



TD0037 and TS0038

ANTI-DUMPING AND ANTI-SUBSIDY TRANSITION REVIEWS  
CONCERNING IMPORTS OF ELECTRIC BICYCLES  
ORIGINATING IN  
THE PEOPLE'S REPUBLIC OF CHINA

*Additional Comments*

by the China Chamber of Commerce for Import and Export of Machinery and Electronic  
Products

23 January 2024

OPEN

**CONTENTS**

**1 INTRODUCTION..... 3**

**2 PROCEDURAL ISSUES..... 4**

2.1 The transition reviews are WTO-inconsistent..... 4

2.2 The lack of transparency in the present reviews hampers the CCCME's procedural rights of defence ..... 6

2.3 The absence of non-confidential summaries of the data in Brompton's questionnaire responses is WTO-inconsistent ..... 12

**3 NO UK DOMESTIC INDUSTRY AND NONCOOPERATION OF THE MAJORITY OF THE UK PRODUCERS ..... 16**

**4 THE PRODUCT SCOPE SHOULD BE LIMITED TO FOLDING E-BIKES ..... 20**

**5 NO LIKELIHOOD OF CONTINUATION/RECURRENCE OF INJURIOUS DUMPING AND SUBSIDISZATION..... 27**

5.1 Injurious dumping and subsidisation of e-bikes was never established..... 27

5.2 No likelihood of continuation or recurrence of injury ..... 28

**6 NO ECONOMIC INTEREST IN THE EXTENTION OF THE MEASURES ..... 36**

**7 CONCLUSION ..... 40**

## 1 **INTRODUCTION**

1. This submission provides additional comments of the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (the "CCCME") and its members regarding the transition reviews of the anti-dumping ("AD") and anti-subsidy ("AS") measures applicable to electric bicycles ("e-bikes") originating in the People's Republic of China ("China").<sup>1</sup>
2. For the sake of completeness, the CCCME (i) incorporates by reference all arguments made in its comments dated 27 August 2023 (the "Initial Comments"); and (ii) reserves its right to comment further on procedural and substantive issues in the course of these reviews.
3. In brief, the CCCME submits that:
  - first, the transition of the EU e-bikes AD and AS measures in the UK legal order is WTO-inconsistent; and even if this were permissible, the present transition reviews must follow the WTO framework;
  - second, the lack of transparency in the present reviews, the inordinate delays in making the relevant information available to interested parties and the absence of non-confidential summaries of the sole cooperating domestic producer's data in the questionnaire responses preclude the CCCME from fully exercising its rights of defence;
  - third, as a threshold issue, the existence of a domestic industry in the UK remains questionable. Moreover, the majority of the UK e-bikes producers did not cooperate and, therefore, do not support the present reviews and the extension of the measures;
  - fourth, if the present reviews are to be continued, the product scope should be limited to folding e-bikes, which is the only e-bike category produced by the sole cooperating domestic producer;

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<sup>1</sup> TRA, Notice of Initiation Transition Review No. TD0037, available to download at <[www.trade-remedies.service.gov.uk/public/case/TD0037/submission/7d4f09c9-9b69-4f3a-9e33-4cc6a7ea4501/](http://www.trade-remedies.service.gov.uk/public/case/TD0037/submission/7d4f09c9-9b69-4f3a-9e33-4cc6a7ea4501/)>; and TRA, Notice of Initiation Transition Review No. TS0038, available to download at <[www.trade-remedies.service.gov.uk/public/case/TS0038/submission/cf4b5bd7-8361-47df-9216-1a4e875905c6/](http://www.trade-remedies.service.gov.uk/public/case/TS0038/submission/cf4b5bd7-8361-47df-9216-1a4e875905c6/)>.

- fifth, based on the available evidence, there is no injury to the sole known UK producer on account of the Chinese e-bike imports, and there is no likelihood of continuation or recurrence of injurious dumping and subsidisation;
- finally, the termination of the present AD and AS measures is in the UK's economic interest.

## **2 PROCEDURAL ISSUES**

4. Before addressing the substantive issues, the CCCME respectfully draws the TRA's attention to the following procedural issues: (i) the transition reviews, albeit illegal, must still follow the WTO framework; (ii) the lack of transparency in the present reviews hampers the CCCME's rights of defence; and (iii) the failure to provide meaningful non-confidential summaries of the domestic producer's questionnaire responses significantly impedes the CCCME's due process rights.

### **2.1 The transition reviews are WTO-inconsistent**

5. The CCCME wishes to reiterate that the transition of the EU AD and AS measures on e-bikes by the UK is WTO-inconsistent and the present reviews cannot be justified under the Anti-Dumping Agreement ("ADA") and the Agreement on Subsidies and Countervailing Measures ("SCM Agreement").
6. First, as explained in the Initial Comments, the transition of the EU e-bikes measures in the UK is WTO-inconsistent. AD and AS measures can "*only be imposed*" by a WTO Member "*pursuant to investigations initiated and conducted in accordance with the provisions of [the ADA and the SCM Agreement]*"<sup>2</sup> by that Member. This implies that (i) the legal determinations in the investigations (such as the definition of the domestic industry, the calculation of dumping, subsidy and injury margins, the analysis of injury caused to the domestic industry, *etc.*); and (ii) the application of the trade remedy measures must be by and limited to the territory of the WTO Member that initiated and conducted these investigations.

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<sup>2</sup> See: Article 1 ADA and Article 10 SCM Agreement. See also: Articles 18.1 ADA and 32.1 SCM Agreement stating that "[n]o specific action against [dumping of exports from another Member and/or a subsidy of another Member] can be taken except in accordance with the provisions of GATT 1994, as interpreted by th[ese] Agreement[s]".

7. The transitioned measures were imposed by the EU on the basis of investigations conducted pursuant to the EU Basic AD and AS Regulations and covering EU-wide data (*i.e.*, the EU-28 consumption and import statistics, the EU-28 industry data, *etc.*), which was not specific to imports into the UK or to the UK industry and in fact, there was no UK e-bikes industry at the time of the original EU e-bikes investigations. Moreover, not only were the dumping and injury margins calculated based on the EU-wide import data, but the measures were based on the EU laws, which have no legal effect in the UK and are different from the UK Trade Remedies Regulations. Indeed, the UK trade remedies laws do not transpose the EU Basic AD and AS Regulations and differ from the latter as regards several legal aspects and notably as regards the calculations of the dumping and subsidy margins.<sup>3</sup> Therefore, the EU e-bikes AD and AS measures – which are based on the Basic AD and AS Regulations – cannot be extended to the UK in the manner done by the TRA. Thus, when exiting the EU, the UK extended the EU e-bikes trade remedy measures to its territory in a manner inconsistent with the WTO law.<sup>4</sup>
8. The UK failed to follow the requirements of the ADA and the SCM Agreement. The correct order of operations to validly impose measures would have been to (i) initiate and conduct independent investigations specifically establishing injurious dumping and subsidisation of Chinese e-bikes imported into the UK; and (ii) impose trade defence measures based on the UK trade defence laws and investigations conducted pursuant thereto.

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<sup>3</sup> For instance, the UK did not transpose the EU's legal approach and legal methodology for dumping margin calculation for non-market economies, and the UK's subsidy margin calculation methods – to the extent applied in recent cases such as concerning Optical Fibre Cables from China – also differ from those of the EU.

<sup>4</sup> The European Commission imposed anti-dumping and countervailing duties on imports of electric bicycles originating in the People's Republic of China by means of Commission Implementing Regulations (EU) 2019/72 and 2019/73 of 17 January 2019.

These measures were transitioned to become the UK trade remedy measures that are subject to these transition reviews under the Taxation Notices 2022/24 and 2022/25 (available at <[www.gov.uk/government/publications/trade-remedies-notices-anti-dumping-duty-on-electric-bicycles-from-china/taxation-notice-202024-anti-dumping-duty-on-electric-bicycles-originating-in-the-peoples-republic-of-china](http://www.gov.uk/government/publications/trade-remedies-notices-anti-dumping-duty-on-electric-bicycles-from-china/taxation-notice-202024-anti-dumping-duty-on-electric-bicycles-originating-in-the-peoples-republic-of-china)> and <[www.gov.uk/government/publications/trade-remedies-notices-countervailing-duty-on-electric-bicycles-from-china/taxation-notice-202025-countervailing-duty-on-electric-bicycles-originating-in-the-peoples-republic-of-china](http://www.gov.uk/government/publications/trade-remedies-notices-countervailing-duty-on-electric-bicycles-from-china/taxation-notice-202025-countervailing-duty-on-electric-bicycles-originating-in-the-peoples-republic-of-china)>, respectively), which gave effect to the Notice of Determination 2022/24: anti-dumping duty on electric bicycles originating in the People's Republic of China (originally published on 31 December 2020 and updated on 29 November 2022), available at: <[www.gov.uk/government/publications/trade-remedies-notices-anti-dumping-duty-on-electric-bicycles-from-china/notice-of-determination-202024-anti-dumping-duty-on-electric-bicycles-originating-in-the-peoples-republic-of-china](http://www.gov.uk/government/publications/trade-remedies-notices-anti-dumping-duty-on-electric-bicycles-from-china/notice-of-determination-202024-anti-dumping-duty-on-electric-bicycles-originating-in-the-peoples-republic-of-china)>; and the Notice of Determination 2022/25: countervailing duty on electric bicycles originating in the People's Republic of China (originally published on 31 December 2020 and updated on 29 November 2022), available at: <[www.gov.uk/government/publications/trade-remedies-notices-countervailing-duty-on-electric-bicycles-from-china/notice-of-determination-202025-countervailing-duty-on-electric-bicycles-originating-in-the-peoples-republic-of-china](http://www.gov.uk/government/publications/trade-remedies-notices-countervailing-duty-on-electric-bicycles-from-china/notice-of-determination-202025-countervailing-duty-on-electric-bicycles-originating-in-the-peoples-republic-of-china)>.

9. For the reasons noted above, the present reviews cannot be justified under any of the WTO provisions, and in fact, the TRA has not even attempted to justify the WTO consistency of these reviews.
10. Second, notwithstanding the illegality of the transitioned measures and the current reviews, the TRA must follow the procedural and substantive framework of the ADA and the SCM Agreement in conducting these reviews.
11. As the following sections demonstrate, the procedural and substantive requirements of the ADA and SCM Agreement have not been complied with by the TRA.

## **2.2 The lack of transparency in the present reviews hampers the CCCME's procedural rights of defence**

12. The CCCME wishes to express its serious concerns about the continued lack of transparency in the e-bikes transition reviews since this affects the CCCME's rights of defence. As indicated in the Initial Comments, access to the data forming the basis of the likelihood analysis is necessary to enable interested parties to defend their interests. In the reviews at hand, it is unclear how the TRA expects interested parties to exercise their due process rights in the absence of key factual data and information, such as the definition of the UK industry, consumption in the UK, production and capacity levels as well as other economic indicators for the UK industry and the data of the sole cooperating UK e-bikes producer.
13. The CCCME reiterates that Article 6 of the ADA and Article 12 of the SCM Agreement set out in unambiguous terms, the evidentiary rules that apply in investigations and reviews whilst also establishing a framework of transparency, procedural and due process obligations that investigating authorities must respect in all investigations and reviews.<sup>5</sup> The obligations under the various subparagraphs of these provisions operate

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<sup>5</sup> For the application of Articles 6 ADA and 12 SCM Agreement to the reviews, see Article 11.4 ADA and 21.4 SCM Agreement. *See also, e.g.*: Panel Report, *US – Facts Available*, para 7.23; Appellate Body Report, *Thailand – H-Beams*, para. 109; Panel Report, *US – Zeroing (Japan)*, para. 7.111; Appellate Body Reports, *China – HP-SSST (Japan) / China – HP-SSST (EU)*, para. 5.73.

together to ensure that interested parties can properly defend their interests during an investigation (or a review).<sup>6</sup>

14. In assessing whether "*ample opportunity*" -- within the meaning of Article 6.1 of the ADA and Article 12.1 of the SCM Agreement -- is provided to interested parties, the Appellate Body has considered that it is necessary to take into account, *inter alia*, whether the information is readily available to the responding party.<sup>7</sup> Indeed, how can interested parties be expected to effectively exercise their due process rights when they have no access to the data and information that would form the basis of their comments? As explained in this context by the Panel in *China – Broiler Products (Article 21.5)*:

*"Articles 6.1 and 12.1 enshrine fundamental due process rights. In each provision, the two obligations are distinct yet closely related, conferring rights on the same parties. The obligations in each provision are inextricably linked, given that they are set out not only in the same paragraph but also in one single sentence. They must be read together; each obligation imparts meaning to the other. In particular, the second obligation clarifies a key purpose of giving notice of the information required to all interested parties: in order to present evidence that is 'relevant in respect of the investigation in question', they need to know what the 'investigation' is about – that is, what kind of information the investigating authority requires; and implicit in 'presenting' written evidence is preparing such evidence, which requires foreknowledge of the contours of the investigation and time to do so."<sup>8</sup> (emphasis added)*

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<sup>6</sup> Articles 6.1, 6.1.2, and 6.2 of the ADA and Articles 12.1 and 12.1.2 of the SCM Agreement enshrine fundamental due process rights and in particular:

- guarantee the right to all interested parties to "*be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant*" (Article 6.1 of the ADA and Article 12.1 of the SCM Agreement) (emphasis added);
- provide that "[s]ubject to the requirement to protect confidential information, evidence presented in writing by one [interested party] shall be made available promptly to other [interested parties] participating in the investigation" (Article 6.1.2 of the ADA and Article 12.1.2 of the SCM Agreement) (emphasis added); and
- establish that: "*[t]hroughout the anti-dumping investigation, all interested parties shall have a full opportunity for the defence of their interests*" (Article 6.2 of the ADA, the first sentence) (emphasis added).

See also e.g., Appellate Body Report, *US–Oil Country Tubular Goods Sunset Reviews*, para. 241; Panel Report, *Guatemala – Cement II*, para. 8.179; Panel Report, *China – Broiler Products (Article 21.5)*, para. 7.218.

<sup>7</sup> Appellate Body Report, *EC – Fasteners (China)*, para. 615.

<sup>8</sup> Panel Report, *China – Broiler Products (Article 21.5)*, para. 7.218.

The panel then went on to consider as follows:

*"The context of the obligation to give 'ample opportunity' in Articles 6.1 and 12.1 and the broader context of Article 6 of the Anti-Dumping Agreement and Article 12 of the SCM Agreement as a whole provide additional guidance for the understanding of the obligation to 'give notice':*

*a. Article 6.1.2 of the Anti-Dumping Agreement and Article 12.1.2 of the SCM Agreement require that written evidence provided by one interested party 'shall be made available promptly' to other participating interested parties;*

15. In the same vein, Article 6.2 of the ADA establishes the basic obligation to ensure that all interested parties have a "*full opportunity for the defence of their interests*" throughout the investigation. As explained by the Appellate Body in *US – Oil Country Tubular Goods Sunset Reviews*:

*"Articles 6.1 and 6.2 require that the opportunities afforded interested parties for presentation of evidence and defence of their interests be 'ample' and 'full', respectively. In the context of these provisions, these two adjectives suggest there should be liberal opportunities for respondents to defend their interests".<sup>9</sup>* (emphasis added)

16. The CCCME recalls that the fundamental due process right enshrined in Article 6.2 of the ADA is not dependent upon interested parties seeking the relevant information. Instead, "*the language of the provision at issue [Article 6.2 of the ADA] creates an obligation on the [investigating authority] to provide opportunities for interested parties to defend their interests*".<sup>10</sup>

17. In addition, pursuant to Article 6.4 of the ADA and Article 12.3 of the SCM Agreement:

*"The authorities shall whenever practicable provide timely opportunities for [all interested parties] to see all information that is relevant to the presentation of their cases, that is not confidential [...], and that is used by the authorities in [an anti-dumping and a countervailing duty] investigation, and to prepare presentations on the basis of this information."* (emphasis added)

18. Article 6.4 of the ADA and Article 12.3 of the SCM Agreement require investigating authorities to give all interested parties timely access to all relevant information. In particular, authorities must provide timely opportunities for all interested parties to see all information that is (i) relevant to the presentation of their cases, (ii) not confidential, and (iii) used by authorities in an investigation. The purpose of giving access to information under these provisions is to allow interested parties "*to prepare*

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*b. Article 6.2 of the Anti-Dumping Agreement establishes an obligation to 'provide opportunities' for all interested parties to meet with parties with adverse interests;*

*c. Article 6.4 of the Anti-Dumping Agreement and Article 12.3 of the SCM Agreement require that investigating authorities 'provide timely opportunities' for all interested parties to see relevant non-confidential information used; and*

*d. Article 6.9 of the Anti-Dumping Agreement and Article 12.8 of the SCM Agreement require the investigating authority to 'inform' all interested parties of essential facts."*

*See: Panel Report, China – Broiler Products (Article 21.5), para. 7.226.*

<sup>9</sup> Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 241.

<sup>10</sup> Panel Report, *Egypt – Steel Rebar*, para. 7.88 (emphasis original).

*presentations based on this information", i.e., to provide comments and evidence in their defence.*<sup>11</sup>

19. Previous Dispute Settlement Body reports establish that the "*relevance*" of information within the meaning of Articles 6.4 of the ADA and 12.3 of the SCM Agreement must be assessed from the perspective of the interested parties<sup>12</sup> and with reference to the issues under consideration.<sup>13</sup> In the present reviews, key information such as the definition of the UK industry, and data regarding the consumption in the UK, production and capacity levels, and the economic factors pertaining to the UK industry is "*relevant*" for the CCCME because this is the key factual data based on which the TRA's determination will be made and on which the CCCME should have a right to comment.
20. Furthermore, as explained by the WTO Panels in *Guatemala – Cement II* and *EU – Cost Adjustment Methodologies II (Russia)*, the obligation to provide "*timely opportunities*" to see information requires providing "*regular and routine*" access to such information:

*"Assuming access to the file is the only practical means of complying with Articles [...] 6.4 [of the ADA and 12.3 of the SCM Agreement], access to the file need not necessarily be unlimited. Nor need the file be made available on demand. Provided access to the file is regular and routine, we consider that the requirements of Articles 6.1.2 and 6.4 [of the ADA and Articles 12.1.2 and 12.3 of the SCM Agreement] would be satisfied".*<sup>14</sup> (emphasis added)

21. In this regard, the CCCME notes that the obligation to provide interested parties with "*timely opportunities*" to see the information relevant to the presentation of their case is not conditional on receiving a request from an interested party.<sup>15</sup> This is because interested parties cannot request to see information that they may not know exists. In the present reviews, the CCCME has repeatedly asked the TRA for information regarding the UK domestic industry and meaningful summaries of all the injury-related data and other information provided by the interested parties and being relied upon/used by the TRA.<sup>16</sup>

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<sup>11</sup> Appellate Body Report, *EC – Tube or Pipe Fittings*, para. 149.

<sup>12</sup> Appellate Body Report, *EC – Tube or Pipe Fittings*, para. 145; and Panel Report, *China – Broiler Products (Article 21.5)*, para. 7.291.

<sup>13</sup> Panel Report, *EC – Salmon (Norway)*, para. 7.769, cited with approval in Panel Report, *EU – Footwear (China)*, para. 7.602; and Appellate Body Report, *EC – Fasteners (China)*, para. 485.

<sup>14</sup> Panel Report, *Guatemala – Cement II*, para. 8.133, cited with approval in Panel Report, *EU – Cost Adjustment Methodologies II (Russia)*, para. 7.610.

<sup>15</sup> Panel Report, *China – Broiler Products (Article 21.5)*, para. 7.291.

<sup>16</sup> See: CCCME's e-mails dated 15 September 2023, 12 and 13 December 2023.

22. Nevertheless, in the present case, timely opportunities have not been provided to interested parties to access, *inter alia*, the UK domestic industry information. For example, thus far, there is no clarification regarding the thresholds for qualifying a company as a UK producer and the composition of the domestic industry. Additionally, the CCCME understands that Brompton Bicycles Ltd. ("Brompton"), the only UK producer cooperating in the present reviews, was required to file its questionnaire responses by 27 August 2023. However, the TRA made available the non-confidential versions of these documents in the public file only on 19 December 2023, *i.e.*, almost four months after their submission and following repeated requests by the CCCME. Such an inordinate delay does not satisfy the requirement to provide "*regular and routine*" access to the file and the relevant information. The TRA justified the delay in making available Brompton's non-confidential questionnaire responses on two grounds.
23. The first reason was the deficiency checking of Brompton's questionnaire responses. In its e-mail dated 19 September 2023, the TRA explained to the CCCME that (i) Brompton's information was still being assessed by the case team, and (ii) the case team was undertaking deficiency checks of the submissions of Brompton. Therefore, the TRA was not in a position to share this information. In its e-mail dated 19 December 2023, the TRA further noted that "*[t]he delay in publishing Brompton Bicycles non-confidential submission has been due to the subsequent deficiency process. This deficiency process has largely been communicated via email and through discussions during the on-site verification visit conducted by the case team*". The CCCME understands that, due to the above-mentioned deficiency checks, Brompton amended some parts of/data in its questionnaire responses before Brompton's non-confidential questionnaire responses were made available in the open file on 19 December 2023.<sup>17</sup>
24. On this point, the CCCME notes that the fact that the TRA was analysing Brompton's data did not preclude it from making available the non-confidential versions of Brompton's original questionnaire responses to interested parties promptly and timely as is legally required and is usually done by investigating authorities around the globe. Article 6 of the ADA and Article 12 of the SCM Agreement do not provide any

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<sup>17</sup> According to the response of Brompton to Question 13 of Section F4 of the Combined Questionnaire, "*[t]hrough this review process it should be noted and understood the findings from the European Bicycle Manufacturers Association (EBMA) on the EU Antidumping and Anti-subsidy Expiry Review Requests for Ebikes which have been now formally filed with the European Commission-DG Trade on 13th October 2023*". See: Brompton's Combined Questionnaire Response, pages 61-62.

exceptions such as those forwarded by the TRA. In the same vein, the fact that the case team was undertaking deficiency checks of the submissions of Brompton did not justify the non-provision of the non-confidential versions of the questionnaire responses to the interested parties.

25. As also noted by the Appellate Body in *Russia – Commercial Vehicles*, "[t]he obligations [under Articles 6.5.1 of the ADA] apply in respect of all information submitted by all interested parties that falls under Article 6.5, whether or not the information is otherwise complete or used by the investigating authority. This is because the obligation applies to the interested party submitting information at the time it submits the information in question. The interested party has no way of knowing *ex ante* whether an investigating authority will ultimately consider the information 'complete' or use it."<sup>18</sup>
26. That the originally submitted questionnaire responses were subsequently amended is not a reason for their non-provision to interested parties. If there is a corrected/amended questionnaire response in response to the deficiency letter or in the course of the verification, then the non-confidential version of that amended questionnaire response must also be made available to the interested parties. Moreover, the ADA and the SCM Agreement do not allow for an exception for the non-provision of the questionnaire response of a party when an investigating authority is doing deficiency checks or assessing its data.
27. As the second justification, the TRA explained to the CCCME that "*it is not the TRA's policy to publish the original submissions made by parties regardless of the state the documents are submitted. As in this case, Brompton Bicycles Ltd. original submission included confidential information which [the TRA] identified as under-redaction, and [the TRA] accordingly considered it not fit for publication".<sup>19</sup>*
28. In this respect, the CCCME respectfully submits that it is well-established in WTO jurisprudence that Articles 6.5.1 of the ADA and 12.4.1 of the SCM Agreement require that a non-confidential summary be furnished by the "*interested parties providing*

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<sup>18</sup> Appellate Body Report, *Russia – Commercial Vehicles*, para. 7.249 (emphasis added).

<sup>19</sup> E-mail of the TRA to CCCME dated 19 December 2023 (emphasis added).

*confidential information*" and not by the investigating authority.<sup>20</sup> Thus, it is for the interested party providing confidential information to decide which information should be redacted in the non-confidential version of its questionnaire response/submission.

29. This is even more so in view of the fact that in the introductory sections of the combined,<sup>21</sup> AD<sup>22</sup> and AS<sup>23</sup> questionnaires, the TRA provided detailed instructions for preparing the non-confidential version of the questionnaire responses. According to the instructions provided by the TRA, "[i]t is [the interested party's] responsibility to ensure that the non-confidential version does not contain any confidential information".<sup>24</sup>
30. Thus, in the present reviews, it was for Brompton to ensure that the non-confidential versions of its originally submitted questionnaire responses did not contain any confidential information.
31. In summary, thus far, the framework of procedural and due process obligations set out in Articles 6.1, 6.1.2, 6.2 and 6.4 of the ADA and Articles 12.1, 12.1.2, and 12.3 of the SCM Agreement have been disregarded and the CCCME is limited in its ability to provide meaningful comments on most issues.

### **2.3 The absence of non-confidential summaries of the data in Brompton's questionnaire responses is WTO-inconsistent**

32. The CCCME is extremely dismayed by the grant of extreme confidentiality to nearly all data and key information in Brompton's questionnaire responses in breach of Article 6.5.1 of the ADA and Article 12.4.1 of the SCM Agreement. As discussed in the previous section, after an inordinate delay of four months, the questionnaire responses of Brompton were made available to the CCCME, but these responses are nearly blank. All data concerning the economic indicators, production cost, and purchases of

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<sup>20</sup> Panel Report, *China – Broiler Products*, para. 7.53 referring to the Panel Reports, *China – GOES*, paras. 7.189-7.190 and *EU – Footwear (China)*, para. 7.708.

<sup>21</sup> Combined Questionnaire (Producer) Cases TD0037 & TS0038: electric bicycles exported from the People's Republic of China ("Combined Questionnaire"), page 4.

<sup>22</sup> Anti-Dumping Questionnaire (Producer) Case TD0037: electric bicycles exported from the People's Republic of China ("AD Questionnaire"), pages 3-4.

<sup>23</sup> Subsidy Specific Questionnaire (UK Producer) Case TS0038: electric bicycles exported from the People's Republic of China ("AS Questionnaire"), pages 5-6.

<sup>24</sup> Combined Questionnaire, page 4; AD Questionnaire, page 3; AS Questionnaire, page 5.

Brompton are completely redacted. Thus, the CCCME is back to square one with no data or information regarding the domestic industry.

33. The CCCME recalls that Article 6.5.1 of the ADA and Article 12.4.1 of the SCM Agreement "*impose[] an obligation on investigating authorities to ensure that parties to an investigation provide non-confidential summaries in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence*".<sup>25</sup> As explained by the panel in *Russia – Commercial Vehicles*:

*"[A]n investigating authority must require an interested party submitting information ... to:*

*a. furnish a non-confidential summary of the information that is in sufficient detail to permit a reasonable understanding of the substance of the data submitted in confidence; and*

*b. in exceptional circumstances, where the submitter indicates that confidential information is not susceptible of summary, provide a statement of the reasons why summarization is not possible*".<sup>26</sup> (emphasis original)

34. The CCCME recalls that the grant of confidential treatment is subject to certain requirements established by WTO Panels and the Appellate Body. More specifically:
- (i) Article 6.5 of the ADA and Article 12.4 of the SCM Agreement require showing of "*good cause*" for the grant of confidential treatment and apply to all types of information for which confidentiality is sought;<sup>27</sup>
  - (ii) as noted by the Appellate Body in *Korea – Pneumatic Valves*, "*'good cause' must demonstrate the risk of a potential consequence, the avoidance of which is important enough to warrant the non-disclosure of the information*". Moreover, "*the '[g]ood cause' must be assessed and determined objectively by the investigating authority, and cannot be determined merely based on the subjective concerns of the submitting party*";<sup>28</sup> and
  - (iii) the role of the investigating authority is to assess such reasons and determine objectively whether the submitting party has shown good cause for the

<sup>25</sup> Appellate Body Report, *EC – Fasteners (China)*, para. 549 (emphasis added).

<sup>26</sup> Panel Report, *Russia – Commercial Vehicles*, para. 7.248.

<sup>27</sup> Panel Report, *Colombia – Frozen Fries*, para. 7.115.

<sup>28</sup> Appellate Body Report, *Korea – Pneumatic Valves*, para. 5.398 and fn. 1039. *See also*: Appellate Body Report, *EC – Fasteners (China)*, para. 537.

confidential treatment of its information. There also needs to be evidence of such an objective assessment.<sup>29</sup>

35. Furthermore, Articles 6.5.1 of the ADA and 12.4.1 of the SCM Agreement allow for an exemption from the requirement to furnish a non-confidential summary only in "*exceptional circumstances*". However, if the exceptional circumstance exemption is not invoked and evidenced, as in the context of the present reviews, they cannot be assumed to exist.<sup>30</sup>
36. The purpose of the strict requirements in Articles 6.5.1 of the ADA and 12.4.1 of the SCM Agreement is to preserve the balance between the interests of confidentiality and the ability of interested parties to defend their rights in an investigation/review.<sup>31</sup> However, this balance has not been observed in the present case.
37. Against this background, the CCCME submits that, in the present reviews, Brompton has failed to provide a non-confidential summary of Annexes 3-14, let alone a meaningful summary. Specifically, the data and annexes concerning turnover, cost of production, purchases, export and domestic sales of like goods, profitability, output, captive use, market share, stocks, productivity, production capacity, cash flow, investments and return on investments have been entirely redacted and thus provide no information at all. The complete absence of non-confidential summaries of the data that is clearly susceptible to summarisation is simply inconsistent with Articles 6.5.1 of the ADA and 12.4.1 of the SCM Agreement.
38. Indeed, Brompton did not seek confidential treatment of its data based on the demonstration of "*good cause*" and did not provide any form of non-confidential summarisation of the data concerned. It simply left the annexes blank. Thus, the TRA granted confidential treatment to Brompton's information without the demonstration of "*good cause*" by Brompton and also exempted it from the requirement to provide non-confidential summaries of the confidential information without any legal or factual

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<sup>29</sup> Appellate Body Report, *EC – Fasteners (China)* (Article 21.5), paras. 5.68-5.69; and Appellate Body Reports, *China – HP-SSST (Japan)*, para. 5.100.

<sup>30</sup> Panel Report, *China – GOES*, para. 7.193.

<sup>31</sup> See: Panel Report, *Mexico – Steel Pipes and Tubes*, para. 7.380; and Panel Report, *Argentina – Ceramic Tiles*, para. 6.38.

- bases. It is also uncontested that Brompton did not claim any "*exceptional circumstances*" for the absence of the non-confidential summarisation of its data.
39. Regardless of Brompton's failure to comply with the requirements for confidential treatment of information, the data in the various annexes could have been summarised – and is routinely summarised in other TRA investigations by the domestic industry – in the form of indexes, percentage changes, or data ranges.<sup>32</sup> The CCCME underlines that in the pre-sampling questionnaire response, Brompton itself provided a meaningful non-confidential summary of its sales and production data in the form of ranges.<sup>33</sup>
40. Moreover, in other on-going trade defence cases, the TRA is impressing upon exporting producers to strictly follow the requirement to provide all confidential data in ranges (+/- 15%) according to the TRA's instructions for non-confidential summaries.<sup>34</sup> However, this requirement has not been imposed on Brompton.
41. In view of the above, and following the express statement in the combined questionnaire that, "*[i]f [a company] do[es] not provide a non-confidential summary (or a statement of reasons why [it] cannot provide this) each time [it] provide[s] confidential information, the TRA may disregard the information [this company] give[s] [the TRA]*",<sup>35</sup> and pursuant to Articles 6.5.2 of the ADA and 12.4.2 of the SCM Agreement, Brompton's questionnaire responses should be disregarded by the TRA.
42. In any event, the CCCME requests the TRA to ensure -- at the earliest -- the provision of Brompton's questionnaire responses that are meaningfully summarised and allow the CCCME, as well as other interested parties, to assess the economic situation of Brompton and make meaningful comments.
43. The CCCME underlines that, as noted by the Panel in *China – GOES*, "*[i]n order to allow an interested party the opportunity to defend its interests, the summary of the confidential information needs to be provided before the investigating authority has*

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<sup>32</sup>For example, in *China – Autos (US)*, the panel concluded that percentage changes, similarly to indexing, "give interested parties a reasonable understanding of the substance of the confidential information". See: Panel Report, *China – Autos (US)*, para. 7.34. In the same vein, in *EU – Cost Adjustment Methodologies II (Russia)*, data ranges in the form of aggregated tables for injury factors were accepted by the panel. See: Panel Report, *EU – Cost Adjustment Methodologies II (Russia)*, paras. 7.655-7.657.

<sup>33</sup> In its pre-sampling questionnaire response, Brompton reported that during the POI, it produced 7,000-8,600 electric bicycles; 2,900-3,200 of which were sold in the UK, for a value of £7,500,000-£9,000,000.

<sup>34</sup> See: [The TRA's investigation process - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>35</sup> Combined Questionnaire, page 4.

*reached its determination.*"<sup>36</sup> As further noted by the above-mentioned Panel<sup>37</sup> and the Appellate Body in *Korea – Pneumatic Valves*, the obligation of investigating authorities to require non-confidential summaries from the interested parties cannot be fulfilled through summaries provided by the authorities themselves:

*"[Article of 6.5.1] imposes an obligation on investigating authorities with respect to the conduct expected of parties seeking to obtain confidential treatment for certain information, namely '[t]he authorities shall require' interested parties 'to furnish non-confidential summaries' of the relevant information. Thus, under Article 6.5.1, the authorities bear the obligation to require non-confidential summaries from the parties, and there appears to be no basis for the proposition that the authorities' obligation could be fulfilled through summaries provided by the authorities themselves. Consequently, we see no error in the Panel's statement that the subsequent issuance of descriptive narratives of the information treated as confidential by the [investigating authority] 'would not resolve the issue of whether they required the submission of a non-confidential summary from the submitter of the information for which confidential treatment was sought'".*<sup>38</sup> (emphasis added)

44. The CCCME cannot emphasize enough that the unwarranted and complete absence of data from Brompton's questionnaire responses strongly impinges upon the CCCME's rights of defence, and the CCCME cannot comment upon the redacted information and has no basis to understand the situation of the UK domestic industry.

### **3 NO UK DOMESTIC INDUSTRY AND NONCOOPERATION OF THE MAJORITY OF THE UK PRODUCERS**

45. The domestic industry as defined under Article 4.1 of the ADA, Article 16.1 of the SCM Agreement -- and thus also paragraph 6(1) of Schedule 4 of the UK Taxation (Cross-Border Trade) Act 2018 (the "Schedule 4 to the Act") -- by an investigating authority forms the basis of the injury, causation, and likelihood of continuation/recurrence of injury determinations.<sup>39</sup>
46. In *EC – Fasteners (China)*, the Appellate Body warned that *"to ensure the accuracy of an injury determination, an investigating authority must not act to give rise to a material risk of distortion in defining the domestic industry"*.<sup>40</sup> Similarly, the Panel in *China –*

<sup>36</sup> Panel Report, *China – GOES*, para. 7.190 (emphasis added).

<sup>37</sup> *Ibid.*

<sup>38</sup> Appellate Body Report, *Korea – Pneumatic Valves*, para. 5.441.

<sup>39</sup> See, e.g.: Appellate Body Report, *EC – Fasteners (China)*, para. 413 (citing footnote 9 to Article 3 ADA); and Panel Report, *China – Broiler Products*, paras. 7.408-7.413.

<sup>40</sup> Appellate Body Report, *EC – Fasteners (China)*, para. 414.

*Autos (US)* explained that "*a wrongly-defined domestic industry necessarily leads to an injury determination that is inconsistent*" with the ADA and the SCM Agreement.<sup>41</sup> The same is relevant for the analysis of the likelihood of continuation/recurrence of injury, and a failure to properly identify the "*domestic industry*" vitiates the likelihood determination as well.<sup>42</sup>

47. As is logical and is also evident from the previous transition reviews, the TRA first assesses the situation of the UK industry -- based on the injury indicators, such as actual and potential decline in sales, profits, output, market share, productivity, return on investment, utilisation of capacity, factors affecting domestic prices *etc.*,<sup>43</sup> -- to determine whether or not the UK industry is injured, and the latter assessment forms the basis of the TRA's analysis and conclusion of the likelihood of continuation/recurrence of injury or absence thereof. Therefore, the definition of the domestic industry is crucial and it should be clear from the outset, and should also be based on positive evidence, and involve an objective examination of facts.
48. In the course of the present reviews, thus far, the TRA has not defined the domestic industry, its composition, and the thresholds on the basis of which a company is to be considered a UK producer so as to form part of the UK industry. The TRA has also not provided production, sales and market share or any other data for the UK industry it purports to protect.
49. To elaborate, first, from the limited information available on the internet and in the case file, it is not clear whether Brompton can even qualify as a UK producer. This is because, as far the CCCME understands, Brompton imports nearly all the inputs for its e-bike assembly and is basically an assembler and only makes folding e-bikes. While the level and extent of assembly operations by Brompton cannot be known to the CCCME, the CCCME understands from its members that several inputs for e-bike assembly are

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<sup>41</sup> Panel Report, *China – Autos (US)*, para. 7.210. *See also*: Panel Report, *EC – Salmon (Norway)*, paras. 7.117-7.118.

<sup>42</sup> *See*: Articles 11.2 and 11.3 of the ADA; Articles 21.2 and 21.3 of the SCM Agreement; regulation 99A(1)(b) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (the "Regulations").

<sup>43</sup> *See, e.g.*: Recommendation to the Secretary of State (Case TD0001): Transition review of anti-dumping measures applying to certain welded tubes and pipes of iron or non-alloy steel originating in the Republic of Belarus, the People's Republic of China and the Russian Federation, Section 8; Recommendation to the Secretary of State (Case TD0026): Transition review of an anti-dumping measure applying to certain hot-rolled flat and coil products originating in the Russian Federation, Ukraine, Federative Republic of Brazil and Islamic Republic of Iran, Section G, available at: <[TRA Investigations - Trade Remedies Service - GOV.UK \(trade-remedies.service.gov.uk\)](https://www.trade-remedies.gov.uk)>.

imported into the UK from Mainland China. Indeed, as indicated by the UK downstream businesses participating in the online survey conducted by the TRA in the context of the present reviews, "[m]ost e-bike parts come from the PRC anyway".<sup>44</sup> This fact is also confirmed by Brompton in its questionnaire responses:

- "*Brompton ha[s] been severely impacted by government regulations including the impact Brexit had on the business' operations with increased customs debt being incurred. This includes ... anti-dumping duties for bicycle parts imported from China, which has meant the business having to obtain special customs procedures and incur additional compliance activities. These were needed for Brompton to stay competitive and ensure the brand's survival in a post Brexit world.*"<sup>45</sup>
- "*Global events over the past few years have impacted the upstream supply chain. Starting with the COVID-19 pandemic, which resulted in nationwide lockdowns that put a temporary stop to raw materials transport. Since most raw materials were imported from China, which was the first to be impacted by the pandemic, there was a long and massive disruption in transportation links and raw materials supply (the Suez Canal crisis).*"<sup>46</sup>
- "*[C]ertain Chinese bicycle parts Brompton import[s] carry additional anti-dumping duties.*"<sup>47</sup>

50. That said, even assuming that Brompton is to be considered an e-bike producer, it seems to "assemble" only folding e-bikes.<sup>48</sup> This implies that, essentially, this company does not produce the vast majority of e-bikes subject to the AD and AS measures and imported into the UK from China.

51. Thus, the only supposed UK producer registered in the present reviews seems to have limited assembly operations and makes limited e-bikes types by using inputs imported, *inter alia*, from China.

52. Second, without prejudice to the producer status of Brompton, there seems to be "*barely any*" domestic production in the UK.<sup>49</sup> Indeed, as noted by the UK media source *Cycling Electric*, "*[i]n fact, we [– the UK –] make barely any [e-bikes] domestically and even*

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<sup>44</sup> See: TRA, Note to public file "Business and consumer survey responses", 10 October 2023, TD0037 and TS0038, responses to question 21, available to download at: <<https://www.trade-remedies.service.gov.uk/public/case/TD0037/submission/d7b1183f-c416-4d5c-8385-6bf3ca9668e2/>> and <<https://www.trade-remedies.service.gov.uk/public/case/TS0038/submission/7b16cd60-ad77-4c42-8759-eb56ed82fd6d/>>.

<sup>45</sup> Brompton's AD Questionnaire Response, page 11 (emphasis added).

<sup>46</sup> TD0037 & TS0038: Brompton Report, page 22 (emphasis added).

<sup>47</sup> Brompton's Combined Questionnaire Response, page 14.

<sup>48</sup> See : Brompton's Combined Questionnaire Response, Excel Table 2.

<sup>49</sup> Mark Sutton, "Why are e-bikes so expensive?" Right now, they're not..." (17 August 2023), available at: <<https://www.cyclingelectric.com/in-depth/why-are-e-bikes-so-expensive>>.

*in those rare cases, key parts have to be imported*".<sup>50</sup> The information on the record of the case, notably from Halfords Limited, one of the largest UK importers, also confirms that "[t]here is little to no UK manufacturing of e-bikes".<sup>51</sup> Thus, there is effectively no UK industry to protect.

53. Third, assuming there is a UK e-bikes domestic industry, according to Brompton, "*[t]he United Kingdom E-bike Market is moderately consolidated, with the top five companies occupying 43.50%. The major players in this market are Brompton Bicycle Ltd., Evans Cycles Limited (Pinnacle), Raleigh Bicycle Company, Tandem Group Cycles (DAWES) and Tandem Group Cycles (Falcon Cycles) (sorted alphabetically)*".<sup>52</sup> If these companies -- excluding Raleigh Bicycle Company, which is not a UK producer and imports e-bikes made in the Netherlands according to its pre-sampling questionnaire response -- are actually e-bike producers, clearly (i) the producers comprising the majority of the UK production of e-bikes did not come forward in the present reviews and do not support the extension of the measures; and (ii) Brompton's production level is insufficient to meet the industry standing test in the ADA, the SCM Agreement and the UK domestic law.<sup>53</sup>
54. As noted above, according to the questionnaire responses of Brompton, it produces only limited types of folding e-bikes, which is only one category of e-bikes covered by the present reviews. As also noted in the CCCME's Initial Comments, Brompton accounted, at best, for around 5% of the UK demand for e-bikes. Thus, as the sole domestic cooperating producer in the present reviews, Brompton does not meet the industry standing test and is not "*capable of providing ample data that ensures an accurate injury analysis*".<sup>54</sup>

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<sup>50</sup> Mark Sutton, "Why are e-bikes so expensive? Right now, they're not..." (17 August 2023), available at: <<https://www.cyclingelectric.com/in-depth/why-are-e-bikes-so-expensive>>.

<sup>51</sup> See, e.g.: pre-sampling questionnaire response of Halfords Limited in TD0037, page 17.

<sup>52</sup> Brompton's Combined Questionnaire Response, page 26.

<sup>53</sup> See: Article 4.1 of the ADA, Article 16.1 of the SCM Agreement, paragraph 6(1) of Schedule 4 to the Act. As explained in the Initial Comments, Brompton's pre-sampling questionnaire response shows that it has extremely limited production of electric bicycles in the UK and cannot be considered the UK industry. Indeed, according to its pre-sampling questionnaire response, Brompton produced only 7,000-8,600 electric bicycles during the POI. This is a very limited amount considering that, in 2022, according to *Bike Europe*, 155,000 electric bicycles seem to have been sold in the UK. While the CCCME considers that the actual sales of electric bicycles in the UK were much higher, based on the conservative estimate of 155,000 units, the production of Brompton represented around 5% of the UK demand for electric bicycles. See: Rosie Burgin, "UK bike sales drop to lowest level in 20 years" (23 February 2023), available at: <<https://www.bike-eu.com/44798/uk-bike-sales-drop-to-lowest-level-in-20-years>>.

<sup>54</sup> Appellate Body Report, *EC – Fasteners (China)*, para. 413.

55. The CCCME underlines that Brompton's data is not representative of the UK industry and cannot be the sole basis for assessing the likelihood of continuation/recurrence of injury and for extending any measures in the transition reviews.
56. Moreover, the lack of cooperation and any support for the reviews by the other major producers and their failure to come forward and cooperate only underlines that the domestic industry does not need protection or that there is no domestic industry to protect. The present situation is similar to the situation in the transition review of the AS measures concerning certain *Stainless-Steel Bars and Rods from India*. In that transition review, due to the lack of cooperation from domestic producers, the TRA was unable to assess the relevant economic factors to draw a conclusion on the overall state of UK Industry, and the TRA found there to be a low risk of injury resulting from the removal of the measure.<sup>55</sup> Thus, following the existing practice in other cases, in view of the complete absence of cooperation from the majority of the UK e-bike producers to the extent that they were to exist, the present reviews should be terminated and the underlying AD and AS measures on e-bikes from China must be revoked.

#### **4 THE PRODUCT SCOPE SHOULD BE LIMITED TO FOLDING E-BIKES**

57. The CCCME notes that should the TRA continue the transition reviews, the product scope should be limited to folding e-bikes and all other e-bike types not produced by the sole cooperating UK producer -- Brompton -- should be excluded from the product scope because (i) there is no legal basis for retaining the AD and AS measures on product types not produced by the sole cooperating producer/the UK industry; and (ii) there can be no injury and likelihood of continuation or recurrence thereof with respect to the e-bikes not produced and sold by the domestic industry but which account for the majority of the UK e-bikes consumption.
58. The CCCME recalls that the scope of the e-bikes subject to the present reviews -- taken over directly from the underlying EU investigations -- is extremely broad and covers in the majority e-bike categories that are not produced by Brompton or more generally in

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<sup>55</sup> Final Recommendation (Case TS0023): Transition Review of countervailing measures applying to certain Stainless Steel Bars and Rods originating in the Republic of India, Section G, available at: <[TRA Investigations - Trade Remedies Service - GOV.UK \(trade-remedies.service.gov.uk\)](https://www.trade-remedies.service.gov.uk)>.

the UK. Indeed, there is no evidence of production of most of the e-bike categories in the UK.

59. This implies that there is extremely limited competitive overlap between the imported Chinese e-bikes and Brompton's e-bikes, and there can be no injury and likelihood of continuation or recurrence thereof to Brompton on account of imports of e-bikes categories that Brompton does not produce. As noted by the Panel in *China – Autos (US)*, merely finding that the domestically produced goods are "like" the subject imported products for the purposes of Article 2.6 of the ADA and footnote 46 to the SCM Agreement is inadequate for the purposes of assessing the effects of the subject imports on the domestic industry prices when there are significant differences between the basket of the subject imports and the basket of the domestically produced like goods,<sup>56</sup> as in the present case.
60. Even as regards the causal link between the allegedly dumped/subsidised imports and the supposed injury to the domestic industry, as explained by the Appellate Body in several disputes, "[a]n examination of the competitive relationship between products is ... required so as to determine whether such products form part of the same market"; and that "products would be in the same market 'when the relevant products are substitutable'".<sup>57</sup> This is especially relevant for cases that involve "a range of different product types that are distinguished by considerable price differences",<sup>58</sup> such as in the present case.
61. Specifically, the present reviews cover "cycles [i.e., bicycles, tricycles and quadricycles], with pedal assistance, with an auxiliary electric motor" classified in tariff codes 8711 60 10 00 and 8711 60 90 10.
62. According to the UK Bicycle Association, e-bikes can be classified into the following categories: BMX, kids, road, commute flatbar hybrid, cyclocross, folding, frame,

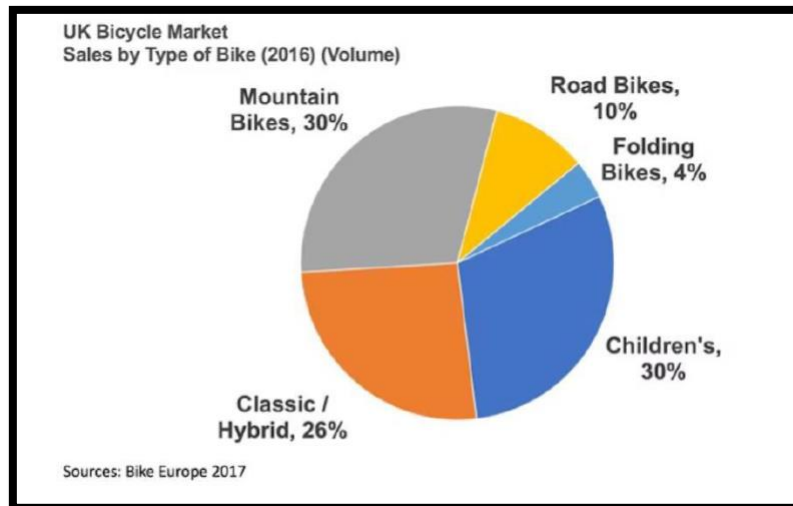
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<sup>56</sup> Panel Reports, *China – Autos (US)*, paras. 7.278-7.282.

<sup>57</sup> Appellate Body Reports, *China – HP-SSST (Japan) / China – HP-SSST (EU)*, para. 5.262 referring to Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, paras. 1119-1120.

<sup>58</sup> Appellate Body Reports, *China – HP-SSST (Japan) / China – HP-SSST (EU)*, para. 5.262. See also: Panel Report, *China – Autos (US)*, para. 7.343 ("[w]e can readily envisage a scenario where domestic and imported goods are found to be 'like' ... but differentiation of goods within those two categories affects the competition between them in ways that have an impact on the assessment of causation"). See also: Panel Reports, *China – Autos (US)*, para. 7.281; *China – X-Ray Equipment*, para. 7.68 (relating to Article 3.2 of the ADA).

gravel, mountain, cargo, and others.<sup>59</sup> However, Brompton -- by its own admission -- seems to be "producing" only folding e-bikes – *i.e.*, only one product type covered by the present reviews. According to Brompton's questionnaire responses, the share of folding bicycles in the UK bicycle market is around 4%.



Source: Brompton's Combined Questionnaire Response<sup>60</sup>

63. The CCCME understands that the share of folding e-bikes in the UK e-bikes market may even be smaller than 4% based on the facts that: (i) in the pre-sampling questionnaire response, Brompton reported producing merely 7,000-8,600 e-bikes and selling only 2,900-3,200 e-bikes in the review POI in the UK; and (ii) the fact that folding e-bikes are relatively more expensive as also confirmed by Brompton's sales prices.
64. Thus, there are no legal and factual bases for the TRA to undertake the present reviews for the original product scope.
65. In addition, the CCCME submits that the e-bikes covered by the present reviews and the e-bikes produced by Brompton do not share the same basic physical characteristics, properties, uses, and consumer preferences, and this critically results in the absence of product and price comparability, and any possible injury or likelihood thereof on account of the Chinese e-bikes imports.

<sup>59</sup> UK Bicycle Association, Cycling Categorization List, available to download at: <<https://mds.bicycle-association.org.uk/>>.

<sup>60</sup> Brompton's Combined Questionnaire Response, page 13.

66. Importantly, while Brompton only produces "luxury" lightweight folding e-bikes, the Chinese manufacturers produce various types of e-bikes, including regular commuter, urban, mountain, kids', folding, snow-riding (suitable for use on beaches and muddy trails), cargo and other types of e-bikes.<sup>61</sup>
67. The e-bikes produced by Brompton and the Chinese manufacturers do not share the same physical characteristics and uses. The difference between folding e-bikes and other e-bikes can be readily established on the basis of their physical appearance. Moreover, technically, folding e-bikes are not made from the same bicycle parts and components compared to the universe of e-bikes exported to the UK from China, and there are bicycle parts which are exclusively used for folding e-bikes and notably for their folding mechanism.
68. According to Brompton, the differences in physical and mechanical characteristics between its e-bikes (like goods) and those imported from China, which result in significant differences in price, are the following:

*(a) Electric Assist System: ... [t]he bike features a small and lightweight motor built into the front wheel hub. This motor provides pedal-assisted power to make cycling easier, especially on hills and longer rides.*

*(b) Battery Integration: The battery of the Brompton Electric is designed to fit seamlessly into a custom bag (several options of bags) which can be attached to the front of the bike. This design choice helps maintain the compact folding capabilities of the Brompton while providing power for the electric assist.*

*(c) Charging: The battery (removable and fits into the bag) can be charged on or off the bike. This flexibility allows users to easily charge the battery wherever it is most convenient.*

*(d) Folding Mechanism: as above mentioned, the Brompton Electric retains the iconic Brompton folding mechanism that allows the bike to be compactly folded for easy storage and transportation. ...*

*(e) Smartphone App: Brompton introduced a companion smartphone app that automatically connects to the electric bike. The app provides features like the dashboard to see key information about your ride and change power modes, view bike information (total distance, service history, service messages) and help finding the nearest stores.*

*(f) Design and Build Quality: The Brompton Electric maintains the high-quality design and construction standards that Brompton is known for. ...*

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<sup>61</sup> See: <https://be.brompton.com/bikes/brompton-electric>.

*(g) Weight: The electric components do add some weight to the bike, but Brompton has worked to keep the weight increase minimal compared to other (non-electric) bikes. ...*

*(h) Compatibility: Brompton designed the Electric Bike to be compatible with a range of accessories and configurations, allowing riders to personalize their bike to suit their needs.*

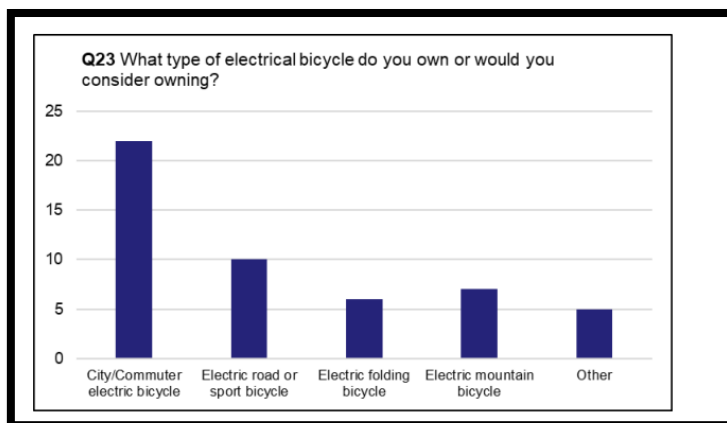
*(i) Safety Features: The Brompton Electric features safety enhancements, such as integrated lights and reflective tyres, to enhance visibility during rides."<sup>62</sup>*

69. Thus, e-bikes manufactured by Brompton have significantly different physical characteristics than the basket of e-bikes exported from China, and they differ in terms of such features as electric assist system; battery integration, design, capacity, and charging; folding mechanism; weight; *etc.* Folding e-bikes and other types of e-bikes are also based on distinct technologies with different technical specifications, levels of complexity, cost structures and prices.
70. The usage of folding e-bikes is also obviously different from other types of e-bikes covered by these reviews, such as, for example, cargo, kids', commuting, or mountain e-bikes.
71. Additionally, the e-bikes produced by Brompton and those imported from China do not share the same consumer tastes and preferences. According to the consumer survey responses provided in the present reviews, only a very small segment of UK consumers owns or considers owning folding e-bikes (6/50 responses).<sup>63</sup> As the graph below shows, most UK consumers responded that they prefer (i) city commuter electric bicycles (22 responses); (ii) electric road or sport bicycles (10 responses); (iii) electric mountain bicycles (7 responses); and (iv) other e-bikes, such as cargo bikes and Dutch-style upright bikes (5 responses).

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<sup>62</sup> Brompton's Combined Questionnaire Response, pages 22-23.

<sup>63</sup> See: TRA, Note to public file "Business and consumer survey responses", 10 October 2023, TD0037 and TS0038, responses to question 23.



72. Moreover, Brompton positions its e-bikes as a luxury product, focusing only on the high-end of the market. Thus, Brompton operates only in a niche segment of the e-bikes market which is not accessible to or affordable for the majority of the e-bikes users and is, therefore, also not comparable with the other market segments in which the Chinese e-bikes are present. In contrast, e-bikes originating from China are positioned in the UK as ordinary consumer products. This important distinction has implications on the consumer perceptions and prices of the Chinese e-bikes and Brompton's "luxury" folding e-bikes.
73. According to the data provided by Brompton in its questionnaire response, the prices of its electric C Line and electric P Line range between £3,000 and £3,650.<sup>64</sup> As clearly noted by Brompton, "*not everyone can afford a Brompton*",<sup>65</sup> "*[t]here are a small number of direct substitutes (at the Brompton price point)*",<sup>66</sup> and "*Brompton Bicycles are a made to order company profile, not a provider in low price mass manufactured products*".<sup>67</sup> In contrast, the Chinese e-bikes imported into the UK are present in the mass consumer e-bikes segment and not luxury segments. Moreover, Brompton admits that there are no Chinese substitutes for its e-bikes and no competition from Chinese e-bikes in its segment.
74. Thus, the Brompton folding e-bikes and the e-bikes imported into the UK from China are not comparable, not in a competitive relationship and are not substitutable such that

<sup>64</sup> Brompton's Combined Questionnaire Response, page 27; *see also*: Brompton's AD Questionnaire Response, page 11; TD0037 & TS0038: Brompton Report, page 15 (emphasis added).

<sup>65</sup> Brompton's AD and AS Questionnaire Responses, page 14; Brompton's Combined Questionnaire Response, page 56.

<sup>66</sup> Brompton's Combined Questionnaire Response, page 57 (emphasis added).

<sup>67</sup> Brompton's Combined Questionnaire Response, page 28; Brompton's AD Questionnaire Response, page 13; Brompton's AS Questionnaire Response, page 14 (emphasis added).

the latter could have caused or are likely to cause any injury to the former. Indeed, in its questionnaire responses, Brompton clearly states that its e-bikes compete with and are substitutable only with a few other folding e-bikes made by European brands:

*"There are a small number of direct substitutes (at the Brompton price point) making folding or e-folding products. Although there has been some innovation in the space, two of the traditional competitors in premium folding bikes, Riese and Muller and Tern have both turned their attention to cargo and urban mobility. In recent years, there has been more development in the e-folding space with new brands such as Eovolt (France) and MATE (Denmark) growing at pace.*

*GoCycle have been a competitor for ten years, but over the last three to five years newer brands such as Eovolt, designed and developed in France or MATE from Denmark have grown. These brands are priced below Brompton's electric product and have primarily been focussed on consumer direct selling.*

*The remaining competition comes primarily from central Europe, with brands such as Flyer and Victoria who offer Bosch equipped Electric folding bikes. These are not particularly compact, or lightweight, but provide a storage solution and an excellent ride experience. Indirect substitutes, there are a wide variety of indirect substitutes for a Brompton. In the subsequent table, brands with similar Urban or Compact positioning are considered.*

*However, none of these offer the true flexibility and benefits of a Brompton – an E-Scooter can complete many of the tasks that a Brompton does, equally a VanMoof cannot be carried onto a train at rush hour or stored in a small flat in the same way as a Brompton can."<sup>68</sup>*

75. Thus, by its own admission, Brompton is in a niche market segment in which Chinese e-bikes are basically not present.
76. In sum, Brompton cannot be injured on account of imports of e-bike types that it does not make and sell or compete with, and there can be no likelihood of continuation and/or recurrence of injury either. Brompton's mere assertion -- not supported by any evidence -- that revoking the measures may "*effect ... the willingness to pay of some consumers, and the consumer would have a choice between different price points*" cannot be the basis for including all e-bikes in the scope of the present reviews or to extend the current measures to all e-bikes from China.<sup>69</sup>
77. Thus, if the present reviews are not terminated, the product scope of the reviews should be limited to folding e-bikes only. This is in line with TRA's practice in previous

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<sup>68</sup> Brompton's Combined Questionnaire Response, page 27.

<sup>69</sup> Brompton's Combined Questionnaire Response, page 31.

reviews. Indeed, in previous transition reviews, if certain types of like products were not produced by the domestic industry, the TRA narrowed the product scope.<sup>70</sup>

## **5 NO LIKELIHOOD OF CONTINUATION/RECURRENCE OF INJURIOUS DUMPING AND SUBSIDISATION**

78. The CCCME respectfully submits that there is no evidence of likelihood of continuation or recurrence of injurious dumping and subsidisation in the absence of the present measures.

### **5.1 Injurious dumping and subsidisation of e-bikes was never established**

79. The CCCME recalls that, in the EU e-bikes investigations, the dumping and subsidy margins were illegally established. The dumping margins were based on the EU's non-market economy methodology, which, apart from being illegal, does not apply in the UK, and the subsidy margins were based on the illegal application of facts available.
80. Moreover, the CCCME notes that the European Commission did not establish the existence of injurious dumping and subsidisation as regards Chinese e-bike imports into the UK. Thus, the present measures have been transitioned into the UK legal order without ever an assessment of injurious dumping and subsidisation being made by the TRA.
81. Indeed, as noted by the CCCME in the Initial Comments, the "*original*" injury analysis conducted by the European Commission pertained to 31 known EU producers, none of which were UK producers. It is also recalled that Brompton launched its first electric bicycle in 2018 (while the investigation of dumping, subsidisation, and injury in the original investigation covered the period from 1 October 2016 to 30 September 2017).<sup>71</sup> Thus, injury on account of the allegedly dumped and subsidised imports to the UK

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<sup>70</sup> See: The recommendation to the Secretary of State (Case TD0001): Transition review of anti-dumping measures applying to certain welded tubes and pipes of iron or non-alloy steel originating in the Republic of Belarus, the People's Republic of China and the Russian Federation, para. 2.6, available at: <[TRA Investigations - Trade Remedies Service - GOV.UK \(trade-remedies.service.gov.uk\)](#)>.

<sup>71</sup> Stan Portus, "New Brompton P Line Electric could make cycling accessible to more people" (12 July 2022), available at <<https://www.bikeradar.com/news/2022-brompton-p-line-electric/>>; see also Commission Implementing Regulation (EU) 2019/73 of 17 January 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of electric bicycles originating in the People's Republic of China OJ [2019] L 16/108, recital (7).

industry was not -- and, in fact, could not have been -- established by the European Commission in the original investigations.

82. Hence, as the existence of injurious dumping and subsidisation as regards Chinese e-bike imports into the UK was never established, (i) the current measures cannot be legally reviewed under the ADA and the SCM Agreement, and (ii) there can be no "*continuation*" or "*recurrence*" of injurious dumping and subsidisation.

## **5.2 No likelihood of continuation or recurrence of injury**

83. Regulation 99A(1)(b) provides that, in a transition review, the TRA must consider whether "*injury to a UK industry in the goods would be likely to continue or recur if the antidumping or countervailing amount were no longer applied to those goods*".
84. As noted in the previous section by the CCCME, in view of the extremely limited competitive overlap between the Chinese e-bikes imported into the UK and the "luxury" folding e-bikes produced by Brompton, there can be no injury to Brompton/the UK industry and no likelihood of continuation or recurrence thereof on account of the Chinese e-bike imports.
85. Without prejudice to the above, the CCCME submits that in conducting a "*prospective*" and "*forward-looking*" analysis, the TRA must still base its determination not only on projected facts but also on existing facts.<sup>72</sup> In this respect, as clarified by the WTO Appellate Body in *US – Oil Country Tubular Goods Sunset Reviews*, "*where the focus of the inquiry is likely future injury, an investigating authority must have a 'sufficient factual basis' to arrive at its conclusion*".<sup>73</sup> The mere possibility that the UK e-bike industry (if any) might be potentially injured in the future is an insufficient basis to retain the current measure. The TRA can also not rely on the "*original*" or subsequent investigations conducted by the European Commission for the reasons noted in the preceding sub-section. The TRA must make an objective and independent assessment, based on positive evidence, of injury to the UK industry and the likelihood of continuation or recurrence thereof in the absence of the measures.

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<sup>72</sup> See: Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para 299; Appellate Body Report, *US – Anti-Dumping Measures on Oil Country Tubular Goods*, para 158.

<sup>73</sup> Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para 299.

86. Against this background, the CCCME submits that (i) the only known and supposed UK e-bikes producer, Brompton is healthy and thriving; (ii) if the TRA were to find that Brompton was injured during the injury POI, factors other than imports of e-bikes from China were the cause of that injury to Brompton, and even those factors do not exist now; and (iii) there is no likelihood of continuation or recurrence of injury to Brompton on account of the Chinese e-bikes imports.
87. First, due to Brompton's failure to provide a non-confidential summary of its data, the CCCME cannot obtain a reasonable understanding of the substance of that information so as to make meaningful comments on Brompton's economic situation. Without prejudice to the above, the extremely limited information available in public sources and Brompton's questionnaire responses indicate that this company is in a very strong economic position.
88. Overall, the COVID-19 pandemic significantly boosted the bicycle industry by encouraging more UK consumers to buy e-bikes.<sup>74</sup> As Brompton's chief executive, Will Butler-Adams, told the *Financial Times* in August 2022, "*initially [Brompton was] hit by reduced demand and later by Omicron infections among staff. But sales swelled as customers sought alternatives to public transport, and the company grew quickly. The last company accounts showed sales increased by a third to £76.1mn in the year to March 2021, with pre-tax profits up to £9.7mn from £6mn, the previous year.*"<sup>75</sup>
89. According to Brompton's 2022 Annual Report, the company sold 93,460 bikes in the financial year ending on 31 March 2022 as compared to 69,695 in the previous financial year.<sup>76</sup> As regards sales, in the financial year 2022, Brompton boasted a record turnover, which increased by almost 40% (to £105.7 million) compared to the financial year 2021 (£75.7 million). Additionally, Brompton's 2022 financial year turnover is well over double the amount the company made in the last financial year before the COVID-19

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<sup>74</sup> See: Brompton to fold up London base as capital's rental costs surge (25 February 2022), available at: <<https://www.ft.com/content/fbe6796c-c2c7-46a1-a186-0e2b35cd8fac>>, stating that: "[t]he pandemic gave a big boost to the bicycle industry as consumers with fewer options for spending their cash sought to avoid public transport".

<sup>75</sup> Emma Jacobs, "Brompton's Will Butler-Adams: 'People have no idea what goes into a product. That's not a good thing'" (6 August 2022), (emphasis added), available at: <<https://www.ft.com/content/f8ba3776-051a-4e05-ac01-f9ad6d628312>>.

<sup>76</sup> Brompton, "Group of Company's accounts made up to 31 March 2022", available to download at <<https://find-and-update.company-information.service.gov.uk/company/01261512/filing-history>>, page 4.

pandemic, *i.e.*, 2019, when it had a turnover of £42.4m.<sup>77</sup> While Brompton's Annual Reports give consolidated turnover and sales volumes for all bicycles sold by the company, there is no evidence or stated reasons that e-bikes sales would not have increased in tandem with the sales of other types of bicycles sold by Brompton.

90. In sum, Brompton's sales have been growing both in the domestic and export markets at an impressive rate. Brompton's UK sales turnover increased by 36% in the financial year ending on 31 March 2022, reaching £33,021,347, compared to £24,301,730 in the previous financial year.

5 Turnover		
	2022	2021
	£	£
United Kingdom	33,021,347	24,301,730
Europe	29,366,541	22,775,868
Rest of world	44,501,450	29,046,314
	<u>106,889,338</u>	<u>76,123,912</u>
	2022	2021
	£	£
Sale of goods	105,750,236	75,687,602
Rendering of services	1,139,102	436,310
	<u>106,889,338</u>	<u>76,123,912</u>

Source: Brompton's 2022 Annual Report<sup>78</sup>

91. Brompton's profitability remains strong. While its profits decreased in 2022 as compared to the previous financial year, as admitted by the company, that was largely a result of the rising costs and inflationary pressure, which are unrelated to the Chinese e-bikes imports.<sup>79</sup> Additionally, as indicated in Brompton's 2022 Annual Report, its profit was also affected by Brompton's investments in business expansion, *i.e.*, massively increased funding for R&D and higher staffing costs "*related to the growth of the business*".<sup>80</sup> Two of the company's biggest cost drivers were staffing and R&D. According to its 2022 Annual Report, in 2022, the company had 623 employees

<sup>77</sup> Brompton, "Group of Company's accounts made up to 31 March 2019", available to download at <<https://find-and-update.company-information.service.gov.uk/company/01261512/filing-history?page=2>>, page 20.

<sup>78</sup> Brompton, "Group of Company's accounts made up to 31 March 2022", available to download at <<https://find-and-update.company-information.service.gov.uk/company/01261512/filing-history>>, page 27.

<sup>79</sup> As well established in WTO jurisprudence, "*investigating authorities are not permitted to attribute to dumped imports injuries caused by other factors*". See: Appellate Body Report, *EC – Tube or Pipe Fittings*, para. 175.

<sup>80</sup> Brompton, "Group of Company's accounts made up to 31 March 2022", available to download at <<https://find-and-update.company-information.service.gov.uk/company/01261512/filing-history>>, page 4.

compared to 434 in 2021.<sup>81</sup> Meanwhile, R&D spending quadrupled, rising from £370,574 in 2021 to £1,504,509 in 2022.<sup>82</sup>

92. Furthermore, as acknowledged by Brompton in its questionnaire responses:

*"The Company has positive cash operating flows, and hence the proceeds of investment are not required to support the daily operations of the business, but instead to promote future growth.*

*Return on Capital Employed (ROCE) is a major KPI which is monitored by the Company. The company has been investing heavily in R&D over the injury period, as well as in the preceding years, which has resulted in a fall in ROCE. The Company has also been investing in its D2C sales channels, through various investment strategies which have not yet met maturity, which is also resulting in temporary suppression of this metric. Strong closing sales performance in Q4 of the injury period did, however, result in a spike in this measure at the end of the year. In February this year, Brompton announced it will be building a new factory at Ashford in Kent, which is expected to open in 2027. Brompton is currently the largest manufacturer of bikes in the UK, producing 100,000 per year across its current factory in Greenford, West London, and its specialist titanium facility in Sheffield, in the north of England. The new factory in Ashford will increase production capacity to approximately 250,000 bikes per year, with staff numbers rising from 850 to 1,500."*<sup>83</sup> (emphasis added)

93. At the end of the day, the key points to consider are that the company is making huge investments, is in a strong economic position to make these investments and has the ability to do so, and despite having made huge investments, the company remains profitable.

94. The CCCME also notes that the non-confidential versions of Brompton's questionnaire responses provide no indication of injury or likelihood of recurrence thereof.<sup>84</sup>

95. In summary, based on the data available, there is no evidence that Brompton suffered material injury during the period considered on account of the Chinese e-bike imports. On the contrary, as the non-confidential versions of Brompton's pre-sampling

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<sup>81</sup> Brompton, "Group of Company's accounts made up to 31 March 2022", available to download at <<https://find-and-update.company-information.service.gov.uk/company/01261512/filing-history>>, page 28.

<sup>82</sup> Brompton, "Group of Company's accounts made up to 31 March 2022", available to download at <<https://find-and-update.company-information.service.gov.uk/company/01261512/filing-history>>, page 27.

<sup>83</sup> Brompton's AD Questionnaire Response, pages 14-15; Brompton's AS Questionnaire Response, page 15; *see also*: Brompton's Combined Questionnaire Response, pages 49-50.

<sup>84</sup> Brompton's Combined Questionnaire Response, Section E, pages 47-50; Brompton's AD Questionnaire Response, Section I, pages 11-16; Brompton's AS Questionnaire Response, Section L, pages 11-17.

questionnaire response, AD and AS questionnaire responses and its 2022 Annual Report prove, Brompton is doing well.

96. Second, if the TRA were to find that Brompton was injured during the injury POI, the CCCME submits that factors other than imports of e-bikes from China would have injured Brompton. As acknowledged by Brompton, in the financial year ending on 31 March 2022, the gross margin was affected *"largely as a result of increased material and labour manufacturing costs"; "an increase in carriage costs caused by macroeconomic factors and supply chain delays, resulting in the need to ship stock via airfreight"; "increased operating costs as a result of increased staff costs related to the growth of the business"*.<sup>85</sup>
97. Thus, unlike imports from China, factors such as the increase in labour costs, increase in the cost of raw materials, and supply chain disruptions had a negative impact on Brompton during the injury POI.
98. While the CCCME cannot know or divine the exact impact of the above-mentioned factors on Brompton's e-bikes operations, the CCCME notes that these factors would necessarily have impacted Brompton's e-bikes costs and margins, and Brompton has acknowledged this in press reports and its questionnaire responses as well.
99. In particular, as acknowledged by Brompton's management in press reports, during the injury POI, raw material prices increased significantly: *"[y]ou combine the raw material cost and the labour cost, I've never seen that in my career. It is extraordinary"*.<sup>86</sup> Indeed, labour costs in the UK increased from 102.2 points in January 2020 to 115.8 points in January 2023.<sup>87</sup> Likewise, during the injury POI (1 April 2019 – 31 March 2023), energy prices in the UK skyrocketed.<sup>88</sup>

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<sup>85</sup> Brompton, "Group of Company's accounts made up to 31 March 2022", available to download at <<https://find-and-update.company-information.service.gov.uk/company/01261512/filing-history>>, page 4.

<sup>86</sup> Oliver Telling, "Brompton's profits plunge as inflation and supply chain pressures take toll" (6 January 2023), available at: <<https://www.ft.com/content/4afc3f48-4252-45db-9099-986e3f93d57e>>.

<sup>87</sup> See: <https://tradingeconomics.com/united-kingdom/labour-costs#:~:text=Labour%20Costs%20in%20the%20United%20Kingdom%20averaged%2047.41%20points%20from,the%20first%20quarter%20of%201955>.

<sup>88</sup> See: <<https://www.statista.com/statistics/546959/average-selling-value-electricity-commercial-sector-uk/>>.

100. Moreover, *"the company recently launched a bicycle made of titanium, supplies of which are heavily reliant on production from Ukraine and Russia"*.<sup>89</sup> Thus, during the injury POI, Brompton's costs of production would also have been affected by soaring energy prices and shortages in raw materials exacerbated by the Russia-Ukraine war.
101. As further noted by Brompton in its questionnaire responses, it was *"severely impacted by government regulations including the impact Brexit had on the business' operations with increased customs debt being incurred. This includes the importation of anti-dumping duties for bicycle parts imported from China, which has meant the business having to obtain special customs procedures and incur additional compliance activities. These were needed for Brompton to stay competitive and ensure the brand's survival in a post Brexit world."*<sup>90</sup> Brompton also noted that it *"has had to acquire authorisations required to obtain to produce, sell, or to export the like goods. Due to the UK leaving the European Union, and to mitigate customs debt which at point of the UK exiting the European Union related to £1,000,000 in customs duties and additional import VAT of £10,000,000"*.<sup>91</sup>
102. Furthermore, 2020 witnessed an explosion in sales of both conventional and e-bikes as the demand for bicycles skyrocketed. At the same time, this situation created a significant gap between supply and demand for bicycle parts. According to industry reports: *"[t]he closure of the borders, caused by the Covid-19 crisis, has considerably slowed down the shipment of components from [Asia], which is responsible for almost 95% of the spare parts needed to assemble the bikes."*<sup>92</sup> As Lisa Conibear, Zoomo UK and Europe regional director, told BikeBiz in 2021, *"[t]he e-bike industry was witnessing a time like no other. Turbulence in the supply chain [was] being felt by 85% of businesses in the cycling industry. This is because demand continue[d] to outweigh supply and market oversaturation [was] leading to shortages in critical bike*

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<sup>89</sup> Brompton to fold up London base as capital's rental costs surge (25 February 2022), available at: <<https://www.ft.com/content/fbe6796c-c2c7-46a1-a186-0e2b35cd8fac>>.

<sup>90</sup> TD0037 & TS0038: Brompton Report, page 18 (emphasis added).

<sup>91</sup> Brompton's Combined Questionnaire Response, page 13.

<sup>92</sup> "Increasing demand and supply problems: the bicycle market is under great pressure" (28 September 2021), available at: <<https://velco.tech/en/supply-problems-bicycle-market/>>.

equipment."<sup>93</sup> Thus, COVID-19 became both a challenge and an opportunity for e-bike producers.

103. As also indicated by Brompton in its questionnaire responses:

- *"Supply chain problems have been the major challenge for the bike industry over the past 12 months, although the severity of these problems have gradually begun to ease during 2022 and beyond."*<sup>94</sup>
- *"Supply-side problems will remain a threat to meeting any future rise in consumer demand, as the cycling industry is heavily reliant on imports."*<sup>95</sup>
- *"Global events over the past few years have impacted the upstream supply chain. Starting with the COVID-19 pandemic, which resulted in nationwide lockdowns that put a temporary stop to raw materials transport. Since most raw materials were imported from China, which was the first to be impacted by the pandemic, there was a long and massive disruption in transportation links and raw materials supply (the Suez Canal crisis)."*<sup>96</sup>

104. Thus, if the TRA were to find that Brompton was vulnerable or injured during the injury POI, the CCCME submits that factors other than imports of e-bikes from China were the explanatory force for Brompton's situation. In any case, as shown above, despite the negative consequences of the above factors, Brompton managed to increase its production, sales volumes, remained highly profitable and is in a strong position, as also publicly acknowledged by the company.

105. Furthermore, in the forward-looking analysis, the TRA should take into account that to the extent that the other factors were injuring Brompton during the injury POI, most of them, like Brexit, COVID-19-related costs and disruptions and supply chain problems, do not exist anymore. Globally, e-bikes producers, including Brompton, have adjusted supply chains. Moreover, as noted by Brompton, it has *"increased its stock levels to mitigate potential stockouts caused by supplier shortages and long lead times"*<sup>97</sup> and supply chain problems have eased out since 2022.

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<sup>93</sup> "How have supply chain shortages affected the e-bike industry" (27 December 2021), available at: <<https://bikebiz.com/how-have-supply-chain-shortages-affected-the-e-bike-industry/>>.

<sup>94</sup> TD0037 & TS0038: Brompton Report, page 12 (emphasis added).

<sup>95</sup> TD0037 & TS0038: Brompton Report, page 13.

<sup>96</sup> Brompton's Combined Questionnaire Response, page 52; TD0037 & TS0038: Brompton Report, page 22 (emphasis added).

<sup>97</sup> Brompton, "Group of Company's accounts made up to 31 March 2022", available to download at <<https://find-and-update.company-information.service.gov.uk/company/01261512/filing-history>>, page 7.

106. Additionally, as noted in the 2022 Annual Report of Brompton, it has and continues to successfully cope with other challenges, such as the increase in labour and raw materials costs, which are being faced by businesses across the world. As noted by Brompton:

*"[T]he rising costs of parts, labour and overheads [have] been partially passed onto customers through price rises, however, with the need to maintain demand in the face of competition [...]. Through further development and growth of [Brompton's] direct to consumer channel [Brompton] managed to buffer these higher costs through an increased sales mix towards [their] higher margin channels. Rising costs have been further combatted by ongoing improvements in efficiency across operations through company wide waste reduction initiatives and steering groups."<sup>98</sup>*

107. Third, the UK e-bike industry is poised to grow in the future, and Brompton expects to grow and expand as also confirmed by its plans for a new factory. As pointed out by the media sources specialising in the e-bike market, UK citizens are reconsidering their travel habits and will increasingly switch to e-bikes. A poll conducted in October 2022 by the cycle advocacy campaign *Bike is Best* evidenced that 69% of Britons are reconsidering their travel habits, with half of the respondents declaring that e-bikes are the most "natural" replacement for cars.<sup>99</sup>

108. Similarly, according to Brompton, the UK e-bike market is set to grow significantly due to several reasons:

- *"As reported by Mordor Intelligence the UK domestic electric bike industry is currently worth 0.19 billion USD and is expected to grow to 0.25 billion USD by 2028. With the green initiatives in place and the carbon footprint targets that the UK has to reach – this market has growth potential and has been emerging over the past 5 years."*<sup>100</sup>
- *"The market for electric bikes, moves broadly in line with the popularity of Cycling as a leisure pursuit."*<sup>101</sup>
- *"An increasing number of people are becoming actively environmentally conscious. Bikes offer a method of transport which is eco-friendly, which is increasingly becoming a draw. This is especially true for electric bicycles as they*

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<sup>98</sup> Brompton, "Group of Company's accounts made up to 31 March 2022", available to download at <<https://find-and-update.company-information.service.gov.uk/company/01261512/filing-history>>, page 7 (emphasis added).

<sup>99</sup> Alex Bowden, "Half of the UK thinks e-bikes are the most 'natural' car replacement – campaigners call for subsidies" (3 October 2022), available at: <<https://ebiketips.road.cc/content/news/half-of-the-uk-thinks-e-bikes-are-the-most-natural-car-replacement-campaigners-call-for>>.

<sup>100</sup> Brompton's AD Questionnaire Response, page 8.

<sup>101</sup> Brompton's Combined Questionnaire Response, page 29.

*offer a green alternative for personal transport, for people who would otherwise not use a conventional bike or who have journeys which are longer."*<sup>102</sup>

- *"Early in the pandemic, government accelerated investment in cycling infrastructure. This trend has continued, with the need amplified more recently with the dramatic increase in cost of fuel and increasing commitments to make city centres car-free. Folding eBikes such as those made by Brompton are also impacted by wider improvements in transportation infrastructure, as they are designed to be folded and carried on trains, busses, and subways."*<sup>103</sup>

109. Thus, more and more UK consumers are considering e-bikes as a way to address environmental, health and cost of living issues and the market is set to expand, and Brompton is set to grow with the market regardless of the Chinese e-bike imports, as the latter do not compete with Brompton's "luxury" folding e-bikes.

## **6 NO ECONOMIC INTEREST IN THE EXTENTION OF THE MEASURES**

110. Under the applicable UK law, the AD or AS measures may only be applied and extended if the economic interest test ("EIT") is met.<sup>104</sup>

111. According to paragraph 25(4) of Schedule 4 to the Act, in conducting the EIT, the TRA should take into account, among others, the following factors: (i) the injury caused to the UK industry by the dumped or subsidised products; (ii) the economic significance of the affected industries and consumers in the UK; and (iii) the likely impact on affected industries and consumers in the UK.

112. First, the fact that the majority of the UK e-bike producers did not come forward in support of the extension of the present measures is clear proof that the UK domestic industry does not consider the measures to be in their interest. Brompton, by its own admission, is not a mainstream brand and has limited production<sup>105</sup> and, in any event, its data does not justify the extension of the measures. As discussed elsewhere in this submission, Brompton -- or any other UK producer that clearly did not come forward - - is not injured on account of the Chinese e-bike imports, and there can be no likelihood of continuation or recurrence of injury either. In any event, the majority of the Chinese e-bikes imports do not compete with Brompton's "luxury" folding e-bikes.

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<sup>102</sup> Brompton's Combined Questionnaire Response, page 29.

<sup>103</sup> Brompton's Combined Questionnaire Response, pages 28-29.

<sup>104</sup> Regulation 100A(2)(a).

<sup>105</sup> Brompton's Combined Questionnaire Response, page 25.

113. Second, as discussed above – based on the evidence on the record of this case and publicly available information – there is hardly any production of e-bikes in the UK, and Brompton alone cannot meet the domestic demand. Brompton's pre-sampling questionnaire response shows that it produced only 7,000-8,600 e-bikes during the POI. As acknowledged by Brompton itself, it has "*[l]imited Scale Production: Brompton bike production has expanded, yet they are not produced in enormous quantities like some mainstream brands*".<sup>106</sup> Moreover, three-quarters of Brompton's production is exported, implying that Brompton is export-oriented and not focused on the domestic market.<sup>107</sup>
114. The CCCME reiterates that Brompton produces only folding e-bikes, while, according to the TRA's survey, the UK customers mostly prefer (i) city commuter e-bikes; (ii) electric road or sport bicycles; (iii) electric mountain bicycles; and (iv) other e-bikes, such as cargo bikes and Dutch-style upright bikes. As mentioned above, according to the TRA's consumer survey responses provided in the present reviews, only a small segment of UK consumers participating in the survey owns or considers owning folding e-bikes (6/50 responses).
115. In addition, and more importantly, not every UK consumer can afford a Brompton e-bike. In this context, as explained by the UK downstream businesses participating in the TRA's survey, "*[w]hile it would be good to support UK producers, they are unable to produce at competitive prices*".<sup>108</sup> As also acknowledged by Brompton itself: "*not everyone can afford a Brompton*",<sup>109</sup> and the company is focused on "*high-earning cyclists*".<sup>110</sup> Indeed, unlike the Chinese e-bikes imports, Brompton focuses only on the luxury segment. Thus, the UK domestic industry (if any) cannot and will not be able to meet the growing UK demand neither price- nor quantity-wise.
116. Third, as noted by the TRA Chief Executive Oliver Griffiths: "*[s]ales of e-bikes have been growing rapidly in the UK and are now worth over £300 million per year. [The TRA] will be investigating whether existing trade remedy measures are still justified to protect UK producers, taking into account the extra costs that the measures place on*

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<sup>106</sup> Brompton's Combined Questionnaire Response, page 25.

<sup>107</sup> TD0037 & TS0038: Brompton Report, page 21.

<sup>108</sup> See: TRA, Note to public file "Business and consumer survey responses", 10 October 2023, TD0037 and TS0038, responses to question 21 (emphasis added).

<sup>109</sup> Brompton's AD and AS Questionnaire Responses, page 14; Brompton's Combined Questionnaire Response, page 56.

<sup>110</sup> Brompton's Combined Questionnaire Response, page 31.

*consumers".<sup>111</sup> On this point, the CCCME respectfully submits that the extension of the existing AD and AS measures will have a detrimental impact on UK consumers not only from the perspective of the choice and availability of e-bikes -- on account of the limited product range produced by the UK industry -- but equally on account of prices, as "[c]ost is seen by consumers as the biggest barrier to e-bike sales".<sup>112</sup> As confirmed by the recent online survey conducted by the TRA, "[o]verall, respondents said that price was the most important consideration when buying an e-bike followed by the type of bike."<sup>113</sup> As explained by Decathlon's spokesperson: "UK's exit from the European Union has made it more expensive to import stock. ... In the UK specifically, we have the obvious challenges involved in dealing with constantly changing exchange rates, coupled with the post-Brexit burden of having to pay import duties twice on a number of products (once as goods enter the EU and again once they enter the UK)."<sup>114</sup>*

117. Thus, under the current circumstances, extending the existing measures would lead to further adverse price effects for the UK consumers who are already facing the rising costs of living. Given the recent inflation and economic crisis, increasing e-bike costs for UK consumers by restricting supplies from China cannot be justified. This is all the more when the UK producers do not need protection, do not compete with the Chinese imports, are export-oriented and cannot supply e-bikes in line with the rising UK demand.
118. The CCCME submits that the extension of the measures will also have a further negative effect on the competition in the market as well as on the UK consumers' purchasing power, especially considering that the latter consider cycling as a form of transport in addition to a sport. If the measures are revoked, e-bikes would be more accessible to average consumers.

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<sup>111</sup> Press release, "TRA opens review on imports of e-bikes" (22 May 2023), available at: <<https://www.gov.uk/government/news/traopens-review-on-imports-of-e-bikes>> (emphasis added).

<sup>112</sup> Alex Bowden, "UK E-bike sales slow due to cost of living crisis with lack of subsidies a barrier" (4 February 2023), available at: <<https://ebiketips.road.cc/content/news/uk-e-bike-sales-slow-due-to-cost-of-living-crisis-with-lack-of-subsidies-a-barrier-4297>>.

<sup>113</sup> See: TRA, Note to public file "Business and consumer survey responses", 10 October 2023, TD0037 and TS0038, responses to question 24 (emphasis added).

<sup>114</sup> Alex Bowden, "Decathlon blames Brexit for higher UK e-bike prices and launches rental service to make them more accessible" (30 August 2022), available at: <<https://ebiketips.road.cc/content/news/decathlon-blames-brexit-for-higher-uk-e-bike-prices-and-launches-rental-service-to-make>>.

119. Indeed, according to the online survey conducted in the course of the present reviews, both upstream and downstream businesses operating in the UK e-bike market support the revocation of the AD and AS measures:<sup>115</sup>

Respondent	Question	Response
Upstream businesses	<b>Q8</b> Please tell us how the existing tariff on electric bicycles from China affects your company and industry? What might change if the tariff were to be removed?	The respondent said <u>the current tariff restricts innovation, reduces speed to market and increases prices for consumers and businesses.</u>
	<b>Q9</b> Is there any other information you would like to provide to help us assess the effects of the tariff on electric bicycles from China on the overall economic interest of the UK?	The respondent suggested <u>that e-bikes might lose market share to e-scooters or conventional bicycles if they were unable to compete at lower price points.</u>
Downstream businesses	<b>Q19</b> Please tell us how the existing tariff on electric bicycles from China affects your company and industry? What might change if the tariff were to be removed?	<u>Four respondents opposed the existing measures, arguing that the measures restrict their ability to import from the PRC and increase prices for customers.</u>
	<b>Q21</b> Is there any other information you would like to provide to help us assess the effects of the tariff on electric bicycles from China on the overall economic interest of the UK?	Respondents said: <ul style="list-style-type: none"> <li>• <u>Reducing the tariff could improve the competitiveness of the UK e-bike market.</u></li> <li>• <u>Most e-bike parts come from the PRC anyway.</u></li> <li>• <u>While it would be good to support UK producers, they are unable to produce at competitive prices.</u></li> </ul>

120. Thus, the CCCME respectfully asks the TRA to take into account the results of its online survey<sup>116</sup> and consider the consumers' interests in the context of the present reviews. This is particularly because as noted above, there is no injury to the UK industry, and there can be no "recurrence" or "continuation" thereof.

121. In light of the above, the termination of the measures is in the economic interest of the UK.

<sup>115</sup> See: TRA, Note to public file "Business and consumer survey responses", 10 October 2023, TD0037 and TS0038.

<sup>116</sup> TRA, Note to public file "Business and consumer survey responses", 10 October 2023, TD0037 and TS0038, responses to questions 8 and 19.

## 7 CONCLUSION

122. For the reasons noted in this submission, the CCCME requests the TRA to terminate the present transition reviews and the existing AD and AS measures on e-bikes from China. Should the TRA continue with the reviews, the CCCME requests that the product scope should be limited to folding e-bikes, and the TRA should ensure that the non-confidential versions of Brompton's data are available in the open file at the earliest and the interested parties' rights of defence are respected during the remainder of the proceeding.

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