

# 中华人民共和国商务部

MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA  
2, DONG CHANG'AN STREET, BEIJING, CHINA 100731

## **Transition review of anti-dumping measures applying to electric bicycles originating in the People's Republic of China (PRC)**

**Review No. TD0037**

*Comments on the Statement of Essential Facts*

**by**

**Ministry of Commerce of the People's Republic of China**

June 14, 2024

OPEN

## **1. INTRODUCTION**

1. The Ministry of Commerce of the People's Republic of China ("GOC") refers to the Statement of Essential Facts ("SEF") issued by the UK Trade Remedies Authority ("TRA") in the context of the transition review of anti-dumping measures applying to electric bicycles originating in the People's Republic of China ("China"). The SEF was published on 24 May 2024.
2. The GOC appreciates the opportunity to present its perspective as an interested party in this transition review. Respectfully, the GOC submits the following comments, *inter alia*, the GOC (i) acknowledges TRA's objective examination of the Economic Interest Test and the fair and reasonable findings, (ii) recognises TRA's conclusion that the injury to the domestic industry is relatively minimal, given its robust performance, and (iii) welcomes TRA's recommendation to revoke the application of the countervailing duty on the goods subject to review from the PRC. However, the GOC (iv) disagrees with certain findings by TRA regarding the likelihood of continuance or recurrence of dumping in accordance with the requirements of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement").

## **2. OBJECTIVE EXAMINATION OF THE ECONOMIC INTEREST TEST**

3. The GOC acknowledges that the TRA correctly found that:

*“Our assessment of economic significance found e-bikes are important to UK producers and somewhat important to upstream businesses, retailers and importers. Retailers and importers are more economically significant in terms of all metrics considered. Upstream businesses, retailers and*

*importers were found to be somewhat vulnerable to economic shocks but UK producers were not*".<sup>1</sup>

4. In addition, the TRA concludes:

*"Overall, we consider the negative impacts of imposing the measure to be disproportionate to the benefits of extending the measure"*.<sup>2</sup>

5. In the SEF, the TRA conducts a full assessment of the interests and welfare of the UK industry, affected industries, and consumers. The TRA also considers other relevant factors, such as environmental and health impacts. The broad-range analysis and well-structured consideration lays solid ground for the conclusion.
6. Further, the TRA's assessment of the economic interests of both the UK industry and affected industries and consumers was based on sound economic analysis methodology and widely collected statistics and facts. The GOC appreciates that the methodology and factual basis employed accurately reflect the economic realities of relevant economic players involved in relation to the application of the duty.
7. In sum, the GOC believes that the TRA's finding in the SEF concerning the economic interest assessment results from an objective assessment supported by positive evidence.

### **3. CORRECT CONCLUSION OF THE LEVEL OF INJURY**

8. In the SEF, TRA clarifies that *"this injury could be relatively low given the strong performance and high brand loyalty"*.<sup>3</sup>
9. The GOC recognizes this finding is a balanced assessment of all relevant economic indices and indicators regarding the current state of the UK industry. For example, TRA observes that the ability to raise capital or investments,

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<sup>1</sup> The Statement of Essential Facts, para. 307.

<sup>2</sup> Ibid, para. 314.

<sup>3</sup> Ibid, para. 307.

increased wages, increased employment levels, and a planned increase in production capacity demonstrate a positive position for the UK industry. Even though some economic indicators and indices may be, to some extent, unfavourable, the overall state of the UK industry, as the authority correctly explained, shows “*strong performance*”.

10. However, the GOC urges the TRA to support and strengthen its recommendation to revoke the application of the anti-dumping measures at issue. As provided and regulated by the AD Agreement, the imposition of an anti-dumping duty requires the establishment of both dumped imports and material injury to the domestic industry caused by the subject imports. Lacking either of the two conditions will undermine the justification for such an anti-dumping measure.
11. In this review, the TRA explicitly and correctly identifies that the injury could be relatively low. Therefore, in the opinion of the GOC, the injury does not reach a “material” suffered or would be suffered by the UK industry.
12. Therefore, the recommendation to revoke the anti-dumping measures under review is further substantiated by the finding of “*low injury*”.

#### **4. CORRECT RECOMMENDATION OF THE DUTY UNDER REVIEW**

13. TRA states that “*our intended recommendation is to revoke the application of the countervailing amount under regulation 100B of the Regulations for the goods subject to review from the PRC*”.<sup>4</sup>
14. The GOC welcomes this recommendation and believes the revocation of the duty under review will benefit not only the affected industries and consumers but also contribute positively to the overall economic development in the UK.

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<sup>4</sup> Ibid, para. 319.

## **5. WTO-INCONSISTENT FINDING OF CERTAIN DUMPING FINDINGS**

15. The GOC disagrees with TRA's findings that certain findings about the likelihood of dumping, including that of particular market situations and the likelihood of continuance or recurrence of dumping.

### **5.1 Erroneous Findings about Particular Market Situation**

16. In the SEF, TRA explains that certain non-market factors exist with regard to the production of e-bikes, and these factors would be likely to increase the normal value<sup>5</sup>.
17. The GOC contends that TRA erroneously understands relevant rules concerning 'particular market situation' in the AD Agreement in this review, and certain conclusions in different parts contradict each other.
18. Article 2.2 of the AD Agreement provides that, dumping margin could be calculated based on exports to an appropriate third country ("third country export method"), or to be calculated with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits ("constructed value method"). Therefore, Article 2.2 provides two progressive steps in this regard, first, the existence of particular market situation may result in the incomparability of the price of domestic sales with that of the subject exports; and second, where proper comparison is not warranted because of the particular market situation, investigating authorities may resort to third country export method or constructed value method to calculate dumping margin.
19. In the SEF, TRA comes to the correct conclusion about the market competition and situation both in the UK market (i.e., the importing market), as well as the Chinese market (i.e., the exporting market). This explains that TRA accurately

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<sup>5</sup> Ibid, para. 95-97.

discovers, regarding the importing market, TRA objectively and correctively finds that the subject merchandise competes with the UK like products, inferring price (both the price of the subject product and that of the UK like products) is a result of competition<sup>6</sup>; with regard to the exporting market, TRA also finds similar situation about the fierce competition and price mechanism<sup>7</sup>. The prices sold in the UK market and the Chinese market could be compared properly, and there are no difficulties or impropriety to compare with the two.

20. In the SEF, TRA does not directly conclude that there is a particular market situation in the Chinese e-bike market. This is in accordance with the findings of TRA about the market situations both in the UK market and the Chinese market.
21. However, certain factors in relation to the production of the subject products, for example, materials, electricity, land, labour and loans as listed in the SEF, do not support the conclusion or inference of the existence of particular market situation in the exporting market. First, the quality of evidence is questionable. TRA employs findings in other investigations or reviews about certain raw materials and energies to demonstrate the particular market situation in the review. It is not convincing because the products, materials used, and productions involved are different in this review from those in the investigations or reviews on which TRA depends its conclusion. Second, the evidential materials, namely the findings in other investigations or reviews, do not support the conclusion of particular market situation in this review. Even though there might be particular market situation in those investigations or reviews (which the GOC disagrees with), those factors in relation to the production of the subject products would equally and simultaneously affect the price of the domestic sales and the subject exports under review. In this way, there are no difficulties in affecting a proper comparison of the two prices, namely the price in the Chinese market and the

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<sup>6</sup> Ibid, para. 72-75.

<sup>7</sup> Ibid, para. 99.

price in the UK market, which further contradicts the findings about particular market situation. Third, it is biased and non-objective to conclude the normal value would increase because of particular market situation. As provided by Article 2.2 of the AD Agreement, the investigating authority may choose the third country export method or constructed value method to calculate the dumping margin, if there were particular market situation findings in an investigation or review. Without other evidence and analysis, it is difficult for an objective and unbiased authority to conclude whether normal value would be higher or lower by relying solely on the finding of particular market situation, let alone to a conclusion that normal value would increase.

22. In sum, the GOC believes that the findings and relevant analysis about the issue of particular market situation is flawed, and therefore urges the TRA to correct it in the final determination.

## **5.2 Erroneous Findings about Likelihood of Continuance or Recurrence of Dumping**

23. In the SEF, TRA provides it is unable to have been unable to conclude on possible continued dumping. Further, by analyzing factors like production and capacity, the ability to shift production and inventory, as well as there have been sales of the subject products in the UK, TRA finds that dumping would recur if the measures were to expire.
24. The GOC acknowledges the conclusion that it is unable to have been unable to conclude on possible continued dumping based on evidence in the case record.
25. However, the GOC believes that the findings and the analysis of the recurrence of dumping by the investigating authority are not convincing. It could only explain and demonstrate that it is likely that the subject imports may continue should the measures be removed, by providing analysis on the production and

capacity, the ability to shift production and inventory factors, as well as the subject imports were still in the UK market. But it is not enough to argue it is likely to appear 'dumped' imports.

26. In addition, whether or not the UK market is attractive, is relevant to the dumping practice. By the definition of dumping in the AD Agreement, attractiveness is not an element of dumping definition.
27. Based on the above, for the factors discussed and disclosed in the SEF, one could only conclude that it is likely to have the subject imports in the UK market, but not the argument that the dumped import would continue or recure should the measure were to be removed.

## **6. CONCLUSION**

28. In light of the above, the GOC urges the authority to terminate the review and revoke the anti-dumping measures under review immediately. The GOC believes that such a decision would be justified based on the comprehensive analysis presented and the lack of substantial evidence supporting the continuation of the duty. Revoking the anti-dumping measures will not only align with WTO regulations but also foster a fair economic environment.