EUROPEAN COMMISSION

Directorate-General for Trade
Directorate H – Trade Defence Instruments

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GENERAL FINAL DISCLOSURE DOCUMENT

AS646 - Anti-subsidy proceeding concerning imports of electric bicycles originating in the People's Republic of China

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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' 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')[1].

(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')[2] 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[3] ('the anti-dumping Regulation') in an investigation which had been initiated by Notice published on 20 October 2017[4] ('the parallel anti-dumping investigation').

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

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

(7) These parties argued that the reasons for which the Commission granted confidential treatment to the identity of some of the interested parties supporting the complaint were both insufficient and unfounded. They added that some Union producers import complete electric bicycles from the PRC and thus, in light of Article 9(1) of the basic Regulation, may be precluded from being considered as being part of the Union

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[1] OJ C 440, 21.12.2017, p. 22.

[2] 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.

[3] OJ L 181, 18.7.2018, p. 7.

[4] OJ C 353, 20.10.2017, p. 19.

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[5], as well as their total production volume[6]. 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, *i.e.* 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

[5] Complaint, Annex 10.
[6] Complaint, Annex 9.

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')[7] 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 (478)), and there is evidence on record that this is indeed regularly done by companies producing both products.

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

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

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 confirms 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.

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[7] OJ L 113, 3.5.2018, p. 4.

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 (58) 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 be 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.

1.7. Questionnaire replies and verification visits

(45) 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.

(46) 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.

(47) 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.

(48) 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.

(49) Questionnaires were also sent to the five sampled exporting producers' groups, to the sampled Union producers and unrelated importers.

(50) 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 (48), and from the sampled Union producers and from the sampled unrelated importers.

(51) The Commission sought and verified all information deemed necessary for the determination of subsidy, resulting injury and Union interest.

(52) 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.

(53) Moreover, 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),
- NEO MOUV S.A.S. (La Fleche, France),
- Stella Fietsen B.V. (Nunspeet, the Netherlands).

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

1.8. Non-imposition of provisional measures

(55) 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.

(56) The Commission continued seeking and verifying all information it deemed necessary for its definitive findings.

(57) 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

(58) 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').

(59) This definition covers various types of electric bicycles.

2.2. Like product

(60) 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.

(61) Those products are therefore considered like products within the meaning of Article 2(c) of the basic Regulation.

2.3. Claims regarding product scope

(62) 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[8] of 250 W, the engine of speed electric bicycles can have a higher power of typically 350 – 500 W.

(63) 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.

(64) 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.

(65) 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.

(66) 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.

(67) 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.

(68) 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.

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[8] Maximum continuous rated power.

(69) 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.

(70) 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.

(71) 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.

(72) 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 (71) that L1e-A electric bicycles have all the benefits of a regular electric bicycle but with more power.

(73) 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.

(74) 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.

(75) 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.

(76) 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.

(77) 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.

(78) 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.

(79) 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.

3. SUBSIDISATION

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

(80) 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.

(81) 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.

(82) 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*'.

(83) 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 […]*'.

(84) 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*'.

(85) 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.

(86) 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*'.

(87) 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.

(88) 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 (110)).

(89) 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*'.

(90) 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 service of intangible assets pledged by enterprises, including their own brands, the special rights to use the trademarks, support brands construction in 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*'.

(91) 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.*'.

(92) 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*'.

(93) 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*.'

(94) 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*'.

(95) 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*'.

(96) 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*'.

(97) 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.

(98) 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*'.

(99) 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).

(100) However, the efforts of the GOC are not limited to the electric bicycles but also embrace their parts, namely engines, control unit and batteries.

(101) The 13th Bicycle Plan explicitly established the link between the development of electric bicycles parts and its parts, by '*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*'.

(102) 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*’.

(103) 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*’.

(104) More specifically, the 12^{th} Bicycles Plan lists among the main goals of the industry development during the 12^{th} 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*’.

(105) 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*’.

(106) 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*.’

(107) 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 (81)).

(108) The Light Industry Development Plan (2016-2020), also lists the battery industry among the ‘*key industries*’. Beside the general policy measures discussed in recitals (80) to (91), the plan recommends as well the implementation of the ‘Specifications of Lead Battery Industry’.

(109) 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*.’

(110) 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)*'.

(111) 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.

(112) 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).

(113) 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*'[9], 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[10]. 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,

[9] Guidance Catalogue for the Industrial Structure Adjustment, (2011 Version).
[10] Chapter III, Article 12 of Decision No. 40.

the decision is legally binding for other public bodies and the economic operators[11].

– **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.

(114) 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.

3.2. Claims

3.2.1. Claims by the GOC

(115) 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.

(116) 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

(117) 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.

(118) CBA also claimed that the 13th Five Year Bicycles Plan was confidential.

3.2.3. Claim rebuttals

Existence and confidentiality of the 13th Bicycle Plan

(119) 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.xueshu.com/zgzxc/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*"

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

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.

(120) Finally, CBA did not provide any evidence on the confidential nature of the 13th Bicycle Plan.

Alleged independence of CBA from the GOC

(121) 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 Society 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.

(122) 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.

3.3. Partial non-cooperation and use of facts available

3.3.1. Preferential lending

(123) 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.

(124) 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.

(125) 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.

(126) 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[12], 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 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.

(127) 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[13], 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.

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12 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.

13 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.

(128) 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.

(129) Therefore the Commission did not therefore 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 considers that the questionnaire contains 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.

(130) 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.

(131) 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.

(132) The Commission only received information on the corporate structure and ownership from the four State-owned banks mentioned in recital (50) 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.

(133) 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 (128) to (132) 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.

(134) Since it 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, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.

(135) 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.

(136) The GOC did not submit any comments as regards the application of Article 28(1) of the basic Regulation.

(137) 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

(138) The Commission requested the GOC to forward a specific questionnaire to Sinosure. Sinosure provided a questionnaire reply.

(139) However, it responded only partially to the specific questionnaire concerning export credit insurance provided to the sampled exporting producers. Furthermore, Sinosure 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.

(140) Sinosure 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.

(141) In the absence of such information, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.

(142) As outlined in recitals (126), 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 Sinosure, 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.

(143) The GOC did not submit any comments as regards the application of Article 28(1) of the basic Regulation.

(144) 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

(145) 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.

(146) 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.

(147) The Commission disagrees with this view. First, it considers that the burden of dispatching a questionnaire already prepared to a contact list already provided was not a 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 considers 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.

(148) 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 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.

(149) 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.

(150) 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.

(151) Therefore, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.

(152) 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.

(153) 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

(154) 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:

(b) Provision of preferential loans and directed credits by State policy banks and State-owned commercial banks.

(c) Preferential Export credit insurance.

(d) 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.

(e) 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.

(f) 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.

(g) 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

(155) 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[14]. The 7 remaining financial institutions were either privately owned or their ownership could not be determined given the non cooperation described in recitals (123) to (137). 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

(156) 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

[14] See recital (159) for the cooperating state-owned banks and recitals (189) for the names and the data concerning the non-cooperating state-owned banks.

is as follows[15]: '*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.

(157) 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.

(158) 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

(159) The following four State-owned banks provided a questionnaire reply: EXIM, ABC, ICBC and BOC. As explained in the recital (132) 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

[15] 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.

(160) 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.

(161) 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'.

(162) 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

(163) 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[16], 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.

(164) 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.

(165) 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

(166) 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.

[16] EXIM submitted only an abstract of its Articles of Association, but not the comprehensive version of it.

(167) 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.

(168) 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.

(169) 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.

BOC

(170) 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.

(171) 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.

(172) In addition, the new stipulations concerning the role of the CCP mentioned in recitals (169) above also apply to BOC:

– Evidence showing that the Government exercised meaningful control over the conduct of those institutions.

ICBC

(173) 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.

(174) 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.

(175) 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).

(176) 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.

(177) 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.

(178) 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.

(179) 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*'.

(180) 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[17]:

- 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.

(181) 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.

(182) 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.

(183) However, no concrete examples relating to the sampled exporting producers were provided. As also explained in recitals (126) to (137) 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.

(184) 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 (175) to (181), 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.

[17] 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).

(185) 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 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 as 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.

(186) 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

(187) 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

(188) As set out in section 3.2 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 (123) to (135) above, the Commission decided to use facts available to determine whether those State-owned banks qualify as public bodies.

(189) 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[18], 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, Shangai 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.

(190) 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 3.4.1.1. 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.

[18] OJ L 176, 30.6.2016, p. 55, recital (132).

(191) 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.

(192) 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.

(193) 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.

(194) 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.

3.5.1.3. Conclusion on State-owned financial institutions

(195) 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.

(196) 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 (197) to (201) below. Thus, their conduct would be attributed to the GOC in any event as explained in section 3.5.2.

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

(197) 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.

(198) According to the WTO Appellate Body Report 'United States – Countervailing duty investigation on Dynamic Random Access Memory (DRAMS) from Korea'[19]; '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*'[20]. 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*'[21] 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'*[22]. Rather, entrustment and direction implies '*a more active role of the government than mere acts of encouragement*'[23].

(199) The normative framework concerning the electric bicycle industry mentioned above in recitals (175) to (181) 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.

(200) 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.

(201) In the absence of any divergent information received from the private financial institutions, the Commission concluded therefore 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.

3.5.3. Specificity

(202) As demonstrated in recitals (175) to (181), 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.

(203) 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

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[19] 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.

[20] Appellate Body Report, DS 296, para. 116.

[21] Appellate Body Report, DS 296, para. 115.

[22] Appellate Body Report, DS 296, para. 114, agreeing with the Panel Report, DS 194, para. 8.31. on that account.

[23] Appellate Body Report, DS 296, para. 115.

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.

3.5.4. *Benefit and calculation of the subsidy amount*

(204) For the calculation 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.

(205) In this regard, the Commission noted a number of specificities on the Chinese electric bicycle market. As explained in sections 3.4.1 to 3.4.3 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.

(206) 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.

(207) 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[24] 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

(208) In the anti-subsidy investigation on hot rolled flat steel products originating in the PRC[25], 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’)[26], 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[27].

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

25 OJ L 176, 30.6.2016, p. 55.

26 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.

27 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.

(209) 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 and the strength of any implicit guarantee when they rate Chinese bonds issued overseas[28]. 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[29].

(210) 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[30].

(211) 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.

(212) 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.[31] 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[32]. 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.

(213) 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.

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28 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.

29 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).

30 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.

31 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.

32 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.

(214) In view of the situation described in recitals (208) to (213) above, the Commission concluded that Chinese credit ratings do not provide a reliable estimation of the credit risk of the underlying asset.

Giant group

(215) 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.

(216) 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.

(217) 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 (208) to (213) above and in absence of ratings from any credit rating agencies, the Commission concluded that these ratings were not reliable.

(218) As mentioned in section 3.4.1 above, the Chinese lending financial institutions did not provide any creditworthiness 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.

(219) In absence of reliable and coherent credit ratings for the Giant group, and the specific profitability situation discussed in recital (216), 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.

(220) 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.

(221) 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[33], and for the same duration as the loan in question. This was done individually for each loan provided to the company.

(222) 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.

Jinhua Vision Group

(223) 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.

(224) 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.

(225) 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 (208) to (212) above and the specific profitability discussed in recital (224) above, the Commission concluded that these ratings were not reliable.

(226) 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 (218) - (222). Therefore, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.

Yadea group

(227) 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 (ie 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.

(228) The two producers of the Yadea Group presented themselves in a generally profitable financial situation according to their own financial accounts. However, when looking

[33] In case of fixed interest loans. For variable interest rate loans, the PBOC benchmark rate during the IP was taken.

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.

(229) Although requested to do so, Yadea Group did not provide any information on its credit rating.

(230) 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.

(231) In light of the overall distortions of Chinese credit ratings mentioned in recitals (208) to (213) above, and the specific profitability discussed in recital (228) 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 (218) - (222). Therefore, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.

Rununion Group

(232) 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.

(233) 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.

(234) 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.

(235) 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.

(236) The Commission noted that Suzhou Rununion Motivity Co., Ltd had been awarded a credit rating of BBB+ by one Chinese State-owned financial institutions, 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 (208) to (213) above, and the specific profitability discussed in recitals (233) to (235), the Commission concluded that this rating was not reliable.

(237) 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 (206) to (210). Therefore, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.

Bodo Group

(238) 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.

(239) While both companies appeared financially viable during the period considered, Xinbao was loss-making in 2017.

(240) 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.

(241) 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.

(242) 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 (208) to (213) above and the specific profitability discussed in recitals (239) to (241), the Commission concluded that this rating was not reliable.

(243) In light of the overall distortions of Chinese credit ratings mentioned in recitals (208) to (213) above, and the specific profitability discussed in recitals (239) to (241) 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) - (221). Therefore, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.

3.5.4.2. Loans

(244) As mentioned in recital (204), 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.

(245) 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.

(246) 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.

(247) 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).

(248) 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.

3.5.4.3. Credit lines

(249) 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 sampled exporting producers benefited from credit lines provided free of charge.

(250) 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.

(251) The appropriate benchmark for the arrangement fee was established at 1,5%, by reference to publicly available data[34] 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.

(252) 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).

3.5.4.4. Bank acceptances

(253) 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

[34] Fees charged by HSBC UK: https://www.business.hsbc.co.uk/.../pdfs/en/bus_bnkg_price_list.pdf.

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.

(254) 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.

(255) As regards the banks, bank acceptance notes payables are recognized as liabilities 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.

(256) 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.

(257) 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.

(258) One sampled exporter 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 acceptances involve a promise of repayment. They further claimed that bank acceptances are a payment method not involving any direct transfer of fund.

(259) In this regard, it should be noted that the credit reference center of the PBOC recognises bank acceptances as liabilities towards banks at the same level as loans, letters of credit or trade financing. 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. Additionally, 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.

(260) As far as the transfer of funds is concerned, 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. This is also evidenced by the fact that upon remittance of the bank acceptance to the supplier, the buyer will, on the one hand, reduce its account payables to the supplier, and on the other increase its notes payables bank liabilities for a corresponding amount. On the basis of the above, the comments of these exporting producers in this regard were rejected.

(261) Another exporting producer further claimed 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. The Commission accepted this claim partly. The

investigation confirmed that all payments were within the due dates of the invoices. However, the bank acceptance system nevertheless provided the suppliers of this exporting producer a bank guarantee for the outstanding invoices which confers a countervailable benefit as described in the recitals (265) to (271) below.

(262) The same exporting producer also claimed that the bank acceptance note system is a generally available financing tool and is not limited to the electric bicycle industry. Therefore, this exporting producer claimed that any benefit from the bank acceptance system would not be specific and therefore not be countervailable.

(263) As explained in the recitals (202) to (203) 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. In addition to loans, this applies also to other financial products, including the bank acceptances. The Commission concluded that there was no evidence indicating that the same mechanism is available to all sectors in the PRC. The Commission did therefore not accept this claim.

(264) For this calculation of the amount of the countervailable subsidy the Commission assessed the benefit conferred on the recipients during the investigation period.

(265) According to the information available, a bank acceptance system in the form as described in recitals (253) to (257) 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.

(266) In order to offer such guarantee, banks normally charge a bank acceptance fee set at the level of the CDOR (Canadian Dollar Offered Rate) and a stamping fee ranging from a few basis points (bps) to over 100 bps depending on the creditworthiness of the borrowers.[35]

(267) 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 BA 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.

(268) In such circumstances, it was considered that, as mentioned in recital (90) and foreseen by the light industry plan, the GOC foresees a "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

[35] https://www.bankofcanada.ca/wp-content/uploads/2018/06/SDP-2018-6.pdf

lower than the premium charged to companies with a poor credit rating such as the sampled exporting producers (see recital(266)).

(269) 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.

(270) 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 (245)) 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 (251) 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.

(271) 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 (245) for loans denominated in RMB.

3.5.5. Conclusion on preferential lending

(272) 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.

(273) 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	0,94%
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

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

(a) Legal basis

(275) 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 Sinosure.

(276) 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

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

(278) As outlined in recital (138) Sinosure partially responded to the specific questionnaire concerning export credit insurance provided to the sampled exporting producers. However, as mentioned in recitals (138) to (144) above, Sinosure failed to provide the supporting documentation requested concerning its corporate governance, such as its Annual Report or its Articles of Association.

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

(280) 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.

(281) 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.

(282) 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.

(283) 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.

(284) 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.

(285) 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.

(286) 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.

(287) 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 (289) below would also be the best estimate for sufficient premium under market conditions.

(288) 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

(289) 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.

(290) 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[36].

(291) 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.

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

[36] https://www.exim.gov/sites/default/files//managed-documents/Ebook-ECI-With%20Case%20Study-Final%20March%202015.pdf.

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

(293) 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.

(294) 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.

(295) As explained in more details in recitals (145) to (153) 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.

(296) 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

(297) As pointed out in recital (146), 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.

(298) 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.

(299) As mentioned in recital (48), 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.

(300) 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.

(301) 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.

(302) 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.

(303) The Commission provided the GOC with the opportunity to comment. The GOC did, however, 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

(304) As developed further in recital (319), 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.

(305) 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.

(306) On this basis, the Commission identified 10 Chinese suppliers.

(307) 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 1 313% of the volume and 5% of the value). As outlined in recitals (117) to (122), 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'.

(308) 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.

3.7.2.2. Government policies and objectives

(309) 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.

(310) 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.

(311) 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.

(312) 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 (89) and (90).

3.7.2.3. Entrustment and direction

(313) 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.

(314) As far as the suppliers to the sampled exporting producers are concerned, the Commission established in recital (307) 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 (307) and (308), 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.

(315) 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 20% cheaper than export prices. Such difference reached 67% for certain models.

(316) 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 (96) and (97) 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.

(317) 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.

(318) 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[37]. 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*'.

(319) The report, which is publicly available, shows that the import of bicycle engines only represent 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%.

(320) 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.

(321) 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 e-bike 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).*

(322) 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 (85) to (90).

(323) 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,*

[37] http://www.chinabgao.com/report/4051392.html

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, <u>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</u>*.' *(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 5-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).*

(324) 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.

(325) 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.

3.7.2.4. Subsidisation of the engine producers

(326) The Commission first recalls 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.

(327) As described in recital (323), the report contains several evidence that the electric engine industry received support through '*tax refund incentive*', '*land use, capital service and labor supply*'.

(328) 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.

3.7.2.5. Specificity

(329) As demonstrated in recitals(175) (309) to (325), 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.

(330) 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

(331) 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.

(332) As explained in recital (315), 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.

(333) Calculation of the subsidy amount

(334) 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.

(335) 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	3,60%
Giant Group	0,79%
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	0,21%
Suzhou Rununion Motivity	2,81%
Yadea Group	2,00%

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

(336) 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.

(337) 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 (117) to (122), during the period considered, the CBA was under the management of the State Council. Moreover, as outlined in recital (307) the CBA imposes certain obligations on its members with respect to national policy implementation.

(338) 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.

3.7.3.2. Government policies and objectives

(339) 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.

(340) 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, such as proton exchange membrane of fuel cell and proplatinum catalyst. 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*.'

(341) The plan also identifies concrete policy measures to promote in each of these key industries. These are laid out in recitals (85) to (90) and include, among others, preferential lending, support of export credit insurance and tax policy support.

(342) 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 industrialization and demonstration application of large and efficient ultra-clean coal emission power unit and further improve the manufacturing level of hydroelectric generating set with ultra-large capacity, nuclear power unit and heavy duty gas turbine. 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).*

(343) The third document is the 13th 5-Year 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*’*).*

(344) The fourth document is the 12^{th} 5-Year 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 for the development of the battery industry, and gradually develop the relevant laws and regulations to promote the products with serious pollution, waste of resources and high energy consumption, and gradually lead the high-tech products to form an industrial scale and increase the international market share*.’ *(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).*

(345) 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).*

(346) 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*')[38], 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).*

(347) 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.

[38] http://www.chinabgao.com/report/4134952.html.

(348) 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

(349) In view of the partial non-cooperation by the GOC, no questionnaire replies were received from suppliers of input material and that the Commission lacked therefore 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.

(350) 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.

(351) 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%’.*

– *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’.*

(352) 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 (345). 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).*

(353) The report 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.

(354) The third 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'.

(355) 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 direct the producers of batteries to sell them at a low price for the benefit of the downstream electric bicycle industry.

(356) As far as the suppliers of batteries to the sampled exporting producers are concerned, the Commission established in recital (337) that 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 (308) 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.

(357) 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.

(358) 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.

(359) 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 13^{th} Bicycle plan, which directly affects CBA, aims at improving the export performance of electric bicycle exporting producers as mentioned in recitals (96) and (97) 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 engines 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.

(360) 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 engines at non subsidised prices.

(361) 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.

3.7.3.4. Subsidisation of battery producers

(362) The Commission first recalls that due to the partial non-cooperation of the GOC the Commission 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.

(363) The Commission noted in recitals (340) and (341) 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.

(364) Furthermore, as described in recital (346), the specific battery industry report contains evidence that this industry received '*preferencial policies*'.

(365) On the basis of the above, the Commission concluded that battery producers received subsidies in various forms.

3.7.3.5. Specificity

(366) As demonstrated in recitals (175) (339)(309) to (361), 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.

(367) 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

(368) All sampled exporting producers purchased batteries domestically from unrelated companies but also imported some quantities.

(369) 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.

(370) As explained in recital (357), 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.

(371) Calculation of the subsidy amount

(372) 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.

(373) 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

(374) 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.

(375) 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.

(376) 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

(377) 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

(378) 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.

(379) In previous investigations[39], 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.

(380) 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.

(381) 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

[39] 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) 366/2017 (OJ L 56, 3.3.2017, p. 1) (Solar panels), Commission Implementing Regulation (EU) 2017/969, OJ L147, 9.6.2017, p. 17 (HRF), p.17

Republic of China[40], 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 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.

(382) 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

(383) 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.

(384) 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 (378) to (381) above, there is no functioning market for land in the PRC and the use of an external benchmark (see recitals (387) to (391) below) demonstrates that the amount paid for land-use rights by the sampled exporting producers is well below the normal market rate.

(385) 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 (379). Within this industrial policy, as described in recital (85) the electric bicycles industry is considered to be a key industry of the Chinese Light Industry[41]. 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.

(386) Consequently, this subsidy is considered countervailable.

(e) Calculation of the subsidy amount

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

[41] See section 3.1 above.

(387) As in previous investigations[42] 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[43]. 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 in 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.

(388) 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.

(389) 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.

(390) Moreover, the Commission considered this benchmark to be a reliable source of data accessible to all interested parties.

(391) The Commission computed the weighted average price of land based on the sales transactions of land in the six cities listed in recital (387). Such data was available only starting from August 2013. For the period starting after this date, the Commission

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[42] 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*).

[43] 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.

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.

(392) 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.

(393) 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

(394) 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

(395) 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 Enterprises’, 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

(396) 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.

(397) 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.

(398) 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.

(399) 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.

(c) Calculation of the subsidy amount

(400) 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.

(401) 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	0,41%

Vehicle	
Suzhou Rununion Motivity	0,00%
Yadea Group	0,70%

3.8.2. EIT offset for research and development expenses

(402) 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.

(403) 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

(404) 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

(405) During a previous investigation[44], 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.

(406) 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

[44] 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.

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.

(c) Calculation of the subsidy amount

(407) 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.

(408) 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%
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

(409) 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.

Legal basis

(410) 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.

(a) Findings of the investigation

(411) 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.

(b) Conclusion

(412) 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.

(c) Calculation of the subsidy amount

(413) 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%
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

(414) 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

(415) 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

(416) 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

(417) 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

(418) 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.

(419) 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

(420) 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

(421) 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.

(422) 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

(423) 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.

(424) 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.

(425) 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.

(426) 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

(427) 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[45]. 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[46].

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[45] OJ C 394, 17.12.1998, p. 6.

[46] 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

(428) 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	0,15%
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	0,25%
Suzhou Rununion Motivity	0,07%
Yadea Group	0,12%

3.10.2. Other grant schemes

(429) 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

(430) 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	0,15%
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	0,25%
Suzhou Rununion Motivity	0,07%
Yadea Group	0,12%

3.11. Conclusion on subsidisation

(431) 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

(*Filament glass fibre*), Commission Implementing Decision 2014/918, OJ L 360, 16.12.2014 p. 65 (*Polyester Staple Fibers*).

investigation period. To calculate the overall subsidisation below, the Commission first calculated the percentage 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.

(432) 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[47].

(433) 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	13,30%
Giant Group	3,86%
Jinhua Vision Industry and Yongkang Hulong Electric Vehicle	7,96%
Suzhou Rununion Motivity	16,14%
Yadea Group	9,78%
Other cooperating companies	8,80%
All other companies	16,14%

4. INJURY

4.1. Definition of the Union industry and Union production

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

(434) 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.

(435) 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.

(436) Following this exclusion, 31 producers constitute the 'Union Industry' within the meaning of Article 9(1) of the basic Regulation.

(437) 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.

(438) 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

(439) The Commission established the Union consumption on the basis of the information submitted by CONEBI.

(440) 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
Index	100	120	146	174
Source: CONEBI				

(441) 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

(442) 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.

(443) 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.

(444) The market share of the imports was then established by comparing import volumes with the Union consumption as shown in Table 13 in recital (440).

(445) 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
Index	100	143	195	350
Market share	18%	21%	23%	35%
Index	100	120	133	201
Source: Eurostat, Chinese export statistics				

(446) 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.

(447) 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.

(448) The CCCME expressed its 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.

(449) 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.

(450) 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.

(451) 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.

(452) 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.

(453) 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.

(454) 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.

(455) CCCME's argument had therefore to be rejected.

(456) 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

(457) The Commission established the prices of imports on the basis of Eurostat data following the method described in recital (443).

(458) 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				

(459) 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.

(460) 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.

(461) The Commission determined the price undercutting during the investigation period by comparing:

(a) 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

(b) 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.

(462) 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.

(463) 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.

(464) 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 43,3%.

4.4. Economic situation of the Union industry

4.4.1. General remarks

(465) 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.

(466) As mentioned in recital (27), sampling was used for the determination of possible injury suffered by the Union industry.

(467) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators.

(468) 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.

(469) 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.

(470) 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.

(471) On this basis, the Commission considered that the set of macroeconomic data is representative of the economic situation of the Union industry.

(472) 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

(473) 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
Index	100	118	132	128
Production capacity (pieces)	1 110 641	1 366 618	1 661 587	1 490 395
Index	100	123	150	134
Capacity utilisation	75%	71%	66%	72%
Index	100	95	88	96

Source: CONEBI, sampled Union producers

(474) 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.

(475) 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

(476) 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.

(477) 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%.

(478) 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.

4.4.2.2. Sales volume and market share

(479) 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
Index	100	110	125	120
Market share	75%	68%	64%	51%
Index	100	92	85	69
Source: CONEBI, sampled Union producers				

(480) 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.

(481) 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.

(482) 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.

4.4.2.3. Growth

(483) 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

(484) 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
Index	100	119	139	140
Productivity (pieces/employee)	334	330	317	305
Index	100	99	95	91
Source: CONEBI, sampled Union producers				

(485) 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.

(486) 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

(487) 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.

(488) There is no evidence of past subsidisation.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

(489) 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
Index	100	104	111	115
Unit cost of production (EUR/piece)	1 068	1 134	1 173	1 234
Index	100	106	110	116
Source: sampled Union producers				

(490) 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%.

(491) 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.

4.4.3.2. Labour costs

(492) 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
Index	100	97	91	90
Source: sampled Union producers				

(493) 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

(494) 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
Index	100	124	153	166
Source: sampled Union producers				

(495) The level of closing stocks of the four sampled Union producers increased by 66% over the period considered.

(496) 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.

(497) 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

(498) 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%
Index	100	160	142	125
Cash flow (EUR)	5 178 860	-5 433 666	17 079 409	4 955 399
Index	100	-105	330	96
Cash flow (% of sales turnover)	1,1%	-1,0%	2,5%	0,6%
Index	100	-89	218	55

Investments (EUR)	6 775 924	17 773 148	7 888 936	11 965 802
Index	100	262	116	177
Return on investments	18%	30%	38%	37%
Index	100	164	213	203
Source: sampled Union producers				

(499) 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.

(500) 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.

(501) 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.

(502) 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.

(503) Investments increased by 77% during the period considered while representing no more than 2% of sales.

(504) 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.

(505) 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.

4.4.4. Conclusion on injury

(506) 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.

(507) 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.

(508) 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.

(509) 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.

(510) 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.

(511) 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.

(512) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 8(4) of the basic Regulation.

5. CAUSATION

(513) 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.

(514) 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

(515) 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

(516) 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
	Index	100	202	372	510
	Market share	2%	3%	5%	5%
	Average price	622	571	843	1 016
	Index	100	92	135	163
Vietnam	Volume (pieces)	37 892	74 259	91 468	101 376
	Index	100	196	241	268
	Market share	3%	5%	5%	5%
	Average price	435	539	542	570
	Index	100	124	125	131
Switzerland	Volume (pieces)	883	14 310	30 477	28 440
	Index	100	1 621	3 452	3 221
	Market share	0%	1%	2%	1%
	Average price	1 140	1 391	1 606	1 606
	Index	100	122	141	141
Japan	Volume (pieces)	16 994	4 217	1 613	1 710
	Index	100	25	9	10
	Market share	1%	0%	0%	0%

	Average price	1 098	1 406	1 687	952
	Index	100	128	154	87
Total of all third countries except the PRC	Volume (pieces)	77 104	135 881	202 870	240 343
	Index	100	176	263	312
	Market share	7%	10%	12%	12%
	Average price	641	666	828	897
	Index	100	104	129	140
Source: Eurostat					

(517) 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.

(518) 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.

(519) 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.

(520) 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.

(521) Consequently, the imports from all counties other 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

(522) 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
Index	100	262	450	389
Average price (EUR)	1 570	680	676	907
Index	100	43	43	58
Source: Sampled Union producers				

(523) 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

(524) 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.

(525) 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.

(526) 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.

(527) 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.

(528) 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.

5.3. Conclusion on causation

(529) The Commission established a causal link between the injury suffered by the Union producers and the subsidized imports from the PRC.

(530) 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.

(531) 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.

(532) 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

(533) 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 dumping. 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

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

(535) 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 660m EUR in manufacturing and innovation in 2016.

(536) 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

(537) 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.

(538) 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.

(539) 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.

(540) 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

(541) 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.

(542) As explained in recital (435), 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.

(543) 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.

(544) 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.

(545) The import statistics show that Vietnam and Taiwan provided significant volumes 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.

(546) 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.

(547) 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.

(548) 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.

(549) 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.

(550) The Commission therefore concluded that the imposition of duties was not in the interest of the importers, but that the likely negative effect on importers did not outweigh the positive effect of measures on the Union industry.

6.4. Interest of users

(551) 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.

(552) 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.

(553) 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.

(554) The ECF is supportive of market conditions which foster quality, innovation and services. As such, if dumping 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.

(555) 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.

(556) The investigation has shown that the Union industry is active in all segments of the market, including entry-level products. 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.

(557) 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.

(558) 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.

(559) 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.

6.5. Interest of other parties

(560) 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

(561) Although an adverse effect of the measures on small importers of the product concerned and on prices to consumers could not be ruled out, it does not outweigh the benefits to suppliers, the union industry and consumers.

(562) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of the product concerned originating in the PRC.

7. DEFINITIVE COUNTERVAILING MEASURES

(563) 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

(564) 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.

(565) 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.

(566) 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.

(567) 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.

(568) 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.

(569) In addition, for the three Chinese exporting producers who sold only OEM electric bicycles, the injury elimination level was determined with a reduction of 2,3% of the Union industry's *ex-works* prices. This adjustment corresponds to the proportion of R&D and design costs identified in the accounts of the sampled union producers and reflects that these costs are born in the operations of the brand-name importers.

(570) 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 (431) to (433)).

7.2. Definitive measures

(571) 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.

(572) 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.

(573) 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.

(574) 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.	13,30%	73,4%	13,30%
Giant Electric Vehicle Co., Ltd.	3,86%	24,8%	3,86%
Jinhua Vision Industry Co., Ltd and Yongkang Hulong Electric Vehicle Co., Ltd	7,96%	18,8%	7,96%
Suzhou Rununion Motivity Co., Ltd	16,14%	79,3%	16,14%
Yadea Technology Group Co., Ltd	9,78%	62,9%	9,78%
Companies listed in the Annex	8,80%	33,5%	8,80%
All other companies	16,14%	79,3%	16,14%

8. REGISTRATION AND RETROACTIVITY

(575) As mentioned in above recital (21), the Commission published on 3 May 2018 Implementing Regulation (EU) 2018/671 ('the registration Regulation')[48] making imports of electric bicycles from the PRC subject to registration as of 4 May 2018 onwards.

(576) On 18 July 2018, the Commission published implementing regulation 2018/1012 imposing a provisional anti-dumping duty on imports of the same product originating

48 OJ L 113, 3.5.2018, p. 4.

in the PRC ('the anti-dumping Regulation') in an investigation which had been initiated on 20 October 2017.

(577) 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.

9. DISCLOSURE

(578) Interested parties are informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of a definitive countervailing duty on imports of electric bicycles originating in the PRC.

ANNEX

Non-sampled cooperating exporting producers

Company Name	**Province**
Acetrikes Bicycles (Taicang) Co., Ltd.	Jiangsu
Active Cycles Co., Ltd.	Jiangsu
Aigeni Technology Co., Ltd.	Jiangsu
Alco Electronics (Dongguan) Limited	Guangdong
Changzhou Airwheel Technology Co., Ltd.	Jiangsu
Changzhou Bisek Cycle Co., Ltd.	Jiangsu
Changzhou Fujiang Vehicle Co. Ltd	Jiangsu
Changzhou Rich Vehicle Technology Co. Ltd	Jiangsu
Changzhou Steamoon Intelligent Technology Co. Ltd	Jiangsu
Changzhou Sobowo Vehicle Co., Ltd.	Jiangsu
Cycleman E-Vehicle Co., Ltd	Jiangsu
Dongguan Benling Vehicle Technology Co. Ltd	Guangdong
Dongguan Honglin Industrial Co. Ltd	Guangdong
Easy Electricity Technology Co., Ltd.	Hebei
Foshan Lano Bike Co., Ltd.	Guangdong
Foshan Zenith Sports Co., Ltd.	Guangdong
Guangzhou Symbol Bicycle Co., Ltd.	Guangdong
Hangzhou Fanzhou Technology Co., Ltd.	Zhejiang
Jiangsu Imi Electric Vehicle Technology Co., Ltd.	Jiangsu
Jiangsu Lvneng Electrical Bicycle Technology Co., Ltd	Jiangsu
Jiangsu Stareyes Bicycle Industrial Co., Ltd.	Jurong
Jiaxing Onway Ev Tech Co., Ltd.	Zhejiang
Jinhua Enjoycare Motive Technology Co., Ltd.	Zhejiang
Jinhua Feirui Vehicle Co., Ltd.	Zhejiang
Jinhua Jobo Technology Co., Ltd.	Zhejiang
Jinhua Lvbao Vehicles Co. Ltd	Zhejiang
Jinhua Suntide Vehicle Co., Ltd.	Zhejiang
Jinhua Zodin E-Vehicle Co., Ltd.	Zhejiang
Kenstone Metal (Kunshan) Co., Ltd.	Jiangsu
Komda Industrial (Dongguan) Co., Ltd.	Guangdong
Kunshan Sevenone Cycle Co., Ltd.	Jiangsu
Melton Industrial (Dong Guan) Co., Ltd	Guangdong
Nantong Tianyuan Automatic Vehicle Co., Ltd.	Jiangsu
Ningbo Bestar Co., Ltd.	Zhejiang
Ningbo Lvkang Vehicle Co., Ltd.	Zhejiang
Ningbo Nanyang Vehicle Co., Ltd.	Zhejiang
Ningbo Oner Bike Co., Ltd.	Zhejiang
Ningbo Roadsan New Energy Technology Co., Ltd.	Zhejiang
Ningbo Zixin Bicycle Industry Co., Ltd.	Zhejiang
Pronordic E-Bikes Limited Company	Jiangsu
Shenzhen Shenling Car Co., Ltd.	Shenzhen
Sino Lithium (Suzhou) Electric Technology Co., Ltd.	Jiangsu
Skyland Sport Tech Co., Ltd.	Tianjin
Suzhou Guoxin Group Fengyuan Imp & Exp. Co., Ltd.	Jiangsu
Suzhou Leisger Vehicle Co. Ltd	Jiangsu
Tianjin Luodeshengda Bicycle Co., Ltd.	Hebei
Tianjin Upland Bicycle Co., Ltd.	Hebei

Ubchoice Co., Ltd.	Guangdong
Wettsen Corporation	Shandong
Wuxi Shengda Bicycles Co., Ltd	Jiangsu
Wuxi United Mobility Technology Co. Ltd	Jiangsu
Xiangjin (Tianjin) Cycle Co., Ltd.	Tianjin
Yong Qi (China) Bicycles Industrial Corp	Jiangsu
Yongkang Juxiang Vehicle Co, Ltd.	Zhejiang
Yongkang Lohas Vehicle Co., Ltd.	Zhejiang
Yongkang Mars Vehicle Co., Ltd.	Zhejiang
Zhejiang Apollo Motorcycle Manufacturer Co., Ltd.	Zhejiang
Zhejiang Baoguilai Vehicle Co., Ltd.	Zhejiang
Zhejiang Goccia Electric Technology Co., Ltd.	Zhejiang
Zhejiang Hangpai Electric Vehicle Co. Ltd	Zhejiang
Zhejiang Jsl Vehicle Co., Ltd.	Zhejiang
Zhejiang Kaiyi New Material Technology Co., Ltd.	Zhejiang
Zhejiang Lianmei Industrial Co., Ltd.	Zhejiang
Zhejiang Tuer Vehicle Industry Co., Ltd.	Zhejiang
Zhejiang Xingyue Electric Vehicle Co., Ltd.	Zhejiang
Zhejiang Xingyue Overfly Electric Vehicle Co., Ltd.	Zhejiang
Zhejiang Xingyue Vehicle Co., Ltd.	Zhejiang
Zhongxin Power (Tianjin) Bicycle Co., Ltd.	Tianjin