the above, this claim had to be rejected.
- (343) One interested party provided additional unverified documents and claimed that the benefit had been miscalculated on the ground that certain agreements should have been considered as renewals rather than separate agreements. They also claimed that if an administrative fee would have been charged, such fee would have been paid before the IP. Furthermore, this party claimed that the Commission did not take into consideration the latest version of the file (with a corrected column).
- (344) As far as the first claim is concerned, the verified evidence at hand does not confirm that such agreement was a renewal. Furthermore the document submitted after disclosure in support of this claim could not be verified and had to be disregarded. Regarding the second claim, the credit lines agreements that started before the IP covered part of the IP and therefore the benefit of the issuance conferred to Giant Group during the IP. The Commission could therefore not accept this claim. As far as the third claim is concerned, it should be noted that this specific column was not relevant for the calculation of the benefit and the correction did therefore not have any impact.

3.5.5. Conclusion on preferential lending

- (345) The investigation showed that all sampled exporting producers benefited from preferential lending during the investigation period. In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, these loans, credit lines and bank acceptances should be considered as a countervailable subsidy.
- (346) The subsidy amount established with regard to the preferential lending during the investigation period for the sampled groups of companies amounts to:

Table 1

Preferential lending

Company/Group	Overall Subsidy amount
Bodo Vehicle Group	1,00 %
Giant Group	0,93 %
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	0,23 %
Suzhou Rununion Motivity	2,65 %
Yadea Group	2,77 %

3.6. Preferential financing and insurance: export credit insurance

- (347) The complainant alleged that Sinasure provided export credit insurance on preferential terms to producers of the product concerned.

(a) Legal basis

- (348) Notice on the Implementation of the Strategy of Promoting Trade through Science and Technology by Utilising Export Credit Insurance (Shang Ji Fa[2004] No. 368), issued jointly by MOFCOM and Sinasure.

(349) Notice on Issuing the 2006 Export Catalogue of High-Tech Products of China, Guo Ke Fa Ji Zi [2006] No. 16.

(b) Findings of the investigation

(350) Three out of five sampled groups of exporting producers had outstanding export insurance agreements with Sinosure during the IP.

(351) As outlined in recital (157) Sinosure partially responded to the specific questionnaire concerning export credit insurance provided to the sampled exporting producers. However, as mentioned in recitals (156) to (162) above, Sinosure failed to provide the supporting documentation requested concerning its corporate governance, such as its Annual Report or its Articles of Association.

(352) During the verification visit at the GOC, Sinosure was also present and confirmed that it is fully State-owned.

(353) In addition, Sinosure did not provide any specific information about the export credit insurance provided to the electric bicycle industry, the level of its premiums or detailed figures relating to the profitability of its export credit insurance business. Therefore, the Commission had to complement the information provided with facts available.

(354) According to Sinosure's reply to the questionnaire, Sinosure is a State-owned policy insurance company established and supported by the State to support the PRC's foreign economic and trade development and cooperation. The company is 100 % owned by the State. It has a board of directors and a board of supervisors. The Government has the power to appoint and dismiss the company's senior managers. Based on the reply to the questionnaire, as well as the information provided during the verification visit, the Commission concluded that there is formal indicia of government control with respect to Sinosure.

(355) On this basis, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of Sinosure.

(356) The Commission also sought concrete proof of the exercise of control in a meaningful way on the basis of concrete insurance agreements. During the verification visit, Sinosure maintained that in practice its premiums were market-oriented and based on risk assessment principles. However, no specific examples with respect to the electric bicycles industry or the sampled exporting producers were provided.

(357) Due to the only partial information provided by Sinosure, the Commission could also not establish any specific behaviour of Sinosure with regard to the insurance provided to the sampled exporting producers which would have enabled the Commission to determine whether Sinosure was acting based on market principles.

(358) In this respect, the Commission was also unable to assess whether the premiums Sinosure charged were sufficient to cover the cost of the claims and the overhead expenses of Sinosure.

(359) In addition, the Commission found that some of the exporting producers benefited from a partial or total refund of the export credit insurance premiums paid to Sinosure.

(360) Therefore, the Commission concluded that the legal framework set out above is being implemented by Sinosure in the exercise of governmental functions with respect to the electrical bicycles sector, thereby acting as a public body in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation. Furthermore, due to its partial cooperation, Sinosure could not demonstrate that it acted under normal market conditions and that it did not provide benefits to the sampled exporting producers, notably that the insurance was provided at rates that were not below the minimum fee needed for Sinosure to cover its operational costs. In the absence of other data, the Commission concluded that the external benchmark explained in recital (362) below would also be the best estimate for sufficient premium under market conditions.

(361) The Commission further determined that the subsidies provided under the export insurance programme are specific, because they could not be obtained without exporting and are thus export contingent within the meaning of Article 4(4)(a) of the basic Regulation.

(c) Calculation of the subsidy amount

- (362) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. According to Article 6(c) of the basic Regulation the benefit conferred on the recipients is considered to be the difference between the amount of the premium that the company pays on the short-term insurance provided by Sinosure and the amount of the premium that the company would pay for comparable export-credit insurance obtainable on the market.
- (363) Since Sinosure represents around 90 % of the domestic market for export insurance in the PRC, the Commission could not find a market-based domestic insurance premium. In line with previous practice, the Commission thus used the most appropriate external benchmark, for which information was readily available, *i.e.* the premium rates applied by the Export-Import Bank ('Ex-Im Bank') of the United States of America to non-financial institutions for exports to OECD countries ⁽⁴³⁾.
- (364) The refunds of export insurance premiums awarded during the IP were treated as a grant. Since there was no evidence of additional costs incurred by the exporting producers for which an adjustment would be needed, the benefit was calculated as the full amount of the refund received in the IP.
- (365) Yadea requested clarification on the calculation of the benefit and claimed that the benefit should be calculated on the basis of the capital actually compensated, in case of loss, if this is lower than the capital insured. Yadea also requested clarifications on whether the Commission had applied any 'immunity ratio' to its calculation.
- (366) In this regard, it should be noted that the benefit was computed according to the methodology laid down in recital (362). As far as the benefit is concerned, the Commission considered that it should be calculated on the capital insured, which is also the basis for the calculation of the premium paid by Yadea as reported in its questionnaire reply. Furthermore, it should be noted that no immunity ratio was applied. On the basis of the above, this claim had to be rejected.
- (367) The subsidy amount established with regard to this scheme during the IP for the sampled exporting producers amounts to:

Table 2

Preferential financing and insurance: export credit insurance

Company/Group	Subsidy Rate
Bodo Vehicle Group	0 %
Giant Group	0 %
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	0,50 %
Suzhou Rununion Motivity	0,17 %
Yadea Group	0,50 %

3.7. Government provision of goods for less than adequate remuneration**3.7.1. Provision of inputs (electric engines and batteries) for less than adequate remuneration**

(a) Introduction

- (368) The complainant alleged that the electric bicycle industry received input materials (*i.e.* batteries, engines and other bicycles parts whether already assembled or not) for less than adequate remuneration.
- (369) As part of the investigation, the Commission verified the information on the domestic purchases of electric bicycles parts (batteries and engines) by the sampled exporting producers. In parallel, the Commission analysed the price behaviour of the only cooperating domestic supplier of these parts, Bafang, which revealed that for this company these parts were provided at lower prices on the domestic market than for export.

⁽⁴³⁾ <https://www.exim.gov/sites/default/files//managed-documents/Ebook-ECI-With%20Case%20Study-Final%20March%202015.pdf>.

- (370) As explained in more details in recitals (163) to (173) above, the GOC failed to cooperate with regard to the input suppliers on the Chinese domestic market and refused to provide clarification or crucial information on the domestic market of batteries and engines. Therefore the Commission had to base its conclusions on facts available accordance with Article 28 of the basic Regulation.
- (371) The investigation showed that some of the suppliers of parts to the sampled exporting producers are SOEs or members of the China Bicycle Association (CBA). As a member of CBA, companies have certain obligations with regard to the implementation of GOC policy in the electrical bicycles industry. The Commission therefore analysed known GOC policies relating to engines and batteries and in particular whether on this basis and on the basis of any other information available such GOC policies could be understood as entrusting suppliers of engines or batteries to sell at more advantageous conditions to the domestic manufacturers of electric bicycles. Finally, the Commission analysed whether as a result Chinese suppliers of engines and batteries received benefits from the GOC.
- (b) Partial non-cooperation and use of facts available
- (372) As pointed out in recital (164), although requested to do so, the GOC did not forward the specific questionnaire intended for suppliers of electric bicycles parts to known suppliers in China. According to the GOC, it had no authority to request information from the suppliers of electric bicycle parts as they operate independently from the GOC.
- (373) In addition, the GOC did not provide a list of Chinese suppliers of electric bicycles parts under investigation and their ownership structure claiming that this was confidential information. Furthermore, the GOC failed to provide detailed information on the characteristics of the domestic market in China of input materials for electric bicycles. For example the share of State-owned enterprises ('SOEs') in the domestic production and consumption, the size of the domestic market, the State's and/or SOEs' pricing policies, actual prices of input materials in the domestic market, export or import restrictions or relevant statistics.
- (374) As mentioned in recital (50), only one supplier of bicycles parts (Bafang) which had provided inputs to the sampled exporting producers submitted information concerning its activities and thus cooperated on its own initiative in this investigation.
- (375) Since the Commission received no information from the GOC in particular on the domestic market structure, on price-setting mechanisms and prices and on the shareholding of companies, the Commission considered that it has not received crucial information relevant to the investigation.
- (376) The cooperating supplier is one of the main Chinese manufacturers of engines destined to electric bicycle industry. The same supplier also sold engines and batteries to the electric bicycle industry. The investigation showed that the company exported equivalent models of engines and batteries at different prices depending on the market and that it was consistently selling engines at substantially lower prices on its domestic market than for export.
- (377) As mentioned in section 3.2 above, the Commission informed the GOC that, given the absence of questionnaire replies from suppliers of input material and in the absence of any information provided by the GOC in this respect, it may have to base its findings on facts available pursuant to Article 28(1) of the basic Regulation as far as the information relating to suppliers of engines, batteries and control units and other electric bicycles parts was concerned.
- (378) The Commission provided the GOC with the opportunity to comment. The GOC, however, did not provide any comments or any further information or evidence in this respect.

3.7.2. Provision of engines for less than adequate remuneration

3.7.2.1. Ownership and state influence of the domestic suppliers of engines for electric bicycles

- (379) As developed further in recital (404), it should first be noted that the Chinese domestic market for engines is largely dominated by the Chinese domestic suppliers that have over 90 % market share.
- (380) In the absence of any information provided by the GOC concerning the number and ownership of domestic suppliers of engines for electric bicycles, the Commission first analysed the situation of the suppliers reported by the sampled five groups of exporting producers.

- (381) On this basis, the Commission identified 10 Chinese suppliers.
- (382) Among the 10 suppliers of engines to the sampled exporting producers, three were members of the China Bicycles Association (CBA), including Bafang and one was a SOE. The SOE and the members of CBA represented 41 % of the total quantity supplied to the sampled exporting producers and up to 66 % of the total value during the IP. The Commission could ascertain the private ownership only for three of the other suppliers (accounting for 46 % of the purchase volume and 29 % of the purchase value), while no information was found on the remaining three suppliers (accounting for 13 % of the volume and 5 % of the value). As outlined in recitals (133) to (134) and (136) to (139), during the period considered, the CBA was under the management of the State Council. Article 3 of its Articles of Association also provide that it shall abide, among others, by national policies. Furthermore, the Articles of Association of the CBA impose certain obligations to its members as reported in Article 11 that provides that members shall comply 'with national laws and regulations of the bicycle industry' and 'abide by the rules and regulations of the Association and implement the resolutions of the Association'.
- (383) On this basis the Commission considered that members of the CBA are bound by strict obligations towards their association which is under the business guidance and supervision of the State-owned Assets Supervision and Administration Commission of the State Council. As a consequence, the CBA members, including suppliers of parts, are considered as subordinated key operators in the bicycle industry entrusted by the GOC to implement national policy in order to achieve the broader objectives related to the production of electric bicycles. Therefore, the Commission investigated further these policies.
- (384) Several parties claimed that the CBA is a non-profit association, whose members are companies, research units and local associations in the bicycle industry which had voluntarily joined it. These parties also claimed that most of the CBA members are private-owned companies.
- (385) In this regard, the Commission referred to recitals (166) and (170) above which provide that, due to the refusal of the GOC to provide information on the ownership of domestic suppliers of input materials, the Commission had to rely on facts available. The information at the Commission's disposal showed that several CBA members are also SOEs.
- (386) The GOC claimed that the Commission failed to demonstrate that the CBA is a public body.
- (387) In this regard, the Commission referred to recital (138) and confirmed its conclusion that the CBA operates under the policy guidance and supervision '*of the State Council, the Ministry of Civil Affairs and the competent business unit of the society*'. This was also the case in the year 2016, when the 13th Bicycle Plan was approved.
- (388) The GOC also claimed that only one third of the domestic suppliers providing engines to the sampled exporting producers of electric bicycles are SOEs or members of the CBA. Moreover, it pointed out that according to existing jurisprudence, the State ownership is not sufficient to demonstrate entrustment and direction.
- (389) The Commission first noted that the GOC did not contest its findings that an important part of the domestic suppliers of engines to the sampled exporting producers are SOEs and/or members of the CBA. In the absence of cooperation, while State ownership and/or CBA membership alone are not a sufficient condition to demonstrate entrustment and direction, it is an important element in this regard. In addition to having demonstrated in recital (138) above that those entities followed the government policies and objectives, the Commission also established, as illustrated in recitals (390) to (412) below, that the domestic suppliers of engines to the electric bicycle industry were entrusted and directed by the GOC. On this basis, these comments were rejected.

3.7.2.2. Government policies and objectives

- (390) The Commission identified several legal sources indicating public support to the industry of engines, because of their position in the electric bicycle industrial supply chain.
- (391) These documents include the 12th Five Year Plan for Bicycles and Electric Bicycles industry, the 13th Bicycle Plan, the Light Industry Development Plan (2016-2020), the Notice of the Suzhou Municipal Government General Office of circulating the Administrative Measures on the Special Fund of the Municipal Industry and Economic Upgrading (SU FU BAN 2014-137) and its Notice on application for year 2016 Suzhou Municipal Fiscal Special Fund Program and the Tianjin Municipal Light Industry and Textile Development Plan for the 13th Five-Year (2016-2020). These documents were analysed in Section 3.1 above.

- (392) These documents emphasize the need to improve the quality and performance of crucial inputs to the electric bicycle producers of which engines are part and to complete the bicycle industrial supply chain so that a vertically integrated and autonomous electric bicycle production chain can be established in China.
- (393) These documents also describe the various support schemes to the electric bicycle producers and their suppliers such as subsidies in the form of preferential financing and tax rebates/exemption as described in recitals (105) and (106).

3.7.2.3. Entrustment and direction

- (394) It is first recalled that in view of the partial non-cooperation by the GOC, no questionnaire replies were received from suppliers of input material, except for Bafang, and that the Commission lacked therefore crucial information with regard to the domestic market of suppliers of engines. As a consequence the Commission had to rely on facts available pursuant to Article 28(1) of the basic Regulation to establish its findings on entrustment. In this regard, the information available to the Commission consisted of the information gathered from the sampled exporting producers with regard to their domestic suppliers of engines, publicly available information concerning CBA and its members, the information gathered from the sole cooperating supplier of input and a specific industry report on engines in China provided by the complainant.
- (395) As far as the suppliers to the sampled exporting producers are concerned, the Commission established in recital (382) that the members of CBA that provided engines to the sampled exporting producers represented 41 % of the total domestic quantity supplied to the sampled exporting producers and up to 66 % of the total domestic purchase value during the IP. Furthermore, in recitals (382) and (383), the Commission concluded that the members of the CBA, including suppliers of parts, are subordinated key operators that are entrusted to implement national policy in order to achieve the broader objectives related to the production of electric bicycles. Based on the above and in the absence of any other information, this was considered representative of the situation on the domestic Chinese engine market.
- (396) More specifically, as far as the sole cooperating supplier of engine is concerned, the investigation revealed that it had exported similar models at different prices depending on the market and that it was consistently selling engines at more favourable prices on its domestic market than on its export market. Domestic prices were more than 33 % cheaper than export prices on average. Such difference reached 67 % for certain models.
- (397) The investigation also established that the same costs were associated with the same models regardless of the destination. Consequently, the price differences between the exported and the domestically sold models could not be explained by means of differences in costs. Bafang claimed that these price differences were due to higher sales costs on the export market. However, the investigation showed that only a small part of the difference in price was attributable to higher selling costs. Bafang did not claim that such differences would be explained by different market conditions and such hypothesis is also not confirmed by the facts established in this investigation. To the contrary, as a member of the CBA, Bafang is subordinated to this association whose 13th Bicycle plan aims at improving the export performance of electric bicycle exporting producers as mentioned in recitals (112) and (113) above. As a consequence, in order to contribute to the export performance of this industry, it is entrusted or directed to sell input at cheaper prices on the domestic market so that the exporting producers of electrical bicycles can offer their products at significantly lower prices than its competitors on the export markets, that have to source engines at non subsidised prices.
- (398) Several parties claimed that Bafang's decision to charge higher prices on exports markets than on its domestic market should not be considered as irrational. First, this could be linked to after sales costs. Second, this could depend on different competitive levels on the two markets. Third, this could depend on a higher domestic demand and recognition of Bafang brand.
- (399) Concerning the first point, reference is made to recital (397) where such claim has already been addressed in the light of the information verified at the premises of the supplier. Concerning the second and the third point, it should be noted at the outset that the above mentioned claim was not supported by new elements. In any event, in view of the partial non-cooperation by the GOC, as discussed in recitals (163) to (169) above, the Commission lacked crucial information with regard to the different competitive levels of domestic and export markets as well as to the situation of the different suppliers of engines in the domestic market. On this basis, the Commission

had to base its findings on the information available; i.e. the sole questionnaire reply received from suppliers of input material. There is no evidence showing a different competitive level of the domestic and export market giving rise to such a different pricing level between the two markets. There is also no evidence on the recognition of the Bafang brand, and how this impacted the different pricing. If at all, brand recognition could have an impact also on the pricing in the domestic market as it could underpin a higher price than competitors on the domestic market. On this basis, this claim had to be rejected.

- (400) Furthermore, considering the substantial price difference between engines sold on the domestic market and those sold for export, a rational economic decision would be to focus rather on sales of engines on the export markets given the much higher profitability that can be achieved. A higher profitability could still be achieved even if the company would reduce its export prices of engines, compared to those charged during the IP, in order to gain market share in third country markets. This is because the profitability achieved on the export market would still be much higher than the one achieved on the domestic market. In combination with increasing export sales volumes, absolute profitability would even exceed current levels. Despite the above, the investigation showed that Bafang's main activity during the IP remained on domestic market. Bafang claimed that the fact that their domestic sales over the IP allowed for a reasonable profit proved that they were not selling at lower prices on their domestic market and that their pricing behaviour was not irrational.
- (401) While it is not disputed that Bafang's domestic sales were profitable, the information on the file shows that domestic prices were substantially lower than export prices. The point made by the Commission in recital (400) was not that a rational decision would be to make profit, but to expand sales to the export markets where profits could be increased in view of the significant price difference discussed in recital (396), or alternatively to increase the price on the domestic sales at least to the same level as the export sales in order to maximize its overall profits.
- (402) Giant also claimed that according to the Panel Report EC — Countervailing Measures on DRAM Chips ⁽⁴⁴⁾, acting in a 'non-commercially reasonable manner is not enough to establish entrustment or direction'.
- (403) In this regard, it should be noted that, as provided in recitals (394) to (397) and (404) below, the conclusion on entrustment and direction is not based on the price difference observed for Bafang. Such an element was considered to be the effect rather than the basis for such entrustment and direction. On this basis, the claim was rejected.
- (404) In addition, the Commission relied on a specific industry report focused on engines for electric bicycles in China '2018-2023 China E-bike motor industry Market Demand and Investment Consulting Report', produced by YuboZhiye Market Consulting ⁽⁴⁵⁾. According to the description on the website, the report is 'based on the data provided by YuboZhiye's researchers in accordance with national statistical agencies, market monitoring databases, industry associations (scholars), import and export statistics departments, research institutes and other institutions'. The report, which is publicly available, shows that the import of bicycle engines only represented less than 10 % of the domestic sales in 2017. Therefore, the Commission considered that the domestic market players are clearly price-setters and could not be influenced by import prices, which are rather price-followers. This is confirmed by the analysis of the import price of engines purchased by the sampled exporting producers, which, for comparable models, are substantially in line with the prices charged by the domestic suppliers of engines, including Bafang. More specifically, for the main model (combination of location and power) which was both imported and purchased on the domestic market in the IP by the sampled exporting producers, the price difference was lower than 3 %.
- (405) Following the disclosure Bafang submitted that the statement that domestic market players are price-setters and could not be influenced by import prices was not supported by evidence. It also claimed that the finding that domestic prices are at the same level as import prices just reflects adequate remuneration.
- (406) In this regard, it is recalled that due to the partial non-cooperation of the GOC, discussed in recitals (163) to (173), crucial information concerning the structure of the domestic market of engines, as well as the mechanism of price settings were not available to the Commission. Therefore, the Commission had to rely on

⁽⁴⁴⁾ Panel Report WT/DS299, EC – DRAMs, paragraph 7.105.

⁽⁴⁵⁾ <http://www.chinabgao.com/report/4051392.html>.

facts available and considered that the information provided in the specific industry report on engines referred to in recital (404) was reasonable. Furthermore, considering that imports of engines only represented 10 % of the consumption of electric engines in China in 2017, it is unlikely that the exporters in other countries instead would be able to influence, at least to an appreciable extent, the domestic prices. In any case, Bafang did not provide any evidence substantiating this claim. On this basis, the Commission rejected the claim.

(407) As a consequence, the fact that the price of engines in the Chinese domestic market are substantially lower than for export further points to government entrustment and direction of the domestic engine suppliers to sell engines to the electric bicycles industry at low prices and to the irrational behaviour of domestic engine suppliers, in the absence of information to the contrary submitted by the GOC.

(408) Furthermore, the report contains evidence that the electric bicycle industry is subsidised and that these subsidies are granted with a view to the overall benefit of the electric bicycle industry including suppliers of engines. This is namely supported by the following extract:

— ‘The “13th Five-Year Plan” for the electric bicycle industry mainly proposes the electrification of the vehicle industry, mainly for the replacement of fuel-based vehicles. [...] The state’s support policies for these industries laid the foundation for the development of the electric bicycle industry. Though the state government mainly supports the development of the new-energy vehicle industry, since the basic motor technologies are interlinked, it promotes the development of the e-bike motor industry to the same extent.’ (Chapter XI, Section I, Subsection II).

(409) The Commission referred to the Light Industry Development Plan (2016-2020) to qualify the nature of these ‘support policies’. In particular the Commission referred to the three sets of supporting measures described in recitals (101) to (106).

(410) The report contains other relevant information showing that the Chinese industry of engines is supported as part of the supply chain of electric bicycles:

— ‘The cost of raw materials and accessories for the electric bicycle industry accounts for about 70 % of the total cost. The price changes of raw material prices directly affects the cost of the products. In particular, the continuous price increase of permanent magnet materials such as NdFeB has pushed up product prices. The supporting facilities for E-bike motors used for E-bikes, and the development of downstream industries directly affect the motor industry.’ (Chapter I, Section III).

— ‘During 2013-2017, e-bike motor industry in China developed rapidly. The Chinese e-bike motor industry achieved growth thanks to the strong promotion of the State and enterprises.’ (Chapter II, Section I, Subsection IV).

— ‘The development trend of bicycle electrification is of great significance to the development of the electric bicycle motor industry. It is essential to expanding the industry’s market demand and to promoting the further expansion of the industry scale. In addition, since the motor is the core component of the electric bicycle, the development of the motor industry is essential as it enhances the competitiveness of the entire industry chain.’ (Chapter III, Section I, Subsection I) (emphasis added).

— ‘At present, the state provides tax support for the technology research and development of the motor industry. The development of the technology of the general motor industry has a strong application value to the motor for electric bicycles and has a positive effect on the development of the industry.’ (Chapter III, Section I, Subsection III).

— ‘The state supports the development of the electric bicycle motor industry for electric bicycles. Due to the wide application of the electric bicycle industry and the large scale of demand, the employment population is significantly improved. Therefore, the country will continue to strongly support the electric bicycle industry in the future, and the electric bicycle motor industry is also obviously affected. [...] The State pays significant attention to the development of the motor industry, therefore the E-bike motor industry is also affected by the country’s active policies, with certain technical support and policy support, which will promote the development of the industry.’ (Chapter III, Section I, Subsection V).

- ‘Guarantee sufficient funds: On the one hand, it requires a large amount of capital investment to design and develop electric bicycle motor products. In daily production and management, enterprises also need to maintain a large amount of liquidity for the procurement of raw materials. On the other hand, e-bike motor production requires a large amount of capital to buy and build factories, and to purchase production equipment, so that it can achieve a considerable production scale to meet the requirements of large downstream customers. Therefore, in order to obtain a healthy and sustainable development of motor manufacturers for electric bicycles, sufficient funds are an indispensable condition.’ (Chapter IV, Section III, Subsection I).
 - ‘Compared with developed countries such as Europe and the United States, there is still a certain gap in the technical level of the motor industry for electric bicycles in China. However, with the strong support of the government, China’s manufacturing industry is developing rapidly, and the production capacity of the electric bicycle industry is expanding.’ (Chapter V, Section I, Subsection I).
 - ‘The State’s strong support for the manufacturing industry has continuously improved China’s motor manufacturing technology and the bicycle motor industry has become increasingly able to meet domestic demand in recent years. Imports of motors for electric bicycles have declined.’ (Chapter V, Section I, Subsection II).
 - ‘The electric bicycle motor is directly used for the production of electric bicycles, and the development of the downstream industry has a decisive influence on the demand for electric bicycle motor products. [...] In recent years, the country’s normative adjustment to the downstream market has had a certain impact on the demand for electric bicycle motors.’ (Chapter VI, Section I, Subsection II).
 - ‘From the perspective of employment, the state government has adopted the main policy of stabilizing employment, and the e-bike industry chain from supporting manufacturers to downstream service providers provides plenty of job opportunities. In addition the relatively high technical level of the e-bike motor meets the policy of promoting employment and industry upgrade. Therefore, the state government supports the development of e-bike motor industry.’ (Chapter XI, Section I, Subsection II).
 - ‘The Chinese government promotes the e-bike motor development in China. Recommendations for the 13th Five-Year Plan for Economic and Social Development of the Central Committee of the Communist Party of China point out that that we should [...] encourage green travelling including bicycle, promote the electrification of bicycle and vehicle industry, and increase electric vehicle industrialization level. The support of national policy provides policy basis for the industry development, and achieves the continuous growth of downstream market demand.’ (Chapter VIII, Section II, Subsection V).
 - ‘The relevant national planning and policies on the motor industry have provided strong policy support for the development of the electric bicycle industry.’ (Chapter XI, Section IV, Subsection I).
 - ‘Government supporting policy: In recent years, the state and local governments have made many arrangements to promote motor industry development. They have not only provided policy support, but also actively planned the measures to promote enterprise transformation and upgrade, so as to provide a good policy environment and show clearly the development direction for the development of China’s motor industry. Firstly, special supporting funds were established, and the scale and cluster development of the motor industry in certain areas was promoted. Secondly, tax refund incentives were given to the investment scale growth or production value growth of the enterprises. Thirdly, maximum incentives and supreme support was given to the motor industry in many aspects including land use, capital service and labor supply, etc., to encourage the enterprises to actively work and start the business, create more famous brands, and promote the further development of the regional motor industry.’ (Chapter XI, Section IV, Subsection III).
- (411) In sum, the report confirms that the electric bicycle and engine industries are interlinked and that the development of the engine industry is key to the development of the electric bicycles industry. It also confirms that the GOC provides subsidies to the engines which aim at enhancing the competitiveness of the entire industry chain including the electric bicycle industry.
- (412) Based on the above, the Commission concluded that the GOC is entrusting or directing Chinese producers of engines to supply this input for less than adequate remuneration to the domestic producers of electric bicycles.

- (413) After the disclosure, Giant submitted that according to WTO Appellate Body in US – Countervailing Duty Investigation on DRAMs, ‘mere policy pronouncements’ cannot ‘constitute entrustment or direction for the purposes of Article 1.1(a)(1)(iv) of the SCM Agreement.’⁽⁴⁶⁾ Furthermore, ‘entrustment and direction – through the giving of responsibility to or exercise of authority over a private body – imply a more active role than mere acts of encouragement.’⁽⁴⁷⁾ The Appellate Body concluded that evidence of ‘entrustment or direction of a private body’ would ‘involve some form of threat or inducement.’⁽⁴⁸⁾ Moreover, Giant also referred to the WTO Panel in US – Export Restraints which noted that ‘both the act of entrusting and that of directing therefore necessarily carry with them the following three elements: (i) an explicit and affirmative action, be it delegation or command; (ii) addressed to a particular party; and (iii) the object of which action is a particular task or duty.’⁽⁴⁹⁾ Mere supervision or the exercise of general regulatory powers is therefore insufficient to find entrustment and direction⁽⁵⁰⁾.
- (414) In this regard, it should be noted that the conclusion of the Commission is not solely based on mere policy pronouncement which is detailed in Section 3.1 above. It is also based on the role of the CBA, which, as an association grouping not only bicycle producers but also engine manufacturers, is supervised and guided by the highest Chinese authority, i.e. the State Council. Furthermore, it is also recalled that the members of CBA are bound to implement the resolutions of the CBA and were therefore considered to be subordinated. In this regard it is recalled that the CBA issued the 13th Bicycle plan which aims namely at improving the export performance of electric bicycle exporting producers as mentioned in recitals (112) and (113). The above considerations are also supported by numerous extracts from the specific industry report on engines listed in recitals (408) to (410), showing that the support to the engines sector is functional to its position in the supply chain of electric bicycles. On this basis, this claim had to be rejected.
- (415) Giant also considered that the Commission had inverted the burden of proof in recital (407) referring to the partial non-cooperation of the GOC with respect to the conclusions made. Giant underlined that the burden of proof rests with the Commission and that the Commission has not demonstrated that the provision of electric bicycle batteries and engines is a practice normally vested in the government.
- (416) In this regard, the Commission considered that the evidence at hand, as summarized in recital (414), which is based on facts available, is sufficient to demonstrate entrustment and direction. It is also recalled that the GOC did not raise any comment or submit further information after being informed that the Commission intended to apply facts available with regard to the provision of inputs for less than adequate remuneration. On this basis, the Commission considers that it did not invert the burden of proof. This claim had therefore to be rejected.

3.7.2.4. Subsidisation of the engine producers

- (417) The Commission first would like to that due to the partially non cooperation of the GOC the Commission had to establish its findings on the basis of facts available which consisted of the specific industry report provided by the complainant and the information provided by the sole cooperating supplier of engine, that responded to the Commission’s questionnaire.
- (418) As described in recital (410), the report contains several evidence that the electric engine industry received support through ‘*tax refund incentive*’, ‘*land use, capital service and labor supply*’.
- (419) This was also confirmed by the findings established as far as Bafang is concerned. Indeed, the investigation revealed that this company received several types of subsidies which consisted of land use rights for less than adequate remuneration reduced tax rate and several grants.
- (420) Several parties commented by referring to the Article 14(d) of the WTO SCM Agreement as well as Article 6(d) of the Basic Regulation concerning the adequacy of remuneration which shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase. In other words, that the benchmark used should relate to the conditions prevailing in the Chinese market; or on the basis of terms and conditions prevailing in the market of another country or on the world market which are available to the recipient.

⁽⁴⁶⁾ AB Report, US – Countervailing Duty Investigation on DRAMs, para. 114.

⁽⁴⁷⁾ Idem footnote 45, para. 114.

⁽⁴⁸⁾ Ibid. footnote 45, para. 116.

⁽⁴⁹⁾ Panel Report, US – Export Restraints, para. 8.29.

⁽⁵⁰⁾ Appellate Body Report, US — Countervailing Duty Investigation on DRAMs, para. 115

- (421) The Commission found that the prevailing conditions in the PRC market were distorted in view of the applicable national and sectoral policies implemented by the economic operators. In addition, due to the partial non-cooperation of the GOC, the Commission lacked crucial information on the engine market situation in China and on possible adjustments that needed to be made. As far as prevailing conditions in the market of another country or the world market are concerned, such information was not available in a level of detail that would allow a meaningful comparison. As a consequence, the Commission had to rely on the available information. On this basis, the Commission concluded that the prevailing conditions on the Chinese market did not justify adjustments and calculated therefore the benchmark using the methodology described in recital (432).
- (422) Several parties claimed that the Commission should have alternatively used the import prices of engines from the sampled cooperating producers as undistorted benchmark.
- (423) In this regard, in view of the market share held by domestic suppliers of engines and the fact that they are price-setters on the Chinese market as provided in recital (404), it was not considered appropriate to use import prices as a benchmark because their level was equally affected by the same distortions present in the domestic market. On this basis, this claim had to be rejected.
- (424) Giant and the GOC claimed that the Commission's approach violated Articles 1.1(b), 10 and 32.1 of the WTO SCM Agreement, since the Commission cannot circumvent its obligation to conclude that manufacturers are entrusted or directed. In this regard, Giant claimed that the Commission must: (1) analyse whether there have been subsidies granted to manufacturers; (2) analyse whether engines and batteries were purchased at arm's-length; (3) calculate how much of the subsidies has passed-through.
- (425) In this regard, it is considered that the Commission's conclusion is based on sufficiently detailed grounds summarised in recital (414). As far as Giant's comments are concerned, the Commission considered that, in view of the non cooperation of the GOC and the fact that only one supplier cooperated on its own initiative, it lacked crucial information. Nevertheless, based on the information at hand and the analysis that the Commission performed, it was considered that the conditions to conclude on entrustment and direction were fulfilled. As far as passthrough is concerned, since the Commission's analysis did not focus on such matter, this claim was considered irrelevant. On this basis, these claims had to be rejected.

3.7.2.5. Specificity

- (426) As demonstrated in recitals (390) to (412), several legal documents which are specifically targeted at companies in the electric bicycle sector, direct the input suppliers to provide engines for less than adequate remuneration to the electric bicycles industry. On the basis of these documents it is demonstrated that the input suppliers only provide engines to a limited number of industries/enterprises which comply with the relevant policies of the GOC.
- (427) The Commission therefore concluded that subsidies in the form of provision of engines at less than adequate remuneration are not generally available but are specific within the meaning of Article 4(2)(a) of the basic Regulation. Moreover there was no evidence submitted by any of the interested parties suggesting that such form of subsidies is based on objective criteria or conditions in the sense of Article 4(2)(b) of the basic Regulation.

3.7.2.6. Benefit

- (428) All sampled exporting producers purchased engines domestically, mostly from unrelated companies but also imported some quantities. Some insignificant quantities were purchased from related companies. For some of the producers, Bafang was the main supplier accounting for over 50 % of the purchase volume.
- (429) As explained in recital (396), Bafang, as a subordinated operator entrusted to implement national policy, sold engines at significantly cheaper prices on its domestic market than for export. As a consequence Chinese exporting producers benefitted from engines sold for less than adequate remuneration.
- (430) Several parties claimed that according to Articles 2(a) and 2(b) of the Basic Regulation only the government is eligible to be the provider of a subsidy. Since Bafang is a private-owned company, it cannot be regarded as the government, within the meaning of Article 2(b) and therefore cannot be a provider of subsidies.

- (431) In this regard, it was considered that this comment was not relevant in view the conclusion reached in recital (412); i.e. that the suppliers of engines to the producers of electric bicycles are entrusted and directed by the GOC to supply this input for less than adequate remuneration.

3.7.2.7. Calculation of the subsidy amount

- (432) The benefit for the sampled companies was calculated by comparing the domestic with the export prices of engines that Bafang charged during the IP. This comparison was made using a combination of the location (hub or central) and power of the engines (in kW). The calculated percentages were applied to the prices paid by the sampled exporting producers for purchases of engines from domestic suppliers. No adjustments were made.
- (433) Giant Group claimed that there is no link between the locally purchased engines and the electric bicycles that it exported to the EU.
- (434) In this regard, it is considered that the benefit defined in recitals (428) to (429) is to the advantage of the exporting producers of electric bicycles purchasing domestic engines at less than adequate remuneration and is not related to specific models of electric bicycles sold. Therefore, it was concluded that Giant Group received a benefit when purchasing domestically engines at distorted prices due to the GOC's entrustment and direction described in recitals (394) to (412). On this basis, this claim had to be rejected.
- (435) As far as domestic sales are concerned, Bafang claimed that the list of transactions used to establish an average price for engines sold domestically included sales to a related company. Moreover, Bafang clarified that these related sales were intended for export as its related company acted as a domestic trader in charge of export sales. Therefore, Bafang requested the Commission to exclude these sales from the computation of the average domestic sale prices.
- (436) The Commission accepted this claim and excluded such sales from the calculation of the average price of domestic sales as it was satisfied with the evidence provided by Bafang that these sales were indeed to be considered as 'export sales' through its domestic related trader. In any event, there was no evidence on file proving whether these sales to the related trader had been effected at 'arm's length' or not, as further explained in recitals (437) to (441). As a consequence, the calculations were amended accordingly by only taking into consideration domestic sales to independent customers.
- (437) As far as the average price of export sales is concerned, Bafang claimed, with regard to the same sales addressed in recitals (435) and (436) that the prices of engines exported via its domestic related trader should be duly adjusted to remove the latter's SG&A and profit.
- (438) In this context, it was not possible to ascertain whether the transactions between Bafang and its related company were made at 'arm's length' or whether the export sales to unrelated customers by this related company should be adjusted with a reasonable amount for profit and SG&A. In any event, the benchmark to measure the price for export sales should be based on the actual export price paid by the independent buyer as this is considered a market price free of distortions from the domestic market, regardless of the levels of SG&A and profits made by Bafang's trader. Therefore, in order to ensure a proper comparison of domestic sales and export sales at the same level of trade and to ensure consistency with the adjustment in the price of the domestic sales explained in recitals (435) and (436), the Commission decided to exclude these indirect export sales via the related domestic trader and amended the calculation of the average export price accordingly. As a result, the comparison between domestic and export price was made considering only direct sales from Bafang to independent customers both domestically and in export markets. The level of representativeness of the relevant sales adjusted in this way was still significant and accounted for almost 70 % of all export sales. These findings were also re-disclosed in an additional final disclosure to all interested parties.
- (439) After there-disclosure, Bafang claimed that the export sales by its related company to unrelated customers should not be excluded and further claimed that the corresponding sales transactions should be duly adjusted downward by removing SG&A and profit. Bafang also claimed that the Commission could have asked for this information during the investigation in order to ascertain that sales to related customers were made at 'arm's length'.

- (440) In this regard, it should be recalled that the price comparison was made for the sole purpose of establishing a benchmark for engines sold for less than adequate remuneration. Following Bafang's comments to the disclosure, it was considered appropriate to exclude export transactions made via the related trader, as claimed by Bafang, since such transactions included SG&A and profit and it could not be ascertained that the sales prices of these transactions were reliable.
- (441) In addition, it should be clarified that the existence of SG&A and profit at the level of the trading company was only made known to the Commission services after the verification visit took place and that Bafang did not raise this issue when providing information concerning its profitability on the two different markets or when identifying elements that could justify a price difference between domestic and export prices (see recital (397)). Finally, it should be noted that Bafang did not substantiate its claim with supporting evidence as it did not submit any further information regarding the level of such SG&A and profit in its comments to the disclosure or re-disclosure. In any event, as explained in recital (437), the correct benchmark for export sale could only be based on the actual price to the final customer regardless of any intermediate sales and corresponding levels of SG&A and profits of traders, as they are irrelevant in establishing the proper market price for the calculation of the subsidy benefit. On this basis, the Commission rejected these claims.
- (442) The subsidy amount established with regard to this scheme during the IP for the sampled exporting producers amounts to:

Table 3

Provision of engines for less than adequate remuneration

Company/Group	Subsidy Rate
Bodo Vehicle Group	5,44 %
Giant Group	0,84 %
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	0,78 %
Suzhou Rununion Motivity	3,96 %
Yadea Group	2,99 %

*3.7.3. Provision of batteries for less than adequate remuneration**3.7.3.1. Ownership of the domestic suppliers of batteries for electric bicycles*

- (443) In absence of any information provided by the GOC concerning the number and ownership of domestic suppliers of batteries for electric bicycles, the Commission had to rely on facts available within the meaning of Article 28(1) of the basic Regulation. In this regard it analysed a specific industry report on the Chinese electric bicycle lithium battery industry provided by the complainant and the situation of the suppliers of batteries of the five sampled exporting producers.
- (444) In parallel, the Commission identified 23 Chinese suppliers of batteries out of which at least 3 were CBA members and at least one was partially State owned. These suppliers represented 33 % of the total quantity of batteries and 31 % of the total value of these purchases in the IP. As outlined in recitals (133) to (139), during the period considered, the CBA was under the management of the State Council. Moreover, as outlined in recital (382) the CBA imposes certain obligations on its members with respect to national policy implementation.
- (445) On this basis the Commission considered that members of the CBA are bound by strict obligations towards their association which is under the business guidance and supervision of the State-owned Assets Supervision and Administration Commission of the State Council. As a consequence, the CBA members, including suppliers of batteries, are considered as subordinated key operators in the bicycle industry entrusted to implement national policy in order to achieve the broader objectives related to the production of electric bicycles. Therefore, also in the case of batteries, the Commission investigated further these policies.

- (446) Similarly to engines, several parties claimed that the CBA is a non-profit association, whose members are companies, research units and local associations in the bicycle industry which voluntarily join. These parties also claimed that most of the CBA members are private-owned companies.
- (447) In this regard, reference is made to recitals (166) and (168) which provide that, due to the refusal of the GOC to provide information on the ownership of domestic suppliers of input materials, the Commission had to rely on facts available. These showed that several CBA members are also SOEs.
- (448) The GOC claimed that the Commission failed to demonstrate that the CBA is a public body.
- (449) In this regard, reference is made to recital (138) and confirmed its conclusion that the CBA operates under the business guidance and supervision 'of the State Council, the Ministry of Civil Affairs and the competent business unit of the society'. This was also the case in the year 2016, when the 13th Bicycle Plan was approved.
- (450) The GOC also claimed that according to existing jurisprudence the State ownership is not sufficient to demonstrate entrustment and direction.
- (451) While State ownership alone is not a sufficient condition to demonstrate entrustment and direction, it is an important element in this regard. Furthermore, it should be noted that, as provided in recitals (452) to (484) below, the Commission's analysis is based on a number of other factors which substantiate the argument that the domestic suppliers of batteries to the electric bicycle industry were entrusted and directed by the GOC. On this basis, these comments had to be rejected.

3.7.3.2. Government policies and objectives

- (452) The Commission identified several legal sources indicating public support to the industry of batteries, because of their position in the electric bicycle industrial supply chain.
- (453) The first document is the Light Industry Development Plan (2016-2020), prepared by the GOC to implement the 13th Five Year Plan and Made in China 2025. The plan identifies batteries among the 'key industries'. Concerning batteries, the plan recommends to 'Promote the battery industry to develop in a green, safe, high-performance and long-life direction. Accelerate the R&D and industrialization of the high-performance electrode materials of lithium ion battery, battery diaphragms, electrolytes, new-type additive and advanced system integration technology, the technology on new-type lead battery, such as coiled and lead-carbon battery, and the next generation lead battery, such as bipolar and non-lead-plate grid and key materials [...]. Focus on developing new-type primary battery, new-type lead battery, power battery for new energy vehicle and fuel cell. Accelerate the speed of technical equipment transforming and upgrading of the lead enterprise in accordance with the Standard Conditions for Lead-acid Battery Industry (Version 2015). Actively boost the construction of waste lead battery recycling system.'
- (454) The plan also identifies concrete policy measures to promote in each of these key industries. These are laid out in recitals (101) to (106) and include, among others, preferential lending, support of export credit insurance and tax policy support.
- (455) The second document is the 'Made in China 2025' Strategy. This is a national strategy which focuses on ten core sectors that receive special support and attention in the period up to 2025. The support is granted through loans from State-owned banks on a non-commercial basis and as well as exemption from compliance with certain standards and regulations, among other privileges. The Chinese battery industry is part of the areas supported by the national strategy. This is evident from the inclusion of the following excerpt:

— Electronic equipment: '[...] Promote the development of new energy and renewable energy equipments, advanced energy storing devices, and smart grid power transmission and transformation and user terminal equipment. Break through manufacturing and application technologies for key components and materials including high power electronic devices and high-temperature superconducting material, and form industrialization ability.' (Chapter III, Section VI, Subsection 7).

(456) The third document is the 13th FiveYear Plan for the Bicycle and Electric Bicycle Industry, which lists the main goals, priorities and support schemes for the bicycle and electric bicycles industry and their main components' industries, including the battery industry:

- 'Continue promoting the development of diverse, branded and high-end bicycles in the industry, and gradually increase the proportion of people travelling by bicycle and the proportion of mid-end and high-end bicycles; realize the lightweight, lithium battery and smart electric bicycles, and constantly improve the market share of lithium battery bicycles and the export proportion of electric bicycles.' (Section V 'Main tasks of the industry development during the 13th 5-year period', Subsection I of the Plan).
- 'Further enhance the comprehensive performance of four major electric components, namely, controller, battery, motor and charger, with an aim to develop the efficient, energy-saving, safe and reliable electric system of electric bicycle.' (Section V, Subsection II of the Plan).
- 'The Plan foresees the further improvement of comprehensive performance of lead-acid battery; the expanded application of lithium battery in electric bicycle; the research and development of new types of energy storage battery.' (Point 4 of Table 3 'Key Technological Innovations of the Industry during 13th 5-year period').

(457) The fourth document is the 12th FiveYear Plan for the Battery industry, adopted in 2015 and therefore applicable throughout the beginning of the period under investigation:

- 'Lithium-ion battery: Increase the use of lithium-ion batteries in electric bicycles, electric motorcycles, buses and small pure electric vehicles (including low-speed electric vehicles), increase the market share of power lithium-ion batteries, and strive for the "twelfth" end of the power tools Lithium-ion batteries are used to reach more than 50 % of the total battery for electric tools, and the proportion of lithium-ion battery electric bicycles is about 20 %.' (Chapter V, Section II).
- 'Promote cooperation between batteries and upstream and downstream industrial chains through the formation of industry alliances or technical collaboration alliances, such as lithium-ion power batteries and electric bicycles, electric vehicles, power management systems and other fields of exchanges and cooperation, organize research, improve product technology, promote the promotion and application.' (Chapter VI 'Main measures and policy recommendations', Section I).
- 'Implement policy guidance and set out relevant laws and regulations so as to i) promote the gradual withdrawal from the market of heavy polluting, resource wasting and highly energy-consuming products, ii) guide high-tech products towards industrialisation, and iii) increase market share on the international markets' (Section VI Subsection V).
- 'It is recommended to introduce industrial policies that encourage the expansion of new types of power batteries (including lithium-ion batteries, hydrogen-nickel batteries, new lead-acid batteries, etc.) and solar cells, such as tax incentives and government subsidies, to promote market launch and energy conservation. It is recommended to introduce a lithium-ion battery electric bicycle subsidy policy to promote the popularization of lithium-ion battery electric bicycles.' (Chapter VI, Section V).

(458) The fifth document is the 13th Five Year Plan for the Battery industry adopted by the China Chemical and Physical Power Industry Association on 18 January 2016:

- 'Main tasks and development priorities', Section II 'Development focus of the chemical power industry during the 13th Five-Year Plan period', Subsection 2 'Lithium-ion battery industry and industrial chain' (Chapter V):
 - 'We should strive to expand our exports in an orderly competition (an average annual increase of 10 %) and maintain the high-speed development of the domestic market (an average annual increase of 20 %) with the support of the favourable policies of the state for new energy vehicles; and attach importance to and promote the formation and development of ultra-large enterprises (or enterprise consortia), promote enterprise innovation in technology and products, well-known brands and high-end enterprises.'
 - 'Continue to support the key technologies of key materials and key equipment, improve the construction of lithium-ion battery industry chain as soon as possible, support the lithium-ion battery industry and product upgrades and reduce costs.'

- ‘Promote cooperation between batteries and upstream and downstream industrial chains through the formation of industry alliances or technical collaboration alliances, such as lithium-ion power batteries and electric bicycles [...].’ (Chapter V ‘Main measures and policy recommendations’, Section I).
- (459) On top of the legal sources depicted above, the Commission relied on a report on the Chinese electric bicycle lithium battery industry (Yubo Zhiye Business consulting). The report (*‘In-depth analysis lithium-ion battery industry for electric bicycles in 2018-2023 and guidance report on the “13th Five-Year” development plan’*)⁽⁵¹⁾, publicly available on the Consultancy’s website (www.chinabgao.com), confirms that the industry is heavily subsidised and that these subsidies are granted with a view to the overall benefit the electrical bicycles industry:
- ‘Continue to support the key technologies of key materials and key equipment, improve the construction of lithium-ion battery industry chain as soon as possible, support the lithium-ion battery industry and product upgrades and reduce costs.’ (Chapter II, Section III, Subsection III, Point I).
 - ‘The cooperation between battery and upstream and downstream industrial chain, such as lithium ion power battery and electric bicycle, electric vehicle and power supply management system, will be promoted through the form of industrial alliance or technical cooperation alliance.’ (Chapter II, Section III, Subsection III, Point II).
 - ‘At present, the high cost restrains the development of energy storage industry, and the market expects high policy subsidies for the energy storage industry. It is expected to be realized in the lithium battery industry in the medium and long term.’ (Chapter V, Section III).
 - ‘Support for national policies: The state and local governments actively supported the development of the electric bicycle industry and the accessories industry, and introduced a number of preferential policies for the development of related industries, which have greatly contributed to the development of the lithium-ion battery industry for electric bicycles. In particular, the rapid development of new energy electric bicycles in recent years also gives strong support to the development of e-bike li-ion battery in China.’ (Chapter X, Section III).
- (460) To summarize, these documents evidence the government’s support to the battery industry and also describe the support measures available from which it has been able to benefit in recent years (preferential financing, tax rebates/exemption and export credit insurance). Furthermore, they emphasize the need to further integrate the battery and electric bicycle industries through advanced cooperation and alliances and acknowledge the existence of a battery electric bicycle subsidy policy to promote the popularization and export of electric bicycles.
- (461) On this basis, the Commission concluded that the battery industry is a supported industry that can benefit from various subsidies and its development is closely linked to that of the electric bicycle industry.

3.7.3.3. Entrustment and direction

- (462) In view of the partial non-cooperation by the GOC, no questionnaire replies were received from suppliers of input material and therefore the Commission lacked crucial information with regard to the domestic market of suppliers of batteries. As a consequence, the Commission had to rely on facts available pursuant to Article 28(1) of the basic Regulation to establish its findings on entrustment. In this regard, the information available to the Commission consisted of the government plans as described in section 3.1, the information gathered from the sampled exporting producers with regard to their domestic suppliers of batteries, publicly available information concerning CBA and its members and the information gathered from Bafang, the sole cooperating supplier of inputs.
- (463) The Commission found several legal sources pointing at the fact that the GOC took actions to lower the cost of batteries in order to confer a benefit to the downstream industry of electric bicycle producers.
- (464) The first document is the 13th Bicycle plan. The plan states that breakthroughs will be achieved in six key technologies. One of which is the comprehensive performance improvement of lead-acid battery and lithium-ion battery. The plan also sets three quantifiable objectives:
- Concerning the share of lithium batteries: ‘make the percentage of lithium battery bicycle in the total output volume of electric bicycles exceed 30 %’.

⁽⁵¹⁾ <http://www.chinabgao.com/report/4134952.html>.

- Concerning the cost of battery: *'While maintaining the high energy efficiency ratio of lithium battery, make breakthroughs in production process and materials, and lower the production cost of lithium battery'.*
 - Concerning the price of battery: *'Further improve the price performance ratio of lithium battery nearly to the level of lead-acid battery'.*
- (465) The second document is the 13th five-year Battery Plan. The plan establishes several links with the downstream industry and in particular with the electric bicycle, as described in recital (458). Furthermore, it also establishes a link between the subsidisation of the battery industry and the electric bicycle industry: *'It is recommended to introduce a lithium-ion battery electric bicycle subsidy policy to promote the popularization of lithium-ion battery electric bicycles'* (Chapter V, Section V).
- (466) The third document is the specific industry report on batteries described in recital (459) which clarifies that the *'future key applications of lithium-ion batteries will focus on power tools, light electric e-bikes, new energy vehicles and energy storage systems'* (Chapter V, Section II). This clarifies the Commission understanding that the Chinese electric bicycles industry is switching towards lithium batteries. This was also confirmed by the questionnaire replies of the sampled exporting producers.
- (467) The fourth document is 'The Implementation Opinions of Further Promoting Healthy Development of Bicycle Industry in Our City' published by the Municipal Commission of Economy and Information Technology of Tianjin. In line with the provisions contained in the 13th Bicycles plan, the Opinions recommend the use of domestic batteries in the production of electric bicycles and a reduction of their cost: *'Relying on the domestic leading lithium battery and material R&D and manufacturing enterprises such as Lishen, BAK, and Gateway, we shall enhance the R&D of high-performance, low-cost, safe and reliable lithium batteries for electric bicycles and related supporting technologies'.*
- (468) On the basis of the above, it is clear that the policy designed by the GOC establishes a link between the development of the lithium-ion battery industry and the electric bicycle industry. Furthermore, the policy also foresees that the battery industry shall reduce its costs and prices, through subsidies, in order to promote the development of the electric bicycle industry. This clearly shows that by way of these policies the GOC entrusts and directs the producers of batteries to sell them at a low price for the benefit of the downstream electric bicycle industry.
- (469) As far as the suppliers of batteries to the sampled exporting producers are concerned, the Commission established in recital (444) that the members of CBA that provided batteries to the sampled exporting producers represented 33 % of the total domestic quantity supplied to the sampled exporting producers and 31 % of the total domestic purchase value during the IP. Furthermore, the Commission concluded in recital (383) that the members of the CBA, including suppliers of parts, are subordinated key operators that are entrusted to implement national policy in order to achieve the broader objectives related to the production of electric bicycles. Based on the above and in the absence of any other information, this was considered representative of the situation on the domestic Chinese batteries market.
- (470) More specifically, in the absence of cooperation by any manufacturing supplier of batteries, the Commission had to rely on the information gathered from Bafang that sold batteries on the domestic market and for export. In this context, the investigation revealed that it had sold equivalent models of batteries at significantly more favourable (lower) prices domestically than for export. The difference was between 30 % and 50 % in the IP.
- (471) Several parties claimed that Bafang's sales of batteries could not be used as a benchmark for the following reasons. First, Bafang is not a producer of batteries. Second, part of the batteries exported as well as sold by Bafang domestically are imported. They also claimed that the comparison of Bafang's prices could not be used as a benchmark for batteries since the volume of batteries sold by Bafang was very low during the IP.
- (472) In this regard, it is first recalled that, in view of the partial cooperation by the GOC as referred to in section 3.3.3 and in the absence of cooperation by any manufacturer of batteries, the Commission had to base its findings on facts available in accordance with Article 28 of the basic Regulation. On this basis, it was considered that the facts available; i.e. the relevant data pertaining to Bafang, were appropriate and reasonable. Second, in view of the national policy and provisions of the Bicycle plan, issued by CBA, which aims namely at improving the price performance of lithium batteries and the export performance of electric bicycle exporting producers as

mentioned in recitals (112), (113) and (464), it was considered that the source of supply, that is whether the batteries were produced internally, or purchased domestically or even imported, was irrelevant. What is relevant for the purpose of the investigation is the difference for the producers of the product under investigation between the subsidised price of batteries actually paid and a representative market price they would have paid absent subsidisation. On the basis of the above, these claims had to be rejected.

- (473) These models were equivalent as they were identified with the same internal product reference code and had the same capacity in mAh. However, the substantial price difference established between domestic and export markets for equivalent models could not be justified. Likewise, as for engines, there was no information in the file that would explain that the different price levels were due to particular market conditions on the different markets where the batteries were sold. Such hypothesis was in particular contradicted by the information collected in the investigation, i.e. that, as a member of CBA, Bafang is subordinated to this association and that the 13th Bicycle plan, which directly affects CBA, aims at improving the export performance of electric bicycle exporting producers as mentioned in recitals (112) and (113) above. As a consequence, in order to contribute to the export performance of the electric bicycle industry, Bafang is entrusted or directed to sell input at cheaper prices on the domestic market so that the Chinese exporting producers of electrical bicycles can reduce their costs and offer their products at significantly lower prices on the export markets than its competitors on the export markets, which have to source batteries at non subsidised prices. By doing so, the suppliers of batteries are following an irrational behaviour to sell batteries for a lower price on the domestic market rather than seeking a maximisation of their profits by selling the same models of batteries in export markets at a substantially higher prices, thus yielding a substantially higher profit. As a consequence, in order to contribute to the export performance of the industry, it is entrusted to sell input at cheaper prices on the domestic market so that the exporting producers of electrical bicycles can offer their products at significantly lower prices than its competitors on the export markets, that have to source batteries at non subsidised prices.
- (474) Yadea Group and Bafang claimed that the models that are sold domestically and exported are not the same and that these models were sourced from different suppliers. Therefore, Bafang suggested that the comparison should be made only on the basis of exactly the same models of batteries sourced by one supplier, whose products are both exported and sold domestically. Bafang also commented that by limiting the comparisons to the batteries sold by the indicated supplier, would still result in a significant difference between domestic and export prices, although sensibly lower than using the models from all the other suppliers.
- (475) In this regard, it should be noted that the comparison was made for products that have the same internal reference number for Bafang. As a consequence, it was considered that these models were similar especially given the fact that they have the same power capacity. The fact that a comparison based on models sourced from exactly the same source would still result in a significant price difference was found irrelevant. For these reasons, the claims above were rejected.
- (476) Based on the above, the Commission concluded that the GOC is entrusting or directing Chinese producers of batteries to supply this input for less than adequate remuneration to the domestic producers of electric bicycles.
- (477) Following the disclosure, Giant submitted that according to WTO Appellate Body in US – Countervailing Duty Investigation on DRAMs, ‘mere policy pronouncements’ cannot ‘constitute entrustment or direction for the purposes of Article 1.1(a)(1)(iv) of the SCM Agreement.’⁽⁵²⁾ Furthermore, ‘entrustment and direction – through the giving of responsibility to or exercise of authority over a private body – imply a more active role than mere acts of encouragement.’⁽⁵³⁾ The Appellate Body concluded that evidence of ‘entrustment or direction of a private body’ would ‘involve some form of threat or inducement.’⁽⁵⁴⁾ Moreover, Giant also referred to the WTO Panel in US – Export Restraints which noted that ‘both the act of entrusting and that of directing therefore necessarily carry with them the following three elements: (i) an explicit and affirmative action, be it delegation or command; (ii) addressed to a particular party; and (iii) the object of which action is a particular task or duty.’⁽⁵⁵⁾ Mere supervision or the exercise of general regulatory powers is therefore insufficient to find entrustment and direction.⁽⁵⁶⁾

⁽⁵²⁾ AB Report, US – Countervailing Duty Investigation on DRAMs, para. 114.

⁽⁵³⁾ Idem footnote 45, para. 114.

⁽⁵⁴⁾ Ibid. footnote 45, para. 116.

⁽⁵⁵⁾ Panel Report, US – Export Restraints, para. 8.29.

⁽⁵⁶⁾ Appellate Body Report, US — Countervailing Duty Investigation on DRAMs, para. 115

- (478) In this regard, it should be noted that the conclusion of the Commission is not solely based on mere policy pronouncement which is detailed in Section 3.1. It is also based on the role of the CBA, which, as an association grouping not only bicycle producers but also battery manufacturers, is supervised and guided by the highest Chinese authority, i.e. the State Council. Furthermore, it is also recalled that the members of CBA are bound to implement its resolutions and were therefore considered to be subordinated. In this regard it is recalled that the CBA issued the 13th Bicycle plan which aims namely at improving the export performance of electric bicycle exporting producers as mentioned in recitals (112) and (113). The above considerations are also supported by numerous extracts from the specific industry report on batteries listed in recital (459) and more in general from different sources in recitals (464) to (467) showing that the support to the battery sector is functional to its position in the supply chain of electric bicycles. On this basis, this claim had to be rejected.
- (479) Giant also considered that the Commission had inverted the burden of proof referring to the partial non-cooperation of the GOC with respect to the conclusions made. Giant underlined that the burden of proof rests with the Commission and that the Commission has not demonstrated that the provision of electric bicycle batteries is a practice normally vested in the government.
- (480) Similarly to the conclusion made in recital (415), it is considered that also for batteries the evidence at hand, which is based on facts available, is sufficient to demonstrate entrustment and direction. It is also recalled that the GOC did not raise any comment or submit further information after being informed that the Commission intended to apply facts available with regard to the provision of inputs for less than adequate remuneration. On this basis, the Commission considered that it did not invert the burden of proof. This claim had therefore to be rejected.

3.7.3.4. Subsidisation of battery producers

- (481) The Commission first recalls that due to the partial non-cooperation of the GOC it had to establish its findings on the basis of facts available which consisted of the government policies described in section 3.7.3.2 and the specific industry report provided by the complainant and the information provided by the sole cooperating supplier of batteries, that responded to the Commission's questionnaire.
- (482) The Commission noted in recitals (453) and (454) that the battery industry is listed in the Light industry Development Plan as a 'key industry' and such plan identifies a number of policy measures in the form of administrative, market, financial and tax supports available to such key industries.
- (483) Furthermore, as described in recital (459), the specific battery industry report contains evidence that this industry received '*preferential policies*'.
- (484) On the basis of the above, the Commission concluded that battery producers received subsidies in various forms.
- (485) Several parties commented by referring to the Article 14(d) of the WTO SCM Agreement as well as Article 6(d) of the basic Regulation concerning the adequacy of remuneration which shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase. In other words, that the benchmark used should relate to the conditions prevailing in the Chinese market; or on the basis of terms and conditions prevailing in the market of another country or on the world market which are available to the recipient.
- (486) The Commission found that the prevailing conditions in the PRC market were distorted in view of the applicable national and sectoral policies implemented by the economic operators. In addition, due to the partial non-cooperation of the GOC, the Commission lacked crucial information on the battery market situation in China and on possible adjustments that needed to be made. As far as prevailing conditions in the market of another country or the world market are concerned, such information was not available in a level of detail that would allow a meaningful comparison. As a consequence, the Commission had to rely on the available information. On this basis, the Commission therefore concluded that the prevailing conditions on the Chinese market did not justify adjustments and calculated the benchmark using the methodology described in recital (495).

- (487) Giant and the GOC claimed that the Commission's approach violated Articles 1.1(b), 10 and 32.1 of the WTO SCM Agreement, since the Commission cannot circumvent its obligation to conclude that manufacturers are entrusted or directed. For this, Giant claimed that the Commission must: (1) analyse whether there have been subsidies granted to manufacturers; (2) analyse whether batteries were purchased at arm's-length; (3) calculate how much of the subsidies has passed-through.
- (488) In this regard, it is considered that the Commission's conclusion is based on sufficiently detailed grounds. As far as Giant's comments are concerned, the Commission considered that, in view of the non cooperation of the GOC and the fact that only one supplier cooperated on its own initiative, it lacked crucial information. Nevertheless, based on the information at hand and the analysis that the Commission performed, it was considered that the conditions to conclude on entrustment and direction were fulfilled. As far as passthrough is concerned, since the Commission's analysis covered the entrustment and direction of the batteries suppliers to provide batteries to electric bicycles producers at less than adequate remuneration and not the subsidies received by the batteries suppliers, this claim was considered irrelevant and was therefore rejected.

3.7.3.5. Specificity

- (489) As demonstrated in recitals (452) to (474), several legal documents which are specifically targeted at companies in the electric bicycle sector, direct the input suppliers to provide batteries for less than adequate remuneration to the electric bicycles industry. On the basis of these documents it is demonstrated that the input suppliers only provide batteries to a limited number of industries/enterprises which comply with the relevant policies of the GOC.
- (490) The Commission therefore concluded that subsidies in the form of provision of batteries at less than adequate remuneration are not generally available but are specific within the meaning of Article 4(2)(a) of the basic Regulation. Moreover there was no evidence submitted by any of the interested parties suggesting that such form of subsidies is based on objective criteria or conditions in the sense of Article 4(2)(b) of the basic Regulation.

3.7.3.6. Benefit

- (491) All sampled exporting producers purchased batteries domestically from unrelated companies but also imported some quantities.
- (492) In view of the partial non-cooperation by the GOC, no manufacturing supplier of batteries provided information to the Commission by replying to the specific questionnaire intended for suppliers of input in China. As a consequence the Commission had to rely on facts available in accordance with Article 28 of the basic Regulation in order to determine the level of the benefit for the sampled exporting producers that purchased batteries on the domestic market. The facts available consisted of the information gathered from the sole supplier of batteries that cooperated in the investigation. As explained in recital (470), Bafang, as a subordinated operator entrusted to implement national policy, sold batteries at substantially lower prices on its domestic market than for export. As a consequence Chinese exporting producers benefitted from batteries sold for less than adequate remuneration.
- (493) Several parties claimed that according to Articles 2(a) and 2(b) of the Basic Regulation only the government is eligible to be the provider of subsidy. Since Bafang is a private-owned company, it cannot be regarded as the government, within the meaning of Article 2(b) and therefore cannot be a provider of subsidies.
- (494) In this regard, it was considered that this comment was not relevant in view of the conclusion reached in recital (476); i.e. that the suppliers of batteries to the producers of electric bicycles are entrusted and directed by the GOC to supply this input for less than adequate remuneration.

3.7.3.7. Calculation of the subsidy amount

- (495) The benefit for the sampled companies was thus calculated by comparing the domestic and export prices to unrelated customers that Bafang charged during the IP. An adjustment was made to take account of differences in transport costs and import charges. This comparison was made for sales of identical models and resulted in a price difference between 30 % and 50 % in the IP. The calculated percentage was applied to the prices paid by the sampled exporting producers for the batteries purchased from Chinese domestic suppliers.

- (496) Giant claimed that there is no link between the locally purchased batteries and the electric bicycles exported to the EU.
- (497) In this regard, it is considered that the benefit defined in recitals (491) to (494) are to the advantage of the exporting producers of electric bicycles purchasing domestic batteries at less than adequate remuneration and are not related to specific models of electric bicycles sold. Therefore, it was concluded that Giant Group received a benefit when purchasing domestically engines at distorted prices due to the GOC's entrustment and direction described in recitals (462) to (476). On this basis, this claim had to be rejected.
- (498) As far as the adjustments are concerned, Bafang claimed that transport costs related to electric bicycles could not be an appropriate benchmark for the transport of batteries and requested the Commission to provide further details on the calculations made.
- (499) Further to such comments, the Commission provided an additional final disclosure to the party concerned providing additional information. In any case, it was considered that the requested information was of confidential nature and that company-specific figures could not be disclosed. The Commission also noted that this claim was not supported by any evidence. No further comments were received in this regard.
- (500) Other interested parties claimed that Bafang's data was not an appropriate benchmark in their case since they had not purchased any batteries from Bafang.
- (501) In this regard, it is noted that, in view of the partial cooperation by the GOC and in the absence of cooperation by any other supplier of batteries, the Commission had to rely on facts available; i.e. the information provided by Bafang, which the Commission could verify. On such basis, this claim had to be rejected.
- (502) The subsidy amount established with regard to this scheme during the IP for the sampled exporting producers amounts to:

Table 4

Provision of batteries for less than adequate remuneration

Company/Group	Subsidy Rate
Bodo Vehicle Group	6,91 %
Giant Group	0,38 %
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	5,51 %
Suzhou Rununion Motivity	8,97 %
Yadea Group	2,74 %

3.7.4. Provision of land use rights (LUR) for less than adequate remuneration**(a) Introduction**

- (503) All land in the PRC is either owned by the State or by a collective, constituted of either villages or townships, before the land's legal or equitable title may be patented or granted to corporate or individual owners. All parcels of land in urbanized areas are owned by the State and all parcels of land in rural areas are owned by the villages or townships therein.
- (504) Pursuant to the constitutional law of the PRC and the Land Law, companies and individuals may however purchase 'land use rights'. For industrial land, the leasehold is normally 50 years, renewable for a further 50 years.
- (505) According to the GOC, since 31 August 2006, by Article 5 of the State Council's Notice regarding Strengthening Regulation of Land (GF[2006] No.31), title to industrial land can only be granted from the State to industrial enterprises through bidding or a similar public offering process whereby the final deal price must not be lower than the minimal bidding price. The GOC considers that there is a free market for land in the PRC, and that the price paid by an industrial enterprise for the leasehold title of the land reflects the market price.

(b) Legal basis

(506) The land-use right provision in China falls under Land Administration Law of the People's Republic of China. In addition, the following documents also are part of the legal basis:

- Law of the People's Republic of China on Urban Real Estate Administration (Order of the President of the People's Republic of China No. 18);
- Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas;
- Regulation on the Implementation of the Land Administration Law of the People's Republic of China (Order of the State Council of the People's Republic of China [2014] No. 653);
- Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation;
- State Council's Notice regarding Strengthening Regulation of Land (GF[2006] No.31).

(c) Findings of the investigation

(507) According to Article 10 of the 'Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation', local authorities set land prices according to the urban land evaluation system, which is only updated every three years, and the government's industrial policy.

(508) In previous investigations ⁽⁵⁷⁾, the Commission found that prices paid for Land Use Rights ('LUR') in the PRC were not representative of a market price determined by free market supply and demand, since the auctioning system was found to be unclear, non-transparent and not functioning in practice, and prices were found to be arbitrarily set by the authorities. As mentioned in the previous recital, the authorities set the prices according to the Urban Land Evaluation System which instructs them among other criteria to consider also industrial policy when setting the price of industrial land, *i.e.* grant *e.g.* preferential access to industrial land for companies belonging to certain industries.

(509) The current investigation did not show any noticeable changes in this respect. For instance, the Commission found that none of the sampled exporting producers had gone through bidding or a similar public offering process for any of its LURs, not even for the land use rights obtained recently. LURs held by the sampled exporting producers were allocated by local authorities at negotiated prices.

(510) In addition to the urban land monitoring system there is also a dynamic land monitoring system. In the expiry review on Solar Panels originating in the People's Republic of China ⁽⁵⁸⁾, the Commission found that prices in the dynamic land monitoring system are higher than the minimum benchmark prices set by the urban land evaluation system and used by local governments, because the latter were updated only every three years, while the dynamic monitoring prices were updated quarterly. However, in the current investigation as in the expiry review mentioned above, there was no indication of land prices being based on the dynamic monitoring prices. In fact, the GOC had confirmed during the investigation on solar panels that the urban land price dynamic monitoring system monitored the fluctuations of the price levels of land in certain areas (*i.e.* 105 cities) in the PRC and was designed to assess the evolution of land prices. However, the starting prices in biddings and

⁽⁵⁷⁾ See, amongst others, Council Implementing Regulation (EU) No 452/2011, OJ L 128, 14.5.2011, p. 18 (Coated fine paper), Council Implementing Regulation (EU) No 215/2013, OJ L 73, 15.3.2013, p. 16 (Organic coated steel), Commission Implementing Regulation (EU) No 1379/2014, OJ L 367, 23.12.2014, p. 22 (Filament glass fibre), Commission Implementing Regulation (EU) 2017/366, OJ L 56, 3.3.2017, p. 1 (Solar panels), Commission Implementing Regulation (EU) 2017/969, OJ L 146, 9.6.2017, p. 17 (HRF).

⁽⁵⁸⁾ Commission Implementing Regulation (EU) 2017/366, OJ L 56, 3.3.2017, p. 1 (Solar panels), recitals 421 and 425.

auctions were based on the benchmarks established by the land evaluation system. In addition, in the case at stake, the sampled groups of companies received their plots of land through direct allocation. Therefore, the fact that the latter system existed was irrelevant since it did not apply to the sampled exporting producers.

- (511) The Commission found that one of the sampled exporting producers received refunds from local authorities to compensate for the prices which they paid for part of their LURs and that another sampled exporting producer did not pay the full amount of LUR.

(d) Conclusion

- (512) The findings of this investigation show that the situation concerning land provision and acquisition in the PRC is non-transparent and the prices were arbitrarily set by the authorities.

- (513) Following the disclosure, several parties claimed that the above conclusion was mainly based on findings in the previous investigations, and the Commission did not show any evidence to show that the situation was the same in this investigation. The Commission notes that it found evidence as described in recitals (509) to (511) above, which supported the Commission's conclusion that the findings of previous investigations were still valid. Furthermore, no new evidence was submitted to support the opposite. On this basis, these claims had to be rejected. Accordingly, the provision of land-use rights by the GOC should be considered a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation in the form of provision of goods which confers a benefit upon the recipient companies. As explained in recitals (507) to (510) above, there is no functioning market for land in the PRC and the use of an external benchmark (see recitals (517) to (527) below) demonstrates that the amount paid for land-use rights by the sampled exporting producers is well below the normal market rate. In the context of preferential access to industrial land for companies belonging to certain industries, the price set by local authorities has to take into account the government's industrial policy, as mentioned above in recital (508). Within this industrial policy, as described in recital (101) the electric bicycles industry is considered to be a key industry of the Chinese Light Industry ⁽⁵⁹⁾. In addition, Decision No 40 of the State Council requires that public authorities ensure that land is provided to encourage industries. Article 18 of Decision No. 40 makes clear that industries that are 'restricted' will not have access to land use rights. It follows that the subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic Regulation because the preferential provision of land is limited to companies belonging to certain industries and government practices in this area are unclear and non-transparent.

- (514) Following disclosure, several parties claimed that the Commission had not substantiated its determination of specificity on the basis of positive evidence showing that the electric bicycle industry is among those industries that obtain LUR at preferential rates.

- (515) In this regard, reference is made to recital (129) and to Decision 40 in particular whereby preferential policies on land should be implemented for encouraged projects. As described in recital (100) the electric bicycle is a key industry. It was also subject to the 13th Bicycle plan issued by the CBA which in turn is under the guidance and supervision of the State Council. Consequently, the Commission considered that the electric bicycle industry belongs to those industries that obtained LUR at preferential rates. This was also confirmed by the findings of the investigation as provided in recitals (507) to (511). Furthermore, the bicycle industry was already indicated as an encouraged industry as far back as the 11th Five Year Bicycle Plan, where the growth of the output volume for bicycles and electric bicycles, was supported. References for improving and strengthening the electric bicycle industry also appeared in a relevant article published by China Bicycles Association summarising the development goals set up in the spirit of the 11th Five-Year Bicycle Plan ⁽⁶⁰⁾. On this basis, this claim had to be rejected.

- (516) Consequently, this subsidy was considered countervailable.

⁽⁵⁹⁾ See section 3.1 above.

⁽⁶⁰⁾ <https://www.ixueshu.com/document/1124f83795d6abfc.html>

(e) Calculation of the subsidy amount

- (517) As in previous investigations ⁽⁶¹⁾ and in accordance with Article 6(d)(ii) of the basic Regulation, land prices from Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu ('Chinese Taipei') were used as an external benchmark ⁽⁶²⁾. In particular, the Commission retrieved information concerning industrial land prices from the official website (<http://lvr.land.moi.gov.tw/login.action>) established by the Taiwan Ministry of Interior for the main industrial parks of six cities located on the west coast of Taiwan island including Taipei city, New Taipei City, Taoyuan City, Taichung city, Tainan City, and Kaohsiung City. The information provided in the database of the Ministry of Interior refers to actual transactional prices rather than offers for industrial land.
- (518) Following the disclosure one party commented that the Commission had failed to select a proper external benchmark for land prices as it failed to conduct a case-specific analysis of the facts pertinent to the respective locations of sampled exporting producers. The Commission rejected the comment and noted that as described in recital (517) its selection has been based on the six districts where most Taiwanese industrial parks are located. Since all the sampled exporting producers are located in industrial zones in China, the location factor has been taken into account. On this basis, this claim had to be rejected.
- (519) The benefit conferred on the recipients is calculated by taking into consideration the difference between the amount actually paid by each of the sampled exporting producers (i.e. the actual price paid as stated in the contract and, when applicable, the price stated in the contract reduced by the amount of local government refunds/grants) for land use rights and the amount that should normally have been paid on the basis of the Chinese Taipei benchmark.
- (520) The Commission considers Chinese Taipei as a suitable external benchmark for the following reasons:
- the comparable level of economic development, GDP and economic structure in Chinese Taipei and a majority of the provinces and cities in the PRC where the sampled exporting producers are based;
 - the physical proximity of the PRC and Chinese Taipei;
 - the high degree of industrial infrastructure in both Chinese Taipei and many provinces of the PRC;
 - the strong economic ties and cross border trade between Chinese Taipei and the PRC;
 - the high density of population in many of the provinces of the PRC and in Chinese Taipei;
 - the similarity between the type of land and transactions used for constructing the relevant benchmark in Chinese Taipei with those in the PRC; and
 - the common demographic, linguistic and cultural characteristics between Chinese Taipei and the PRC.
- (521) Moreover, the Commission considered this benchmark to be a reliable source of data accessible to all interested parties.
- (522) After the disclosure, several parties claimed that Chinese Taipei was not a suitable external benchmark. They claimed that the similarities and the link between PRC and Chinese Taipei described in recital (520), reflect only the situation in recent years instead of the year when the land use right was purchased.
- (523) In this regard, it should be noted that the calculated benchmark was adjusted to reflect changes over time by taking into account the evolution of GDP and inflation, as described in recital (527) below. Consequently, the fact that some land use rights were acquired in a distant past had already been taken into account.
- (524) One interested party claimed that Thailand would be more appropriate than Chinese Taipei due to better comparability of the economic development and the population density. In addition, it claimed that Thailand has a high degree of industrial infrastructure. After consideration of the claim the Commission considered that the choice of Chinese Taipei as a suitable external benchmark was based on the examination of several factors listed in recital (520) which justified its choice as a valid benchmark. On this basis, this claim had to be rejected.

⁽⁶¹⁾ See, amongst others, Council Implementing Regulation (EU) No 452/2011, OJ L 128, 14.5.2011, p. 18 (*Coated fine paper*), Council Implementing Regulation (EU) No 215/2013, OJ L 73, 15.3.2013, p. 16 (*Organic coated steel*), Commission Implementing Regulation (EU) 2017/366, OJ L 56, 3.3.2017, p. 1, (*Solar panels*), Commission Implementing Regulation (EU) No 1379/2014, OJ L 367, 23.12.2014, p. 22, (*Filament glass fibre*), Commission Implementing Decision 2014/918, OJ L 360, 16.12.2014, p. 65 (*Polyester Staple Fibers*).

⁽⁶²⁾ As accepted by the General Court in Case T-444/11 *Gold East Paper and Gold Huacheng Paper versus Council*, Judgment of the General Court of 11 September 2014 ECLI:EU:T:2014:773.

- (525) Furthermore, another party claimed that the Commission's methodology for determining an out-of-country benchmark for land-use prices was flawed and suggested the use of India instead of Chinese Taipei for the following reasons:
- The industrial land prices were collected by a wide number of different industrial areas in the states of Bihar, Maharashtra and Tamil Nadu,
 - These three states are highly industrialised and display a high level of economic development and industrial infrastructure similar to China
 - These three states are geographically close to each other and to China,
 - There are well-established economic ties and cross-border trade between India and China,
 - The 22 cities have similar population densities as Chinese industrialised cities,
 - Finally, data relating to industrial land prices are publicly available in India.
- (526) The claim of this party ignored one crucial element in its analysis, namely the level of economic development of these provinces. According to public sources, the level of GDP per capita of these Indian provinces is far below that of the cities / provinces where the exporting producers are based. As a matter of fact, the GDP per capita of Maharashtra ⁽⁶³⁾, which is the highest of the three provinces quoted, amounted to only 2 500 USD in 2017-2018 while the lowest level found for Chinese exporting producers amounted to 7 932 USD for Jinhua in 2012 ⁽⁶⁴⁾. The investigation also revealed that the GDP per capita for Kunshan ⁽⁶⁵⁾, which was listed as No. 1 of all Chinese county-level city in 2016 ⁽⁶⁶⁾ amounted to over 20 000 USD. Considering the above and the factors listed in recital (520), this claim had to be rejected.
- (527) The Commission computed the weighted average price of land based on the sales transactions of land in the six cities listed in recital (517). Such data was available only starting from August 2013. For the period starting after this date, the Commission therefore used the actual prices from the Taiwanese Ministry of Interior. For LURs acquired before this date, historic prices were constructed based on the evolution of GDP and inflation in Taiwan, as was the case in previous investigations. In particular, the Commission corrected the weighted average land price per square meter established in Taiwan by the inflation rate and GDP at current prices in USD for Taiwan as published by the IMF for 2015.
- (528) Following the disclosure several parties claimed that the method used by the Commission to calculate the historic land prices did not reflect the normal market rate. They claimed that the Commission did not base itself on any evidence that the development of land prices followed a similar trend as that of GDP and inflation. However, this claim was not supported by any evidence. This had therefore to be rejected.
- (529) Two interested parties also claimed that they did not receive any benefit from the LUR as (i) the rent was reflected in the companies' cost of production; (ii) the rent paid to the related company was set according to market conditions or at fair conditions and (iii) any benefit had in any event not been passed through from the related company. One of the exporting producers, in addition, claimed that its related company had acquired its LUR following a competitive bidding process. The latter also claimed that in any event, the rent paid to its related party for LUR should be deducted from the calculation of the benefit.
- (530) Regarding the setting of the rent that was paid to the related company, none of the exporting producers concerned submitted any supporting evidence concerning the prevailing market conditions. The same is true concerning the bidding process to which the related company allegedly participated in order to acquire its LUR, i.e. no evidence was submitted in support of this claim. These claims had therefore to be rejected.
- (531) Regarding the calculation of the benefit, it is recalled that LUR in China, as detailed in recitals (507) ff, was found to be provided for less than adequate remuneration to electric bicycles industry. Furthermore, these parties did not provide any evidence on the prevailing market conditions in China. Finally, the benefit is calculated on a group level and intercompany transactions have a neutral effect on the overall calculation. Therefore, these claims were rejected..

⁽⁶³⁾ https://en.wikipedia.org/wiki/Economy_of_Maharashtra

⁽⁶⁴⁾ <https://en.wikipedia.org/wiki/Jinhua>

⁽⁶⁵⁾ <https://en.wikipedia.org/wiki/Kunshan>

⁽⁶⁶⁾ <http://unn.people.com.cn/n1/2017/1009/c14717-29576902.html>

- (532) In accordance with Article 7(3) of the basic Regulation the subsidy amount has been allocated to the IP using the normal life time of the land use right for industrial use land, i.e. 50 years. This amount has then been allocated over the total respective company turnover during the IP, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.
- (533) The subsidy amount established with regard to this scheme during the IP for the sampled exporting producers amounts to:

Table 5

Provision of Land use rights for less than adequate remuneration

Company/Group	Subsidy Rate
Bodo Vehicle Group	1,42 %
Giant Group	0,91 %
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	0,62 %
Suzhou Rununion Motivity	1,46 %
Yadea Group	0,43 %

3.8. Direct tax exemption and reduction programmes

3.8.1. EIT privileges for High and New Technology Enterprises

- (534) According to the Law of the People's Republic of China on Enterprise Income Tax ('EIT Law'), high and new technology enterprises to which the State needs to give key support are given a reduced enterprise income tax rate of 15 % rather than the standard tax rate of 25 %.

(a) Legal basis

- (535) The legal basis of this programme is Article 28 of the EIT Law and Article 93 of the Implementation Rules for the Enterprise Income Tax Law of the PRC, as well as:
- Circular of the Ministry of Science and Technology, Ministry of Finance and the State Administration of Taxation on revising and issuing 'Administrative Measures for the Recognition of High-Tech Enterprise', G.K.F.H. [2016] No. 32;
 - Notification of the Ministry of Science and Technology, Ministry of Finance and State Administration of Taxation concerning Revising, Printing and Issuing the Guidance for the Recognition Management of High and New Tech Enterprises, GKFH [2016] No. 195; and
 - Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries (2011), issued by the NDRC, the Ministry of Science and Technology, the Ministry of Commerce and the National Intellectual Property Office.

(b) Findings of the investigation

- (536) Companies which can benefit from the tax reduction are part of certain key high and new technology fields supported by the State, as well as the current priorities on high technology fields supported by the State, as listed in the Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries.
- (537) In addition in order to be eligible, the companies must satisfy the following criteria:
- keep a certain proportion of research and development expenses in comparison with their sales revenue;
 - keep a certain proportion of income from high-tech technology/products/services in the enterprise's total revenue; and
 - keep a certain proportion of technical personnel in the enterprise's total employees.

- (538) Companies benefiting from this measure have to file their income tax return and the relevant annexes. The actual amount of the benefit is included in the tax return.
- (539) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this scheme only to enterprises that are operating in certain high technology priority areas determined by the State.
- (540) Following the disclosure one party argued that EIT Reduction for High and New Technology Enterprises stipulated in Article 28 of the Enterprise Income Tax Law is not a specific subsidy. It also argued that the Commission did not demonstrate that obtaining the certificate of High and New Technology Enterprises is limited to certain enterprises. In this regard, reference is made to recitals (536) to (539), which list the eligibility criteria in this regard, i.e. limited to high and new technology enterprises to which the State needs to give key support, thus confirming the specificity of the subsidy. On this basis, this claim had to be rejected. In the absence of further evidence the Commission maintained its position.

(c) Calculation of the subsidy amount

- (541) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the IP. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable under the reduced tax rate.
- (542) The subsidy amount established with regard to this scheme during the IP for the sampled exporting producers amounts to:

Table 6

EIT privileges for High and New Technology Enterprises

Company/Group	Subsidy Rate
Bodo Vehicle Group	0,00 %
Giant Group	0,65 %
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	0,41 %
Suzhou Rununion Motivity	0,00 %
Yadea Group	0,70 %

3.8.2. *EIT offset for research and development expenses*

- (543) The tax offset for research and development entitles companies to preferential tax treatment for their R&D activities in certain high technology priority areas determined by the State and when certain thresholds for R&D spending are met.
- (544) More specifically, R&D expenditures incurred to develop new technologies, new products and new crafts which do not form intangible assets and are accounted into the current term profit and loss, are subject to an additional 50 % deduction after being deducted in full in light of the actual situation. Where the above-mentioned R&D expenditures form intangible assets, they are subject to amortization based on 150 % of the intangible asset costs.

(a) Legal basis

(545) The legal basis for the programme is Article 30(1) of the EIT Law, along with the Implementation Rules for the Enterprise Income Tax Law of the PRC; as well as the following notices:

- Notice of the Ministry of Finance, the State Administration of Taxation and the Ministry of Science and Technology on Improving the Policy of Pre-tax Deduction of R&D Expenses. (Cai Shui [2015] No. 119);
- Notice of the State Administration of Taxation on Issues Concerning Policy of Pre-tax Deduction of R&D Expenses of Enterprises; and
- Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries (2011), issued by the NDRC, the Ministry of Science of Technology, the Ministry of Commerce and the National Intellectual Property Office.

(b) Findings of the investigation

(546) During a previous investigation ⁽⁶⁷⁾, it was established that the ‘new technologies, new products and new crafts’ which can benefit from the tax deduction are part of certain high technology fields supported by the State, as well as the current priorities on high technology fields supported by the State, as listed in the Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries.

(547) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this measure only to enterprises that incur R&D expenses in certain high technology priority areas determined by the State.

(548) Following disclosure some parties argued that EIT offset for research and development expenses is not a specific subsidy and that it was not countervailed in the Canadian anti-subsidy investigation on certain unitized wall from China for lack of specificity. The Commission referred to recitals (546) and (547) above, where specificity has already been addressed. Furthermore, it should be noted that this finding is also corroborated by the situation of one exporting producer which enjoyed such preferential tax policy after obtaining a New and High technology certificate. On the basis of the above, this claim was rejected.

(c) Calculation of the subsidy amount

(549) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable after the additional 50 % deduction of the actual expenses on R&D.

(550) The subsidy amount established with regard to this scheme during the IP for the sampled exporting producers amounts to:

Table 7

EIT offset for research and development expenses

Company/Group	Subsidy Amount
Bodo Vehicle Group	0,21 %
Giant Group	0,05 %

⁽⁶⁷⁾ See Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China, (OJ L 146, 9.6.2017, p. 17), recital 330.

Company/Group	Subsidy Amount
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	0,19 %
Suzhou Rununion Motivity	0,00 %
Yadea Group	0,51 %

3.8.3. Exemption from tax of dividend income between qualified resident enterprises

(551) The exemption from tax of dividend income between qualified resident enterprises is a general subsidy practice of exemptions and/or reductions of direct income tax.

(a) Legal basis

(552) The legal bases of such tax exemption of dividend income are Articles 25-26 of the EIT Law and Article 83 of the Regulations on the Implementation of Enterprise Income Tax Law.

(b) Findings of the investigation

(553) The Commission found that one sampled company received an exemption from tax of dividend income between qualified resident enterprises. This company applied directly to the local taxation bureau for the deduction of the dividends obtained by equity investments from the taxable income.

(c) Conclusion

(554) The Commission considers that this is a subsidy under Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the company concerned. The benefit for the recipient is equal to the tax saving. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this exemption only to qualified resident enterprises which have the major support of, and the development of which is encouraged by, the State.

(555) In this regard, several parties claimed that this subsidy is not specific and referred to Article 83 of the Regulations on the implementation of the EIT, which itself is linked to Article 26(2) of the EIT, claiming that there is no evidence proving that this exemption only applies to qualified resident enterprises which have the major support of, and the development of which is encouraged by, the State.

(556) In this regard, reference is made to Article 25 of the EIT, which is part of the same Chapter as Article 26(2); i.e. 'Chapter IV Preferential Tax Policies' and stands as a chapeau for this chapter. Such Article provides that '*The State implements preferential tax policies with respect to the industries and projects which have the major support of, and the development of which is encouraged by, the State*'. On this basis, it was considered that such preferential tax policy is limited to certain industries and projects, and therefore specific. The evidence on file also showed that the company that benefited from this scheme had a New and High technology certificate. On the basis of the above, this claim had to be rejected.

(d) Calculation of the subsidy amount

(557) The Commission has calculated the amount of the subsidy as the difference between the amount of tax normally collected during the IP and the amount of tax actually paid by the company concerned.

Table 8

Exemption from tax of dividend income between qualified resident enterprises

Company/Group	Subsidy Amount
Bodo Vehicle Group	0,00 %
Giant Group	0,00 %

Company/Group	Subsidy Amount
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	0,04 %
Suzhou Rununion Motivity	0,00 %
Yadea Group	0,00 %

3.8.4. Total for all direct tax exemption schemes and reduction programmes

- (558) The total subsidy amount established with regard to all direct tax schemes during the IP for the sampled exporting producers was as follows:

Table 9

Direct tax exemptions and reductions

Company/Group	Subsidy Amount
Bodo Vehicle Group	0,21 %
Giant Group	0,70 %
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	0,63 %
Suzhou Rununion Motivity	0,0 %
Yadea Group	1,21 %

3.9. Indirect Tax and Import Tariff Programmes

VAT exemptions and import tariff rebates for the use of imported equipment and technology

- (559) This programme provides an exemption from VAT and import tariffs for imports of capital equipment used in their production. To benefit from the exemption, the equipment must not fall in a list of non-eligible equipment and the claiming enterprise has to obtain a Certificate of State-Encouraged project issued by the Chinese authorities or by the NDRC in accordance with the relevant investment, tax and customs legislation.

(a) Legal basis

- (560) The legal bases of this programme are:

- Circular of the State Council on Adjusting Tax Policies on Imported Equipment, Guo Fa [1997] No. 37;
- Notice of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation on the Adjustment of Certain Preferential Import Duty Policies;
- Announcement of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation [2008] No. 43;
- Notice of the NDRC on the relevant issues concerning the Handling of Confirmation letter on Domestic or Foreign-funded Projects encouraged to develop by the State, [2006] No. 316; and
- Catalogue on Non-duty-exemptible Articles of importation for either FIEs or domestic enterprises, 2008.

(b) Findings of the investigation

- (561) The Commission found that none of the sampled exporting producers benefitted from this program.

3.10. Grant programmes

3.10.1. Ad hoc grants provided by municipal/regional authorities

- (562) In its complaint, the complainant alleged and provided evidence which showed that the electric bicycle industry in the PRC may receive various one-off or recurring grants from different levels of government authorities, i.e. local, regional and national.
- (563) The investigation revealed that the four sampled groups of exporting producers received substantial one-off or recurring grants from various government levels resulting in the receipt of benefits during the investigation period. Some of these had been reported by the sampled exporting producers in their respective questionnaire replies, while others were found on-the-spot during the verification visits. None of them were disclosed in the questionnaire reply of the GOC.

(a) Legal Basis

- (564) These grants were given to the companies by national, provincial, city, county or district government authorities and all appeared to be specific to the sampled exporting producers, or specific in terms of location or type of industry. The level of legal detail for the exact law under which these benefits were granted, if there was any legal basis for them at all, was not disclosed. However, the Commission was often given a copy of a document issued by a government authority which accompanied the grant of funds (referred to as 'the notice').

(b) Findings of the investigation

- (565) Given the large amount of grants contained in the complaint and/or found in the books of the sampled exporting producers, only a summary of the key findings is presented in this Regulation. Evidence of the existence of numerous grants and the fact that they had been granted by various levels of the GOC were initially supplied by the four sampled exporting producers, and findings on these grants are provided to the individual companies in their specific disclosure documents.
- (566) Examples of such grants were patent funds, science and technology funds and awards, business development funds, export promotion funds, grants to participate in exhibitions, grants to promote the upgrading of manufacturing equipment, grants to support vocational skills training, support funds provided at district or provincial level.

(c) Conclusion

- (567) These grants constitute subsidies within the meaning of Article 3(1)(a)(i) and (2) of the basic Regulation as a transfer of funds from the GOC in the form of grants to the producers of the product concerned took place and a benefit was thereby conferred.
- (568) These grants are also specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation given that they appear to be limited to certain companies or specific projects in specific regions and/or the electric bicycle industry. In addition, some of the grants are contingent upon export performance within the meaning of Article 4(4)(a). These grants do not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation, given that the eligibility conditions and the actual selection criteria for enterprises to be eligible are not transparent, not objective and do not apply automatically.
- (569) In all cases the companies provided information as to the amount of the grant, and from whom the grant was received. The companies concerned also mostly booked this income under the heading 'non-operating income' and sub-heading 'government or subsidy income' in their accounts and had these accounts independently audited. This has been taken as positive evidence of a subsidy that conferred a countervailable benefit.
- (570) Therefore, the Commission concluded that these findings represented a reasonable indicator of the level of subsidisation in this respect. As those grants shared common features, were awarded by a public authority and were not part of separate subsidy programme, but individual grants to this (encouraged) industry, the Commission assessed them together.

(d) Calculation of the subsidy amount

- (571) The benefit was calculated as the amount received in the IP, or allocated to the IP, where the amount was depreciated over the useful life of the fixed asset to which the grant was related. The Commission considered whether to apply an additional annual commercial interest rate in accordance with section F.a) of the Commission's Guidelines for the calculation of the amount of subsidy ⁽⁶⁸⁾. However, such an approach would have involved a variety of complex hypothetical factors for which there was no accurate information available. Therefore, the Commission found it more appropriate to allocate amounts to the investigation period according to the depreciation rates of the related fixed assets, in line with the calculation methodology used in previous cases ⁽⁶⁹⁾.
- (572) Yadea claimed that one of the grants received before the IP was wrongly allocated over a period of three years, including the IP and claimed that it should be excluded since it did not relate to the IP.
- (573) This claim was accepted and the calculation was updated accordingly.
- (574) Giant Group claimed that some of the grants received were not specific and should be excluded from the calculation. For all but one of the grants concerned the company did not submit any supporting evidence. Therefore, this claim could only be accepted in relation to one grant, while for the remaining grants it was rejected. Giant Group also pointed to a clerical error in the calculation which was corrected. This correction had however no effect on the company's overall amount of subsidisation.
- (575) The amount of subsidy established with regard to this type of subsidies during the IP for the sampled exporting producers was as follow:

Table 10

Ad hoc grants

Company/Group	Subsidy Amount
Bodo Vehicle Group	0,15 %
Giant Group	0,14 %
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	0,25 %
Suzhou Rununion Motivity	0,07 %
Yadea Group	0,07 %

3.10.2. Other grant schemes

- (576) No financial contribution was received by the sampled exporting producers from the remaining grant programmes mentioned in section 3.3(iii) above during the IP.

3.10.3. Total for all grant schemes

- (577) The total subsidy amounts established with regard to all grants during the IP for the sampled exporting producers were as follows:

Table 11

Grants

Company/Group	Subsidy Amount
Bodo Vehicle Group	0,15 %
Giant Group	0,14 %

⁽⁶⁸⁾ OJ C 394, 17.12.1998, p. 6.

⁽⁶⁹⁾ Such as e.g. Council Implementing Regulation (EU) No 452/2011, OJ L 128, 14.5.2011, p. 18 (*Coated fine paper*), Council Implementing Regulation (EU) No 215/2013, OJ L 73, 15.3.2013, p. 16 (*Organic coated steel*), Commission Implementing Regulation (EU) 2017/366, OJ L 56, 3.3.2017, p. 1 (*Solar panels*), Commission Implementing Regulation (EU) No 1379/2014, OJ L 367, 23.12.2014, p. 22 (*Filament glass fibre*), Commission Implementing Decision 2014/918, OJ L 360, 16.12.2014, p. 65 (*Polyester Staple Fibers*).

Company/Group	Subsidy Amount
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	0,25 %
Suzhou Rununion Motivity	0,07 %
Yadea Group	0,072 %

3.11. Conclusion on subsidisation

- (578) The Commission calculated the amount of countervailable subsidies in accordance with the provisions of the basic Regulation for the sampled exporting producers by examining each subsidy or subsidy programme, and added these figures together to calculate a total amount of subsidisation for each exporting producer for the investigation period. To calculate the overall subsidisation below, the Commission first calculated the percentage of subsidisation, being the subsidy amount as a percentage of the company's total turnover. This percentage was then used to calculate the subsidy allocated to exports of the product concerned to the Union during the IP. The subsidy amount per piece of product concerned exported to the Union during the IP was then calculated, and the margins below calculated as a percentage of the Costs, Insurance and Freight ('CIF') value of the same exports per piece.
- (579) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating exporting producers not included in the sample will be calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts as well as the amount of subsidies established for items which are subject to the provisions of Article 28(1) of the basic Regulation. However, the Commission will not disregard findings related to preferential lending even if it had to rely partially on facts available to determine those amounts. Indeed, the Commission considers that the facts available and used in those cases did not affect substantially the information needed to determine the amount of subsidisation through the preferential lending in a fairly manner, so that the exporting producers who were not asked to cooperate in the investigation will not be prejudiced by using this approach ⁽⁷⁰⁾.
- (580) Given the high rate of cooperation of Chinese exporting producers, the Commission set the amount for 'all other companies' at the level of the highest amount established for the sampled exporting producers. The 'all other companies' amount will be applied to those companies which did not cooperate in the investigation.

Table 12

Countervailable subsidies

Company name	Amount of countervailable subsidies
Bodo Vehicle Group	15,1 %
Giant Group	3,9 %
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	8,5 %
Suzhou Rununion Motivity	17,2 %
Yadea Group	10,7 %
Other cooperating companies	9,2 %
All other companies	17,2 %

⁽⁷⁰⁾ See also, *mutatis mutandi*, WT/DS294/AB/RW, US — Zeroing (Article 21.5 DSU), Appellate Body Report of 14 May 2009, paragraph 453.

4. INJURY

4.1. Definition of the Union industry and Union production

- (581) At the start of the period considered, forty-one producers manufactured the like product in the Union. Four of them stopped their production during the investigation period.
- (582) Following comments from interested parties, the Commission reassessed and established that six companies initially considered to be part of the Union industry should be excluded from the definition of the Union Industry because the interest represented by their import activity exceeded the interest represented by their production activity in the Union.
- (583) Following this exclusion, 31 producers constitute the 'Union Industry' within the meaning of Article 9(1) of the basic Regulation.
- (584) The total Union production during the investigation period was established at around 1,1 million pieces. The Commission established the figure on the basis of the consumption figure submitted by the Confederation of the European Bicycle Industry ('CONEBI'), import statistics, and the ratio of sales to production of the sampled Union producers.
- (585) One interested party claimed that the company ATALA and its related company Accell Nederland should not form part of the Union industry because ATALA imports electric bicycles from the PRC. However, are not related within the meaning of Article 9(2) of the basic Regulation ATALA and Accell. In any case, imports alone would not constitute a reason for exclusion from the definition of the Union industry.

4.2. Union consumption

- (586) The Commission established the Union consumption on the basis of the information submitted by CONEBI.
- (587) Union consumption developed as follows:

Table 13

Union consumption (pieces)

	2014	2015	2016	IP
Total Union Consumption (pieces)	1 139 000	1 363 842	1 666 251	1 982 269
<i>Index</i>	100	120	146	174

Source: CONEBI

- (588) Union consumption increased steadily from 1.1 million pieces in 2014 to almost 2 million pieces during the investigation period, reflecting a growth of 74 % during the period considered. This development was due to greater environmental awareness and continued investment in marketing and promotion, and in the technological development of electric bicycles.

4.3. Imports from the PRC

4.3.1. Volume and market share of the imports from the PRC

- (589) Since 2017, electric bicycles have been classified under CN code 8711 60 10. Before 2017, electric bicycles were classified under (ex) CN code 8711 90 10 under which other products were included. To overcome this issue, the complainant submitted detailed Chinese customs statistics in which it was able to identify Chinese exports of electric bicycles.
- (590) The Commission established the volume of imports on the basis of Eurostat data by extrapolating to the relevant HS code the ratio of Chinese exports of electric bicycles (as established above) on total exports from the PRC under the same HS code. For the nine months of 2017, the Chinese import statistics are directly based on Eurostat.
- (591) The market share of the imports was then established by comparing import volumes with the Union consumption as shown in Table 13 in recital (586).

(592) Imports into the Union from the PRC developed as follows:

Table 14

Import volume (pieces) and market share

	2014	2015	2016	IP
Volume of imports from the PRC (pieces)	199 728	286 024	389 046	699 658
<i>Index</i>	100	143	195	350
Market share	18 %	21 %	23 %	35 %
<i>Index</i>	100	120	133	201

Source: Eurostat, Chinese export statistics

- (593) The volume of imports from the PRC more than tripled, increasing from close to 200 000 pieces in 2014 to close to 700 000 pieces in the investigation period. The pace of growth accelerated between 2016 and the investigation period.
- (594) In parallel, the share of the Union market held by imports from the PRC has increased from 18 % in 2014 to 35 % in the investigation period.
- (595) The CCCME and the CEIEB expressed their concerns regarding the reliability of the Chinese customs statistics submitted by the complainant and requested to disclose the detailed statistics and the source of these data.
- (596) The complainant made available to the Commission the detailed statistics used to support its complaint. The complainant also made available, on the non-confidential version of the complaint, the aggregated export figures per year. The complainant furthermore indicated that the source was the Chinese customs, mentioned the codes used, and explained its methodology to exclude other products than the product concerned.
- (597) The Commission established through a verification of this data that the complainant had purchased these customs statistics from a long-established Chinese company specialising in this field, and that the same information was available from other Chinese service providers.
- (598) The verification also evidenced that the complainant had accurately described in the open file the methodology followed to determine the exports of electric bicycles from the PRC.
- (599) In addition, the detailed data submitted by the complainant was cross-checked against other sources of information and proved to be reliable. No other party proposed alternative source of information or methodology.
- (600) The Commission also established that the detailed data and the identity of the company supplying this information were by nature confidential within the meaning of Article 29(1) of the basic Regulation. Disclosing the identity of the supplier of the information would have a significant adverse effect upon the party supplying the information or upon the party from whom the information has been acquired.
- (601) In these circumstances, and given the level of disclosure of aggregated data and methodology on the non-confidential file, the Commission considered that the input data and the identity of the company reselling them are not necessary for the party concerned to exercise their rights of defence.
- (602) This argument had therefore to be rejected.
- (603) Interested parties claimed that imports from the PRC have followed the market trends, since both the consumption in the Union and Chinese exports were growing. It is however noted that the magnitude of growth between Chinese exports and the consumption in the Union is very different. Between 2014 and the investigation period, Chinese imports grew by 250 %, while the consumption in the Union increased at a much slower pace by 74 %. Thus, while the trend was certainly the same, the magnitude of increase was very different.

4.3.2. Prices of the imports from the PRC and price undercutting

- (604) The Commission established the prices of imports on the basis of Eurostat data following the method described in recital (589).
- (605) The average price of imports into the Union from the PRC developed as follows:

Table 15

Import prices (EUR/piece)

	2014	2015	2016	IP
The PRC	472	451	477	422
Index	100	96	101	89

Source: Eurostat, Chinese export statistics

- (606) The average price of imports from the PRC decreased by 11 % between 2014 and the investigation period, with a first decline of 4 % between 2014 and 2015 and a second decline of 12 % between 2016 and the investigation period.
- (607) As the detailed product type mix was not known due to the general nature of the Eurostat statistics, the evolution of prices is not completely reliable. However, the Commission noted that the average prices of imports from the PRC were markedly below those of both Union producers' and imports from other third countries than the PRC. In addition, while Chinese exporting producers expanded the range of products sold in the Union market and included more expensive electric bicycles, the average price of Chinese imports decreased.
- (608) Following disclosure, a number of 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.
- (609) As indicated in recital (606), 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 same interested parties claimed 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.
- (610) The Commission determined the price undercutting during the investigation period by comparing:
- the weighted average sales prices per product type of the four sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - the corresponding weighted average prices per product type of the imports from the sampled exporting producers in the PRC to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for customs duties of 6 % and importation costs.
- (611) GOC claimed that the price undercutting analysis should take into account various elements, such as the type of electric bicycle (e.g. electric city bike and electric mountain bike), the location of the engine (hub or central engine), the power of the battery and the material of which the electric bicycle is made (e.g. steel, aluminium, carbon). It is confirmed that all these factors were taken into account when making the price undercutting analysis.
- (612) The Commission made the price comparison on a type-by-type basis for transactions, duly adjusted where necessary, and after deduction of rebates and discounts. As for the level of trade of these transactions, it was established that both the sampled Union producers and sampled Chinese exporting producers sell to OEM customers as well as under their own brand. It was therefore examined whether an adjustment for level of trade was warranted. In this respect, it was examined whether there is a consistent and distinct difference in prices between sales to OEM customers and sales under their own brand. It was established, that no such consistent and distinct difference in prices exists for the sales of the sampled Union producers.

- (613) The result of the comparison was expressed as a percentage of the four sampled Union producers' turnover during the investigation period. It showed undercutting margins ranging from 16,2 % to 43,2 %.
- (614) Following disclosure, the GOC and an exporting producer with related importers in the Union submitted that the methodology followed by the Commission in calculating the undercutting margin applied Article 2(9) of the basic anti-dumping Regulation by analogy. These parties claimed that in so doing the Commission violated Article 2 and Article 8 of the basic Regulation as well as EU and WTO case law. These parties claimed that the Commission's methodology had no legal basis and that the use of a constructed CIF price breached its obligations to compare prices where the competition takes place and at the same level of trade.
- (615) The Commission recalls that, as far as undercutting is concerned, the basic Regulation does not prescribe any specific methodology. The institutions therefore enjoy a wide margin of discretion in assessing this injury factor. That discretion is limited by the need to base conclusions on positive evidence and to make an objective examination, as required by Article 8(1) of the basic Regulation. It should also be recalled that Article 8(2) of the basic Regulation specifically provides that the existence of significant price undercutting has to be examined at the level of the subsidised imports, and not at the level of any subsequent resale price on the Union market.
- (616) 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. This 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. This 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, the rules on the construction of the export price as contained in Article 2(9) of the basic anti-dumping Regulation are pertinent, and are applied by analogy, just as they are pertinent for the determination of the export price for dumping purposes. The application by analogy of Article 2(9) of the basic anti-dumping Regulation allows arriving at a price that is fully comparable to the CIF price (Union border) that is used when examining sales made to unrelated customers.
- (617) This 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 this 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 and underselling 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.
- (618) 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.
- (619) These claims were therefore rejected.
- (620) Following disclosure, some exporting producers claimed that the rejection of their claim for a level of trade adjustment under recital (611) did not address the difference of prices arising at the level of the OEM customer. These interested parties submitted that a fair price comparison required an upward adjustment to reflect the mark-up of the OEM customer and brand owner post-importation.
- (621) The Commission considered, as already explained in recital (611), 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.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (622) In accordance with Article 8(4) of the basic Regulation, the examination of the impact of the subsidized imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (623) As mentioned in recital (27), sampling was used for the determination of possible injury suffered by the Union industry.
- (624) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators.
- (625) The Commission evaluated the macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, market share, employment, growth, productivity, magnitude of the subsidisation margin, and recovery from past subsidisation) on the basis of the information provided by CONEBI, import statistics and the sampled Union producers.
- (626) The Commission verified the consumption figure submitted by CONEBI. The Commission established that this information was genuinely based on information collected from national associations of European producers, that it derived from companies' declarations or reasonable estimates and that it was supported by adequate documentation and research procedures.
- (627) The indicators of Union Industry's sales, production, capacity and employment derive from this information. They have been estimated on the basis of the relevant ratios of the sampled Union's producers. This approach follows the methodology described by the complainant in the non-confidential version of the complaint. No interested party made any comment on this methodology.
- (628) On this basis, the Commission considered that the set of macroeconomic data is representative of the economic situation of the Union industry.
- (629) The Commission evaluated the microeconomic indicators (average unit sale prices, labour costs, unit cost, inventories, profitability, cash flow, investments, and return on investments) on the basis of data contained in the questionnaire replies from the sampled Union producers, duly verified. The data related to the sampled Union producers.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

- (630) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 16

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

- (631) The production volume of the Union industry increased by 28 % over the period considered despite a decrease of 3 % between 2016 and the investigation period.
- (632) The increase in production was driven by the increase in consumption. Production has to be planned ahead of very short selling seasons and therefore relies to some extent on sales' forecasts. The decrease in production between 2016 and the investigation period was therefore primarily related to a continued loss of market share against imports from the PRC which forced the Union Industry to reassess its expectations
- (633) 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 10 % between 2016 and the investigation period.
- (634) Capacity utilisation declined from 75 % in 2014 to 72 % during the investigation period. Capacity utilisation decreased from 75 % to 66 % between 2014 and 2016 due to a faster growth in capacity than in production. The trend reversed between 2016 and the investigation period when capacity was reduced to a larger extent than the decline in production, which generated an increase in capacity utilisation from 66 % to 72 %.
- (635) The capacity refers to the theoretical number of electric bicycles which can be manufactured on available production lines. The production lines currently used for the manufacturing of electric bicycles are mainly converted from existing production lines previously used for conventional bicycles. Such conversion can be done quickly and at a small cost. The electric bicycles manufacturing capacity represents a small portion of the existing capacity for the manufacturing of conventional bicycles. As a result, the indicators for capacity and capacity utilisation are of limited relevance since they can be adapted taking account of market developments. In this particular case, the Commission also established that the conversion between conventional and electric bicycles also does not require significant investment (impacting cash flow, the ability to raise capital, or the continuation of operations), a significant fixed cost (with a large impact on profitability linked to utilisation), or a constraint to increase production.
- (636) Following disclosure, some 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.
- (637) The Commission noted that the complaint never stated that the Union Industry did not face competition between 2014 and 2016. As stated in recital (631), 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 (634), the indicators for capacity and capacity utilisation are of limited relevance with regards profitability.
- (638) Following disclosure, the CEIEB claimed that there was no link between the deterioration of the capacity and capacity utilisation and subsidized imports from China since it was allegedly difficult to determine which part of the capacity is used for conventional and which part for electric bicycles, in particular since the production of conventional bicycles decreased by 3.7 % in 2016 according to figures published by CONEBI.
- (639) 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.

4.4.2.2. Sales volume and market share

(640) The Union industry's sales volume and market share developed over the period considered as follows:

Table 17

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>	<i>100</i>	<i>110</i>	<i>125</i>	<i>120</i>
Market share	75 %	68 %	64 %	51 %
<i>Index</i>	<i>100</i>	<i>92</i>	<i>85</i>	<i>69</i>

Source: CONEBI, sampled Union producers

- (641) The Union industry's sales volume 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.
- (642) Similar to the development of the production volume, the increase in sales quantity between 2014 and 2016 was driven by an increasing consumption. The decline in sales quantity between 2016 and the investigation period was directly related to the continued loss of market share against imports from the PRC.
- (643) The sales of the Union Industry increased at a much slower pace than the development of consumption. As a result, the market share of the Union industry decreased significantly, going from 75 % in 2014 to 51 % during the investigation period.
- (644) Following 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.
- (645) 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 13. An increase in sales which was that much lower than the increase in consumption cannot be considered a strong performance, and can indeed be indicative of material injury.
- (646) The CCCME also claimed that according to information in the complaint, the producers supporting the complaint only suffered a very minor decrease in market share of 2 percentage points during the period considered. This small decrease would allegedly confirm that the complainants in this investigation have not suffered material injury from imports of the product concerned.
- (647) In this respect, it is noted that pursuant to Article 8 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.

4.4.2.3. Growth

- (648) The Union Industry was not able to fully benefit from the growth in consumption between 2014 and the investigation period. Indeed, consumption increased by 74 %, and the Union industry only managed to increase their sales by 20 %. As a consequence, Union industry lost significant market share (24 percentage points) during this period. The Union Industry had to reduce its production, sales, employment and capacity between 2016 and the investigation period due to subsidized imports from the PRC.

4.4.2.4. Employment and productivity

(649) Employment and productivity developed over the period considered as follows:

Table 18

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
<i>Source:</i> CONEBI, sampled Union producers				

(650) The Union industry increased the level of employment by 40 % over the period considered. Most of this increase occurred between 2014 and 2016. Employment remained at almost unchanged level between 2016 and the investigation period.

(651) Productivity declined by 9 % as a result of employment increasing at a higher pace than production.

4.4.2.5. Magnitude of subsidisation and recovery from past subsidisation

(652) The impact of the magnitude of the actual margins of subsidisation on the Union industry was substantial, given the volume and prices of imports from the PRC.

(653) There is no evidence of past subsidisation.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

(654) The weighted average unit sales prices of the four sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 19

Sales prices in the Union

	2014	2015	2016	IP
Average unit sales price in the Union (EUR/piece)	1 112	1 156	1 237	1 276
<i>Index</i>	100	104	111	115
Unit cost of production (EUR/piece)	1 068	1 134	1 173	1 234
<i>Index</i>	100	106	110	116
<i>Source:</i> sampled Union producers				

(655) The average sales prices of the sampled Union producers increased by 15 % over the period considered, in line with the increase in the average cost of production which grew by 16 %.

(656) Since the average costs and prices are affected by the product mix sold by these producers, this does not mean that the cost and price of a comparable product increased by 16 % during the period considered.

- (657) Following disclosure the CEIEB, the CCCME and some exporting producers claimed that the Commission did not justify that the price of the Union's industry should have in fact increased by a higher degree. It claimed that the statement in recital (655) that the average price is a mix of all electric bicycles sold by the sampled producers does not provide such explanation and assessed that it was more logical to assess that the prices and costs of the same products were increasing proportionally for the product concerned as a whole.
- (658) 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 (655), 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

- (659) The average labour costs of the four sampled Union producers developed over the period considered as follows:

Table 20

Average labour costs per employee

	2014	2015	2016	IP
Average labour costs per employee (EUR)	38 348	37 042	34 818	34 659
<i>Index</i>	100	97	91	90

Source: sampled Union producers

- (660) The average labour cost per employee decreased by 10 % over the period considered due to the increase in the number of factory workers in relation to the increase in the number of staff employed on sales and administrative functions.

4.4.3.3. Inventories

- (661) Stock levels of the four sampled Union producers developed over the period considered as follows:

Table 21

Inventories

	2014	2015	2016	IP
Closing stocks (pieces)	59 375	73 521	90 573	98 412
<i>Index</i>	100	124	153	166

Source: sampled Union producers

- (662) The level of closing stocks of the four sampled Union producers increased by 66 % over the period considered.
- (663) It had to be noted that the level of stocks in the investigation period was taken at the end of September when stocks are normally low since it coincides with the end of the selling season. On the contrary, the level of stocks in the other periods was taken at the end of December when it is normal to have high stocks in anticipation of the next selling season.

- (664) The increase in stocks was therefore significant. This was found to be due to the general development of the market and to the fact that while production volumes were kept well below the increase in consumption, the volumes of sales developed even less rapidly than production, generating an accumulation of stocks which is particularly visible at the end of the investigation period.

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

- (665) Profitability, cash flow, investments and return on investments of the four sampled Union producers developed over the period considered as follows:

Table 22

Profitability, cash flow, investments and return on investments

	2014	2015	2016	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	2,7 %	4,3 %	3,8 %	3,4 %
<i>Index</i>	100	160	142	125
Cash flow (EUR)	5 178 860	– 5 433 666	17 079 409	4 955 399
<i>Index</i>	100	– 105	330	96
Cash flow (% of sales turnover)	1,1 %	– 1,0 %	2,5 %	0,6 %
<i>Index</i>	100	– 89	218	55
Investments (EUR)	6 775 924	17 773 148	7 888 936	11 965 802
<i>Index</i>	100	262	116	177
Return on investments	18 %	30 %	38 %	37 %
<i>Index</i>	100	164	213	203

Source: sampled Union producers

- (666) The Commission established the profitability of the four sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (667) Starting from a low base of 2,7 % in 2014, profits margins eroded from 4,3 % in 2015 to 3,4 % in the investigation period.
- (668) The net cash flow is the ability of the Union producers to self-finance their activities. The cash flow decreased by 4 % over the period considered and turned negative in 2015. It did not cover the investments incurred during the period considered.
- (669) The comparison of the profit margin in percentage of the turnover with the operating cash flow expressed on the same basis shows a very poor conversion of profit to cash flows due to the variation of stocks.
- (670) Investments increased by 77 % during the period considered while representing no more than 2 % of sales.
- (671) The ratio of return of investment increased by 103 % over the period considered. However, while the electric bicycle industry is structurally a cash-intensive business, it requires little assets to operate and those generally already exist from the production of conventional bicycles. In this context, the return on investments is of limited relevance.
- (672) The poor financial performance of the Union Industry in terms of profits and cash flow during the investigation period limited its ability to raise capital.

- (673) Following disclosure, some 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.
- (674) Whilst the investigation established the existence of a significant volume of imports at subsidised 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 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.
- (675) Following 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.
- (676) As stated in recital (670), 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 22, 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 is maintained.
- (677) Following 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.
- (678) As regards investments, that comment was analysed in section 5.2.3 of this regulation, notably under recitals (705) to (707) where the Commission explained that capital expenditure did not have a material impact on the profitability of the Union Industry.
- (679) 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.
- (680) 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 subsidized imports of Chinese electric bicycles during the period considered.

4.4.4. Conclusion on injury

- (681) Confronted with an accelerating flow of subsidized imports from China, the Union Industry was not able to capitalise on the growth of the electric bicycle market. Sales grew by 20 % in the period considered while consumption increased by 74 %. At the same time 24 points of market share were lost, of which 17 went to Chinese imports having undercut Union industry's prices by 16 % to 43 % in the investigation period.
- (682) The pressure on sales was felt in relation to production, stocks, capacity, capacity utilisation, and employment levels. Production increased broadly at the same rate as consumption between 2014 and 2015 (+ 18 % and + 20 % respectively). However, after 2015, the Union industry was forced to reassess its sales expectations. The trend in production then diverged markedly and increasingly from the general development of the market, with production increasing by 9 % and consumption by 45 % between 2015 and the investigation period.
- (683) Nevertheless, except in 2014, production was systematically higher than sales, leading to a significant increase in stocks. Production capacity, which had increased in line with consumption until 2016, was reduced to stem the deterioration of the capacity utilisation rate which lost 9 percentage points between 2014 and 2016.

- (684) Between 2016 and the investigation period, overall, production declined, stocks were higher after than before the selling season, capacity was reduced, employment stalled while imports from the PRC increased by 155 percentage points.
- (685) The pressure on prices and the inability to seize economies of scale in a nascent market kept the profitability of the Union industry at depressed levels throughout the period considered. This low level of profit and the variation of stocks led to low operating cash flows which were below the level of investment incurred during the period considered and created an additional element of vulnerability for this cash-intensive business strongly dependent on the liquidity provided by banks. Four producers went into bankruptcy during the investigation period.
- (686) The injury indicators for growth, market share, capacity, capacity utilisation, stocks, profit margins, cash flows, and ability to raise capital developed negatively. It was only due to the strong underlying growth in demand that other indicators did not also turn negative.
- (687) Following disclosure, some 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.
- (688) Notwithstanding the fact that these 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 subsidisation, injury and causality. As established in recital (746), 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. Following disclosure, the CCCME argued that since the loss of market share of the Union industry mostly affected Union producers other than the complainants, as explained in recital (645), the imports from China and the production of the complainants has allegedly been in largely distinct market segments. However, as already mentioned in recital (646), 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.
- (689) Following disclosure, some exporting producers submitted that the statement made in recital (685) 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. Those interested parties added that contrary to had been stated in recitals (684) and (685), performance indicators and notably profitability were not depressed during the period considered. Finally, it was 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. In the same vein, the CEIEB submitted that the positive trends in production, sales, production capacity and employment offset the loss of market share and the pressure on prices and profitability. It claimed that the loss of market share was the only indicator which had a negative trend during the period considered and that in itself was not enough to justify the existence of injury. 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 (647) and (680) 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 significant loss of market share. As explained in recitals (681) to (683), the impact of this divergence spread over time on production, stocks, capacity, capacity utilisation, and employment level. In addition, as explained in recital (684), 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 characterized a depressed and negative situation and confirmed its conclusion that the Union industry suffered material injury.

- (690) Finally, the Commission disagreed with the 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. This claim was therefore rejected.
- (691) Following disclosure, some 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.
- (692) As is the standard practice of the Commission and was set out in recital (628), 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.
- (693) In the absence of any further comments, the Commission confirmed its conclusion on injury set out in recitals (680) to (685) above.

5. CAUSATION

- (694) In accordance with Article 8(5) of the basic Regulation, the Commission examined whether the subsidized imports from the PRC caused material injury to the Union industry. In accordance with Article 8(6) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry.
- (695) The Commission ensured that any possible injury caused by factors other than the subsidized imports from the PRC was not attributed to the subsidized imports. These factors are: imports from other third countries, export sales performance of the Union producers, and an alleged impact of investment and expansion of capacities.

5.1. Effects of the subsidized imports

- (696) Prices of subsidized imports from the PRC significantly undercut Union industry prices during the investigation period with undercutting margins ranging from 16,2 % to 43,2 %. During the period considered, the Union Industry lost 24 points of market share in a market growing by 74 % while imports from the PRC increased by 250 % and gained 17 points of market share from 18 % to 35 %. The pressure on prices by subsidized imports from the PRC kept profits and cash flows at depressed levels.

5.2. Effects of other factors

5.2.1. Imports from third countries

- (697) The volume of imports from other third countries developed over the period considered as follows:

Table 23

Imports from third countries

Country		2014	2015	2016	IP
Taiwan	Volume (pieces)	21 335	43 095	79 312	108 817
	<i>Index</i>	100	202	372	510
	Market share	2 %	3 %	5 %	5 %
	Average price	622	571	843	1 016
	<i>Index</i>	100	92	135	163

Country		2014	2015	2016	IP
Vietnam	Volume (pieces)	37 892	74 259	91 468	101 376
	<i>Index</i>	100	196	241	268
	Market share	3 %	5 %	5 %	5 %
	Average price	435	539	542	570
	<i>Index</i>	100	124	125	131
Switzerland	Volume (pieces)	883	14 310	30 477	28 440
	<i>Index</i>	100	1 621	3 452	3 221
	Market share	0 %	1 %	2 %	1 %
	Average price	1 140	1 391	1 606	1 606
	<i>Index</i>	100	122	141	141
Japan	Volume (pieces)	16 994	4 217	1 613	1 710
	<i>Index</i>	100	25	9	10
	Market share	1 %	0 %	0 %	0 %
	Average price	1 098	1 406	1 687	952
	<i>Index</i>	100	128	154	87
Total of all third countries except the PRC	Volume (pieces)	77 104	135 881	202 870	240 343
	<i>Index</i>	100	176	263	312
	Market share	7 %	10 %	12 %	12 %
	Average price	641	666	828	897
	<i>Index</i>	100	104	129	140

Source: Eurostat

- (698) The volume of imports from third countries other than the PRC developed strongly, increasing its market share from 7 % in 2014 (77 000 pieces) to 12 % (240 000 pieces in the investigation period). Yet, the pace of increase decelerated when Chinese exporting producers intensified their activity after 2015.
- (699) These imports originated almost exclusively from Taiwan and Vietnam. Nevertheless, after 2015, the Commission observed a slower increase of imports from Vietnam, which may be explained by the significant and growing price difference with Chinese imports. Likewise, the continued progression of imports from Taiwan occurred on the back of an equally significant increase in prices, which suggests that these imports may have been displaced towards the high end of the market.
- (700) Imports from Taiwan and Vietnam had on average lower prices than the Union Industry. However, given the wide range of prices of electric bicycles, the Commission cannot conclude that these imports undercut Union Industry's prices on a like-for-like basis. In addition, their average prices increased while the average prices of imports from the PRC decreased.
- (701) The difference between the prices of imports of Vietnam and of the Union's Industry's was nevertheless significant and it cannot be excluded that they marginally contributed to the injury. However, imports from Vietnam ceased to win market share after 2015 and their volumes remained small.
- (702) Consequently, the imports from all countries other than the PRC did not attenuate the causal link between the subsidized imports from the PRC and the injury suffered by the Union industry, and could not have more than a marginal impact on injury.

5.2.2. Export performance of the Union industry

- (703) The volume of exports of the four sampled Union producers developed over the period considered as follows:

Table 24

Export performance of the sampled Union producers

	2014	2015	2016	IP
Export volume (pieces)	5 539	14 529	24 922	21 548
<i>Index</i>	100	262	450	389
Average price (EUR)	1 570	680	676	907
<i>Index</i>	100	43	43	58

Source: Sampled Union producers

- (704) Exports outside the Union by the sampled Union producers were negligible (3 % of total sales volume in the period considered). Even considering the decrease in the average price, the export performance of the Union industry cannot have been a cause of injury.

5.2.3. Investment and expansion of capacities

- (705) The CCCME claimed that the investment in capacity resulted in 2016 in a surplus of production capacity beyond any realistic sales expectations which had the effects of both significantly reducing capacity utilisation and severely impacting profitability.
- (706) The Commission rejected this argument. Firstly, it cannot be said that the investment in capacity was beyond any realistic sales expectations. As shown in Table 6 above, production capacity increased by 300 000 pieces between 2015 and 2016. This was fully in line with the growth in consumption between 2015 and 2016, which was equally 300 000 pieces as shown in table 13 above. Due to unfair pressure by subsidized Chinese imports, the Union industry subsequently reduced their production capacity between 2016 and the investigation period by more than 150 000 pieces, despite a further market growth of more than 300 000 pieces.
- (707) Secondly, the Commission noted that the level of capital expenditure was not high. To the contrary, it stood below 2 % of total turnover over the period considered. The Union Industry converted existing production lines and the increase of capacity was therefore not a major driver of capital expenditures.
- (708) Thirdly, capital expenditures were not taken into account in profitability (except for depreciation and amortization which did not increase materially) or cash flows (which are at operating level). It was therefore inaccurate to interpret any of these indicators in light of the level of investments.
- (709) Finally, the Commission's indicators showed that the cost of production increased in line with sales prices. As a result, it could not be argued that the increase in capacity had a disproportionate impact on cost of production.

5.2.4. Performance by the Union industry

- (710) Following disclosure, some 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.
- (711) The Commission recalls that the geographic scope of its investigation is the Union 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.

- (712) Furthermore, some exporting producers submitted that the poor performance of the Union industry might have been caused by the management mistakes by the Union producers.
- (713) First, the Commission observed that this statement seemed to contradict the claims made by the same interested parties 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.
- (714) The Commission further noted that these interested parties claimed both that the Union industry did well during the period considered (as stated in recital (687)) and that its poor management 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 % at the same time.
- (715) 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.

5.2.5. Incentives for sales of electrical bicycles on the Union market

- (716) Following disclosure, some 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.
- (717) 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 subsidised. That claim was therefore rejected.

5.3. Conclusion on causation

- (718) The Commission established a causal link between the injury suffered by the Union producers and the subsidized imports from the PRC.
- (719) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the subsidized imports.
- (720) The other identified factors such as imports from other third countries, export sales performance of the Union producers, and an alleged impact of investment and expansion in capacity were not found to attenuate the causal link, even considering their possible combined effect.
- (721) On the basis of the above, the Commission concluded that the material injury to the Union industry was caused by the subsidized imports from the PRC and the other factors, considered individually or collectively, did not attenuate the causal link between the injury and the subsidized imports.

6. UNION INTEREST

- (722) In accordance with Article 31 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious subsidisation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

6.1. Interest of suppliers

- (723) COLIPED, which brings together national associations representing parts suppliers, supported the imposition of measures. However, no supplier individually took position in this investigation.

- (724) According to figures submitted by CONEBI, the bicycle parts (for both conventional and electric bicycles) are manufactured by 424 companies in 19 Members States, employing nearly 21 000 staff, who invested more than 660 m EUR in manufacturing and innovation in 2016.
- (725) The Commission concluded that the imposition of a countervailing duty would be in the interest of the suppliers of the Union Industry.

6.2. Interest of the Union industry

- (726) The Union industry is composed of large as well as small and medium-sized companies and employed directly around 3 600 people spread across twelve Member States during the period considered. Moreover, while the consumption of electric bicycles still represents a small portion of the overall bicycle market, the shift in demand from conventional bicycles to electric bicycles is rapid and poses a structural challenge to maintain the level of activity, value-added and jobs of the entire bicycle industry.
- (727) As demonstrated in section 4.4.4 above, when analysing the development of the injury indicators since the beginning of the period considered, the whole Union industry experienced a deterioration of its situation and was negatively affected by the subsidized imports.
- (728) The Commission expects that the imposition of a countervailing duty will allow all producers to operate under conditions of fair trade on the Union market. In the absence of measures, a further deterioration of the Union industry's economic and financial situation is very likely.
- (729) The Commission therefore concluded that the imposition of a countervailing duty would be in the interest of the Union industry.

6.3. Interest of unrelated importers

- (730) Throughout the proceeding, twenty-nine importers expressed their opposition to the imposition of measures. Nineteen of them 19 belonged to the CEIEB. The thirteen companies opposing the measures for which the volume of imports was known represented altogether 10 % of the total imports from the PRC in the investigation period.
- (731) As explained in recital (581), six companies manufacturing the like product were excluded from the definition of the Union Industry and classified as importers. These companies expressed their support for the measures. Their imports represented close to 12 % of the total imports from the PRC during the investigation period.
- (732) The submissions made by sampled importers showed that the imposition of duties was likely to disrupt at least temporarily their supply chains and threaten their financial position if they were not able to pass on the increased costs related to the duty to their customers.
- (733) The submissions made by the sampled importers also showed 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.
- (734) The import statistics show that Vietnam and Taiwan provided significant quantities of electric bicycles to European importers. It is also likely that other countries which are well positioned in the manufacturing of conventional bicycles could potentially supply importers.
- (735) In this regard, the Commission notes that the imposition of duties on imports of conventional bicycles from the PRC did not have the effect to close the Union market to imports and on the contrary expanded the number of countries supplying conventional bicycles. On the contrary, in large markets without measures on conventional bicycles from the PRC such as the United States and Japan, imports represented respectively 99 % and 90 % of the market and most of these imports came from the PRC.
- (736) The Commission noted that the bicycle industry consists of more than 450 producers, of which only 37 currently manufacture electric bicycles. In addition, the current manufacturers of electric bicycles supply already a wide range of electric bicycles, and can increase their production capacities in normal market conditions.
- (737) The Commission found that the imposition of duties could have an adverse effect on small importers. However, it also found that the negative impact of the imposition of duties could be mitigated by the availability to source suitable bicycles in the Union Industry, in other third countries, and in the PRC at fair prices.

- (738) In addition, 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.
- (739) Following disclosure, 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.
- (740) The Commission disagrees with that claim and makes reference to recital (736) where the adverse effect of the imposition of measures on small importers is stated and to recital (740) where it concludes that the imposition of measures was not in the interest of importers.
- (741) 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 this does not outweigh the positive effect of measures on the Union industry.

6.4. Interest of users

- (742) The European Cyclists' Federation ('ECF') came forward in this investigation. The ECF represents associations and federations of cyclists. The ECF submitted that the price is not the determining factor in whether people cycle more or less and provided evidence that countries where people cycle more are the countries where bicycles and electric bicycles cost more.
- (743) This pattern was corroborated by a submission made by the collective of importers opposing the measures which showed that the countries with the fastest rates of adoption of electric bicycles were the countries where electric bicycles were on average the most expensive.
- (744) The collective of importers also submitted that there was a strong link between the prices of electric bicycles, the national cycling culture, the quality of infrastructures and ultimately the adoption of electric bicycles.
- (745) The ECF is supportive of market conditions which foster quality, innovation and services. As such, if the existence of unfair trade practices was established, ECF claimed that it would play a negative role in the development of electric bicycles and as a consequence on the transition to a greener Europe offering more effective mobility to its citizens.
- (746) On the other hand, the collective of importers opposing the imposition of measures submitted that measures would prevent Chinese producers to supply the low-end as well as developing mid- and high-range products, which would result in reduced competition. Since the Union industry allegedly to a large extent is active in the mid- and high-range segments, this in turn would bring a reduction of choice and higher prices for the European consumers.
- (747) The investigation has shown that the Union industry is active in all segments of the market, including entry-level products. In that respect, 'entry-level products' are those electric bicycles which have the basic characteristics in the structure of the product control number (PCN). The definition of 'entry-level products' is different from the alleged differentiation of the market in segments. In particular, no physical criteria were provided by any interested party which would support an analysis based on a segmentation of the market.
- (748) It is expected that the measures will amplify and diversify the supply of electric bicycles by restoring competition on a level playing field. It is recalled that the imposition of measures on conventional bicycles did not reduce the consumer choice, but increased the diversity of suppliers and of their countries of origins. The argument was therefore found to be unsubstantiated and had to be rejected.
- (749) Whilst the imposition of measures is expected to restore market prices which are de facto higher than subsidized prices, price is one factor guiding consumer choices and the likely impact on prices for consumers has to be balanced by a cost-benefit comparison with alternatives to electric bicycles such as cars, motorcycles or scooters.
- (750) The Commission found that the interest of the consumer cannot be reduced to the price impact of bringing imports from the PRC to non-injurious levels. On the contrary, there is evidence that consumer choice is driven by other factors such as variety, quality, innovation, and service which can only be achieved under normal market conditions with fair and open competition.

- (751) The Commission therefore concluded that the measures would not unduly affect the situation of consumers and would contribute to the sustainable development of electric bicycles in Europe and its wider benefits to society in terms of protection of the environment and improved mobility.
- (752) Following disclosure, some exporting producers claimed the imposition of measures would reduce consumer choice, increase prices and play against environmental policies designed to encourage the use of electric bicycles.
- (753) In addition, as stated in recital (747), 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.
- (754) 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.
- (755) 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.
- (756) With regards to the impact of the measures on prices, the Commission refers to recitals (748) and (749) 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.

6.5. Interest of other parties

- (757) Lastly, the European Trade Union industriAll came forward to express concerns on the negative impact of the subsidized imports on the state of the Union Industry and its support of measures to ensure a level playing field and continued strong Union employment.

6.6. Conclusion on Union interest

- (758) 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.
- (759) 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 countervailing measures on the Union market, in particular on the Union industry, outweigh the potential negative effect on the other interest groups.

7. DEFINITIVE COUNTERVAILING MEASURES

- (760) On the basis of the conclusions reached by the Commission on subsidisation, injury, causation and Union interest, definitive countervailing measures should be imposed to prevent further injury being caused to the Union industry by the subsidized Chinese imports.

7.1. Injury elimination level

- (761) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry.
- (762) The injury would be eliminated if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of subsidized imports.
- (763) To establish this profit that could be reasonably achieved under normal conditions of competition, the Commission considered the profits made on the sales to unrelated customers, which are used for the purpose of determining the injury elimination level.

- (764) The target profit was set at 4,3 % which is the highest average profit margin of the Union industry during the period considered. The sampled Union producers were not in a position to provide a profit margin for the manufacturing of electric bicycles before 2014.
- (765) Following disclosure, 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.
- (766) 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.
- (767) 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 subsidized 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.
- (768) Following disclosure, 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 subsidised imports, the Commission could not by definition take as reference point the profitability of Union producers already materially injured by 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. The complainant claimed that in other cases, the Commission had deviated from its standard methodology to establish the target profit by reference to relevant circumstances.
- (769) The Commission recalls that the target profit is the profit that the Union industry as a whole can achieve in the absence of injurious subsidisation. 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.
- (770) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the cooperating sampled exporting producers in the PRC, duly adjusted for importation costs and customs duties, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average CIF import value.
- (771) In addition, for the Chinese exporting producers who sold only non-branded electric bicycles, the injury elimination level was determined with a reduction of 2,3 % of the Union industry's non-injurious prices. This adjustment corresponds to the proportion of R&D and design costs identified in the accounts of the sampled and verified union producers and reflects that these costs are borne in the operations of the brand-name importers. The injury elimination level was adjusted accordingly, leading to a reduction of 3 % - 5 % to the injury

margin. The 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.

- (772) The injury elimination level for 'other cooperating companies' and for 'all other companies' is defined in the same manner as the amount of subsidisation for these companies (see recitals (577) to (579)).

7.2. Definitive measures

- (773) In view of the findings above, a definitive countervailing duty should be imposed at a level sufficient to eliminate the injury caused by the subsidised imports without exceeding the amount of subsidisation found.
- (774) Given the high rate of cooperation of Chinese exporting producers, the 'all other companies' duty was set at the level of the highest duty to be imposed on the sampled companies. The 'all other companies' duty will be applied to those companies which had not cooperated in the investigation.
- (775) For the other cooperating non-sampled Chinese exporting producers listed in the Annex, the definitive duty rate is set at the weighted average of the rates established for the cooperating exporting producers in the sample.
- (776) Consequently, the proposed countervailing duty rates are as follows:

Table 25

Definitive Countervailing duty

	Amount of Subsidisation	Injury elimination level	Countervailing duty rate
Bodo Vehicle Group Co., Ltd.	15,1 %	73,4 %	15,1 %
Giant Electric Vehicle Co., Ltd.	3,9 %	24,6 %	3,9 %
Jinhua Vision Industry Co., Ltd and Yongkang Hulong Electric Vehicle Co., Ltd	8,5 %	18,8 %	8,5 %
Suzhou Rununion Motivity Co., Ltd	17,2 %	79,3 %	17,2 %
Yadea Technology Group Co., Ltd	10,7 %	62,9 %	10,7 %
Non-sampled co-operating companies	9,2 %	33,5 %	9,2 %
All other companies	17,2 %	79,3 %	17,2 %

- (777) The individual company countervailing duty rate specified in this Regulation was established on the basis of the findings of the present investigations. Therefore, it reflects the situation found during these investigations with respect to the company concerned. This duty rate (as opposed to the countrywide duty applicable to 'all other companies') is thus exclusively applicable to imports of products originating in the country concerned and produced by the company mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (778) A company may request the application of the individual duty rate if it changes subsequently the name of its entity. The request must be addressed to the Commission. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.
- (779) In order to ensure a proper enforcement of the countervailing duty, the duty level for all other companies 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 IP.

- (780) In view of the recent case-law of the Court of Justice ⁽⁷¹⁾, 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.

8. REGISTRATION AND RETROACTIVITY

- (781) As mentioned in above recital (21), the Commission published on 3 May 2018 Implementing Regulation (EU) 2018/671 ('the registration Regulation') ⁽⁷²⁾ making imports of electric bicycles from the PRC subject to registration as of 4 May 2018 onwards.
- (782) On 18 July 2018, the Commission published implementing regulation 2018/1012 imposing a provisional anti-dumping duty on imports of the same product originating in the PRC ('the anti-dumping Regulation') in an investigation which had been initiated on 20 October 2017.
- (783) As of 18 July 2018, registration of imports for the purpose of protection against dumped imports was terminated through the anti-dumping Regulation. As far as the current anti-subsidy investigation is concerned, and in view of the above findings, the registration of imports for the purpose of the anti-subsidy investigation in accordance with Article 24(5) of the basic Regulation should also be discontinued.
- (784) In this case, no provisional countervailing measures were applied. As a consequence, the Commission decided that the definitive countervailing duty shall not be levied retroactively.

9. PRICE UNDERTAKING OFFER

- (785) Following the disclosure one Chinese exporting producer, Wettsen Corporation, submitted a price undertaking offer.
- (786) Wettsen Corporation was not sampled, and although it had requested individual examination, that request along with all other requests for individual examination was rejected.
- (787) The price undertaking offer was rejected for a number of reasons, which was communicated to Wettsen Corporation in a separate letter. The reasons were as follows:
- first, Wettsen 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 Wettsen Corporation while seemingly complying with the MIP.

10. DISCLOSURE

- (788) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty on imports of imports of electric bicycles originating in the PRC.
- (789) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036 of the European Parliament and of the Council,

⁽⁷¹⁾ Judgment of the Court (Third Chamber) of 18 January 2017, *Wortmann v Hauptzollamt Bielefeld*, C-365/15, EU:C:2017:19, paragraphs 35 to 39.

⁽⁷²⁾ OJ L 113, 3.5.2018, p. 4.

HAS ADOPTED THIS REGULATION:

Article 1

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

2. The rate of the definitive countervailing 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 counter-vailing duty	TARIC additional code
People's Republic of China	Bodo Vehicle Group Co., Ltd.	15,1 %	C382
	Giant Electric Vehicle (Kunshan) Co., Ltd.	3,9 %	C383
	Jinhua Vision Industry Co., Ltd and Yongkang Hulong Electric Vehicle Co., Ltd	8,5 %	C384
	Suzhou Rununion Motivity Co., Ltd	17,2 %	C385
	Yadea Technology Group Co., Ltd	10,7 %	C463
	Other cooperating companies listed in Annex I	9,2 %	See Annex I
	Non-cooperating companies in the anti-subsidy investigation, but cooperating in the parallel anti-dumping investigation listed in Annex II	17,2 %	See Annex II
	All other companies	17,2 %	C999

3. The application of the individual countervailing 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) electric bicycles for export to the European Union covered by this invoice were 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.

Article 2

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 countervailing duty shall be levied on the registered imports.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

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 JUNKER

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 Fujiang Vehicle Co. Ltd	Jiangsu	C484
Changzhou Rich Vehicle Technology Co. Ltd	Jiangsu	C395
Changzhou Steamoon Intelligent Technology Co. Ltd	Jiangsu	C398
Changzhou Sobowo Vehicle Co., Ltd.	Jiangsu	C397
Cycleman E-Vehicle Co., Ltd	Jiangsu	C400
Dongguan Benling Vehicle Technology Co. Ltd	Guangdong	C401
Dongguan Honglin Industrial Co. Ltd	Guangdong	C402
Easy Electricity Technology Co., Ltd.	Hebei	C451
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 Lvbao Vehicles Co. Ltd	Zhejiang	C486
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

Company Name	Province	TARIC additional code
Kunshan Sevenone Cycle Co., Ltd.	Jiangsu	C427
Melton Industrial (Dong Guan) Co., Ltd	Guangdong	C402
Nantong Tianyuan Automatic Vehicle Co., Ltd.	Jiangsu	C429
Ningbo Bestar Co., Ltd.	Zhejiang	C430
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
Suzhou Leisger Vehicle Co. Ltd	Jiangsu	C487
Tianjin Luodeshengda Bicycle Co., Ltd.	Tianjin	C449
Tianjin Upland Bicycle Co., Ltd.	Tianjin	C450
Ubchoice Co., Ltd.	Guangdong	C452
Wettsen Corporation	Shandong	C454
Wuxi Shengda Bicycles 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) Bicycles 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 Hangpai Electric Vehicle Co. Ltd	Zhejiang	C488
Zhejiang Jsl Vehicle Co., Ltd.	Zhejiang	C473

Company Name	Province	TARIC additional code
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 Electric Vehicle Co., Ltd., Zhejiang Xingyue Overfly Electric Vehicle Co., Ltd. and Zhejiang Xingyue 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
Yongkang Aijiu Industry & Trade Co., Ltd.	Zhejiang	C465

Company Name	Province	TARIC additional code
Zhejiang Enze Vehicle Co., Ltd.	Zhejiang	C471
Zhejiang Luyuan Electric Vehicle Co., Ltd.	Zhejiang	C476
Zhongshan Qiangli Electronics Factory	Guangdong	C479

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, Wettsen Corporation, submitted a price undertaking offer.
- (215) Wettsen 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 Wettsen Corporation in a separate letter. The reasons were as follows:
- first, Wettsen 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 Wettsen 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 Lvbaos Vehicles Co. Ltd	Zhejiang	C486
Suzhou Leisger Vehicle Co. Ltd	Jiangsu	C487
Zhejiang Hangpai Electric Vehicle Co. Ltd	Zhejiang	C488

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2018 OF THE EU-ALGERIA ASSOCIATION COMMITTEE of 27 December 2018

regarding the modification of the conditions of application of the preferential tariffs for agricultural products and processed agricultural products set out in Article 14 of the Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part [2019/74]

THE EU-ALGERIA ASSOCIATION COMMITTEE,

Having regard to the Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part ⁽¹⁾,

Whereas:

- (1) In view of the difficulties faced by the People's Democratic Republic of Algeria ('Algeria') in dismantling the customs duties for agricultural products and processed agricultural products established in accordance with the conditions laid down in Protocols Nos 2 and 5 to the Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part (the 'Association Agreement'), a group of experts from the European Commission and Algeria met six times between September 2010 and July 2011.
- (2) As a result of the consultations, an agreement was reached on the acceptable modifications to the basic duties, quantities and schedule initially established for dismantling tariffs, in accordance with the conditions laid down in Protocols Nos 2 and 5 to the Association Agreement.
- (3) Article 16 of the Association Agreement makes provision for the potential unilateral modification of the agreed tariff arrangements subject to certain conditions. However, the Party making the modification is to accord imports originating in the other Party a comparable advantage. In accordance with Article 16(2) of the Association Agreement, the EU-Algeria Association Committee ('the Association Committee') is to meet to take due account of the interests of that Party.
- (4) By virtue of Article 97 of the Association Agreement, the Association Committee has the power to take decisions for the management of that Agreement. It is therefore necessary for the Association Committee to adopt a decision in respect of the modifications envisaged,

HAS ADOPTED THIS DECISION:

Article 1

The rate and duration conditions agreed during the bilateral consultations and set out in the Annex to this Decision shall modify the tariff conditions established initially for the respective agricultural products and processed agricultural products in Protocols Nos 2 and 5 to the Association Agreement.

⁽¹⁾ OJ L 265, 10.10.2005, p. 2.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 27 December 2018.

For the EU-Algeria Association Committee

The President

Ali MOKRANI

ANNEX

1. Following the submission by the People's Democratic Republic of Algeria ('Algeria') of a formal request to revise the schedule for dismantling the tariffs for agricultural products and processed agricultural products at the fifth session of the Association Council held on 15 June 2010 and following six consultation sessions, on 11 July 2011 the Parties agreed on new provisions to modify the tariff arrangements set out in Protocols Nos 2 and 5 to the Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part ('the Association Agreement') based on a list of 36 tariff subheadings (34 subheadings for agricultural products and two subheadings for processed agricultural products).
2. In accordance with Article 16 of the Association Agreement, the Party that modifies the arrangements laid down in that Agreement is to provide the other Party with compensation with equivalent effect.

The Algerian memorandum of June 2010 envisaged the elimination of preferential tariffs for the Union for 34 tariff subheadings for agricultural products and of two subheadings for processed agricultural products.

3. Following six meetings (from September 2010 to July 2011) resulting in an agreement in the form of a memorandum dated 11 July 2011, the Parties agreed to eliminate 25 preferential tariff subheadings for agricultural products in Protocol No 2 to the Association Agreement and two subheadings for processed agricultural products in Protocol No 5 to the Association Agreement for Union exports to Algeria. They also reached an agreement on the compensation for the Union with the same effect in terms of lost customs duties for Union operators by increasing two preferential tariff subheadings for agricultural products: pure-bred breeding animals of the bovine species and common wheat, other than for sowing.

Details of these changes are set out in this Annex.

4. The preferential tariffs initially established in Protocols Nos 2 and 5 to the Association Agreement shall apply to the remaining products referred to in Article 14(2) of that Agreement.
5. The modifications to the tariff arrangements set out in Protocols Nos 2 and 5 to the Association Agreement were unilaterally applied by Algeria from 1 January 2011 and were then revised following the consultations between the Parties. Algeria has applied the following provisions since 1 October 2012.

The preferential quotas granted to the Union in Protocol No 2 to the Association Agreement in relation to the following agricultural products were repealed by Algeria on 1 October 2012:

Algerian nomenclature	Description	Applied tariff (%)	Reduction in customs duties (%)	Preferential tariff quotas (tonnes)	Union code
0105.11.10	Day-old broiler chicks	5	100	20	0105.11
0105.11.20	Day-old layer chicks	5			
0105.11.30	Day-old breeding, broiler chicks	5			
0105.11.40	Day-old breeding, layer chicks	5			
0713.10.90	Peas	5	100	3 000	0713.10.90
0713.20.90	Chickpeas	5			0713.20.00
0713.31.90	Mungo, Hepper or radiata beans	5			0713.31.00
0713.32.90	Small red beans	5			0713.32.00
0713.33.90	Kidney beans	5			0713.33.90
0713.39.90	Other beans	5			0713.39.00
0713.40.90	Lentils	5			0713.40.00
0713.50.90	Broad beans	5			0713.50.00
0713.90.90	Other leguminous vegetables	5			0713.90.00

Algerian nomenclature	Description	Applied tariff (%)	Reduction in customs duties (%)	Preferential tariff quotas (tonnes)	Union code
0805.10.00	Oranges	30	20	100	0805.10
0805.20.00	Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids	30			0805.20
0805.40.00	Grapefruit, including pomelos	30			0805.40
0805.50.00	Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>) and limes (<i>Citrus aurantifolia</i> , <i>Citrus latifolia</i>)	30			0805.50
0805.90.00	Other citrus fruit	30			0805.90
1105.20.00	Flakes, granules and pellets of potatoes	30	20	100	1105.20.00
1107.10.00	Malt, not roasted	30	100	1 500	1107.10
1108.12.00	Maize starch	30	20	1 000	1108.12
2005.40.00	Peas (<i>Pisum Sativum</i>), prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 20.06.	30	100	200	2005.40
2005.60.00	Asparagus	30	100	500	2005.60
2005.90.00	Other vegetables and mixtures of vegetables	30	20	200	2005.99
2007.99.00	Non-homogenised preparations, of other than citrus fruit	30	20	200	2007.99

The preferential quotas granted to the Union in Annex 2 to Protocol No 5 to the Association Agreement in relation to the following processed agricultural products were repealed by Algeria on 1 October 2012:

Algerian nomenclature	Description	Applied tariff (%)	Reduction in customs duties (%)	Preferential tariff quotas (tonnes)	Union code
2105.00.00	Ice cream and other edible ice	30	20		
3505.10.00	Dextrins and other modified starches	15	100		

The preferential quotas granted to the Union in Protocol No 2 to the Association Agreement in relation to the following agricultural products were replaced by Algeria on 1 October 2012 as follows:

Algerian nomenclature	Description	Applied tariff (%)	Reduction in customs duties (%)	Preferential tariff quotas (tonnes)	Union code
0102.10.00	Live bovine animals: pure-bred breeding animals	5	100	4 950	0102.10.00
1001.90.90	Durum wheat, other than for sowing	5	100	403 000	1001.90.99

The preferential quotas granted to the Union in Protocol No 2 to the Association Agreement in relation to the agricultural products below were re-established in their entirety by Algeria on 1 October 2012:

Algerian nomenclature	Description	Applied tariff (%)	Reduction in customs duties (%)	Preferential tariff quotas (tonnes)	Union code
0102.90.10	Dairy cows	5	100	5 000	0102.90
0102.90.20	Heifers in calf and female calves	5			
0102.90.90	Other	30			
0406.90.10	Other soft uncooked cheeses, and other pressed cheeses, half- or fully cooked	30	100	800	0406.90 (except 90.01)
0406.90.90	Other cheeses (of Italian and Gouda style)	30			
10.03.00.90	Barley, other than for sowing	15	50	200 000	1003.00.90
1517.10.00	Margarine, excluding liquid margarine	30	100	2 000	1517.10
1517.90.00	Other	30			1517.90
1701.99.00	Cane or beet sugar and chemically pure sucrose, other than raw, not containing added flavouring or colouring matter	30	100	150 000	1701.99

