

## V

*(Announcements)*PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON  
COMMERCIAL POLICY

## EUROPEAN COMMISSION

**Notice of reopening of the anti-dumping and anti-subsidy investigations with regard to Commission Implementing Regulation (EU) 2019/73 and Commission Implementing Regulation (EU) 2019/72 imposing measures on imports of electric bicycles from the People's Republic of China following the judgments of 27 April 2022 in cases T-242/19 and T-243/19**

(2022/C 260/04)

**1. Judgments**

In its judgments of 27 April 2022, in cases T-242/19 <sup>(1)</sup> and T-243/19 <sup>(2)</sup> Giant Electric Vehicle Kunshan Co. Ltd (Giant) v Commission ('the judgments'), the General Court of the European Union ('the General Court') annulled respectively 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 <sup>(3)</sup> and Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China <sup>(4)</sup> ('the regulations at issue') as far as Giant is concerned.

Giant challenged the adjustment made on its export price for sales via related traders established in the Union using by analogy Article 2(9) of Regulation (EU) 2016/1036 <sup>(5)</sup> ('the basic anti-dumping Regulation') in the calculation of price undercutting. In particular, Giant claimed that the adjustment - the deduction of the related importer's SG&A and a notional profit - changed the level of trade of its export sales, which resulted in the comparison of its export price at the level of an importer with the Union prices at retailers' level. This adjusted export price was compared to the Union industry's sale prices to their first independent customers through sales via related selling entities in the EU for the purpose of the undercutting and underselling calculations. Giant also challenged the treatment of Original Equipment Manufacturer ('OEM') sales for the purpose of the undercutting calculation. In Giant's view, the Union producers' sales of own-brand products to retailers should have been adjusted to bring them to the level of a sale to an unrelated OEM customer in the Union before they were compared with its OEM sales.

The General Court found that the Commission was not obliged to determine price undercutting margins and that it was entitled to base its injury analysis and, therefore, the causal link, on other price phenomena listed, respectively, in Article 3(3) of the basic anti-dumping Regulation and in Article 8(2) of Regulation (EU) 2016/1037 <sup>(6)</sup> ('the basic anti-subsidy Regulation'), such as significant depression of Union industry prices or prevention of price increases to a notable extent. However, in both cases, since the Commission relied on the calculation of price undercutting in the context of Article 3(3)

<sup>(1)</sup> Case T-242/19 Giant Electric Vehicle Kunshan Co. Ltd. v European Commission, EU:T:2022:259.

<sup>(2)</sup> Case T-243/19 Giant Electric Vehicle Kunshan Co. Ltd. v European Commission, EU:T:2022:260.

<sup>(3)</sup> OJ L 16, 18.1.2019, p. 108.

<sup>(4)</sup> OJ L 16, 18.1.2019, p. 5.

<sup>(5)</sup> Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, OJ L 176, 30.6.2016, p. 21.

<sup>(6)</sup> Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union, OJ L 176, 30.6.2016, p. 55.

and Article 8(2), the General Court found that by taking into account in relation to the prices of Union producers certain elements which it had nevertheless deducted from the applicant's prices (or were not present as regards OEM sales since the downstream marketing of the product concerned <sup>(7)</sup> was carried out by the independent buyer itself), the Commission did not make a fair comparison when calculating the applicant's price undercutting margin. The General Court noted that that methodological error found had the effect of identifying undercutting of those prices, the importance or existence of which had not been properly established.

Considering the importance the Commission had attached to the existence of price undercutting as an indicator of primary importance in its finding of injury and a decisive element in the conclusion on the causal link between the dumped or subsidised imports and that injury, the General Court found that the error in the calculation of price undercutting was sufficient to invalidate the Commission's analysis of the respective causal links, existence of which is an essential element for the imposition of measures.

Finally, the General Court noted that irrespective of the application by analogy of Article 2(9) of the basic anti-dumping Regulation for the purposes of assessing the existence of injury within the meaning of Article 3 of that regulation or Article 8 of the basic anti-subsidy Regulation, the unfair nature of the comparison found under the second part of that plea vitiated, in any event, the Commission's analysis under those provisions <sup>(8)</sup> <sup>(9)</sup>.

The General Court also noted that the injury elimination level was determined on the basis of a comparison involving the weighted average import price of the sampled exporting producers, duly adjusted for importation costs and customs duties, as had been established for the price undercutting calculation <sup>(10)</sup> <sup>(11)</sup>. It consequently held that it cannot be ruled out that, were it not for the methodological error relating to the undercutting of the applicant's prices, the injury margin of the Union industry would have been established at a level even lower than that established in the regulations at issue and lower still than the dumping margin or amount of countervailable subsidies established therein. In that case, in accordance with Article 9(4) of the basic anti-dumping Regulation and Article 15(1) of the basic anti-subsidy Regulation, the amount of the respective duties should be reduced to a rate which would be adequate to remove the injury <sup>(12)</sup> <sup>(13)</sup>.

In light of the above, the Court annulled both regulations at issue in so far as Giant was concerned.

## 2. Consequences

Article 266 TFEU provides that the Institutions must take the necessary measures to comply with the judgments. In case of annulment of an act adopted by the Institutions in the context of an administrative procedure, such as anti-dumping or anti-subsidy investigations, compliance with the General Court's judgement consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated <sup>(14)</sup>.

According to the case-law of the Court of Justice, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred <sup>(15)</sup>. That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-dumping procedure. In a situation where for instance a Regulation imposing definitive anti-dumping measures is annulled, that means that subsequent to the annulment, the anti-dumping proceeding is still open, because the act concluding the anti-dumping proceeding has disappeared from the Union legal order <sup>(16)</sup>, except if the illegality occurred at the stage of initiation.

<sup>(7)</sup> As defined in the regulations at issue.

<sup>(8)</sup> Case T-242/19 Giant Electric Vehicle Kunshan Co. Ltd. v European Commission, EU:T:2022:259, paragraph 126.

<sup>(9)</sup> Case T-243/19 Giant Electric Vehicle Kunshan Co. Ltd. v European Commission, EU:T:2022:260, paragraph 118.

<sup>(10)</sup> Case T-242/19 Giant Electric Vehicle Kunshan Co. Ltd. v European Commission, EU:T:2022:259, paragraph 122.

<sup>(11)</sup> Case T-243/19 Giant Electric Vehicle Kunshan Co. Ltd. v European Commission, EU:T:2022:260, paragraph 114.

<sup>(12)</sup> Case T-242/19 Giant Electric Vehicle Kunshan Co. Ltd. v European Commission, EU:T:2022:259, paragraph 123.

<sup>(13)</sup> Case T-243/19 Giant Electric Vehicle Kunshan Co. Ltd. v European Commission EU:T:2022:260, paragraph 115.

<sup>(14)</sup> Joined cases 97, 193, 99 and 215/86 Asteris AE and others and Hellenic Republic v Commission [1988] ECR 2181, paragraphs 27 and 28; and Case T-440/20 Jindal Saw v European Commission, EU:T:2022:318.

<sup>(15)</sup> Case C-415/96 Spain v Commission [1998] ECR I-6993, paragraph 31; Case C-458/98 P Industrie des Poudres Sphériques v Council [2000] I-8147, paragraphs 80 to 85; Case T-301/01 Alitalia v Commission [2008] II-1753, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 Région Nord-Pas de Calais v Commission [2011] II-0000, paragraph 83.

<sup>(16)</sup> Case C-415/96 Spain v Commission [1998] ECR I-6993, paragraph 31; Case C-458/98 P Industrie des Poudres Sphériques v Council [2000] I-8147, paragraphs 80 to 85.

In the present case, the General Court annulled the anti-dumping and anti-subsidy Regulations at issue for one common reason, namely, that the Commission failed to make a fair comparison in the price undercutting analysis at the same level of trade when determining the existence of significant undercutting. According to the General Court, this error also tainted the causation analysis and potentially the injury margin as regards the applicant.

The remaining findings and conclusions in the regulations at issue which were not contested, or which were contested but not examined by the General Court remain valid and are not affected by this reopening.

### 3. Reopening procedure

In view of the above, the Commission decided to reopen the anti-dumping and anti-subsidy investigations on imports of electric bicycles originating in the People's Republic of China that led to the adoption of the regulations at issue, insofar as they concern Giant Electric Vehicle Kunshan Co. Ltd. The reopening of the original investigations resumes them at the point at which the irregularity occurred.

The purpose of the reopening of the original investigations is to fully address the errors identified by the General Court and to assess whether the application of the rules as clarified by the General Court warrants the re-imposition of the measures at the original or, if any, a revised level as from the date on which the regulations at issue originally entered into force.

Interested parties are hereby informed that future liability may emanate from the findings of this re-examination.

### 4. Written submissions

All interested parties, and in particular Giant, are invited to make their views known, submit information and provide supporting evidence on issues pertaining to the reopening of the investigation. Unless otherwise specified, this information and supporting evidence must reach the Commission within 20 days from the date of publication of this Notice in the *Official Journal of the European Union*.

### 5. Possibility to be heard by the Commission investigation services

All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the reopening of the investigation, the request must be submitted within 15 days of the date of publication of this Notice in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within the specific deadlines set by the Commission in its communication with interested parties.

### 6. Instructions for making written submissions and sending correspondence

Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing the Commission a) to use the information and data for the purpose of this trade defence proceeding and b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their rights of defence.

All written submissions, including the information requested in this Notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Sensitive' <sup>(17)</sup>. Parties submitting information in the course of this investigation are invited to reason their request for confidential treatment. Parties providing 'Sensitive' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic anti-dumping Regulation and Article 29(2) of the basic anti-subsidy Regulation, which will be labelled 'For inspection by interested parties'. Those summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If a party providing confidential information fails to show good cause for a confidential treatment request or does not furnish a non-confidential summary of it in the requested format and quality, the Commission may disregard such information unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.

<sup>(17)</sup> A 'Sensitive' document is a document which is considered confidential pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

Interested parties are invited to make all submissions and requests via TRON.tdi (<https://tron.trade.ec.europa.eu/tron/TDI>) including requests to be registered as interested parties, scanned powers of attorney and certification sheets. By using TRON.tdi or e-mail, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of DG Trade: [http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc\\_148003.pdf](http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf). The interested parties must indicate their name, address, telephone and a valid e-mail address and they should ensure that the provided e-mail address is a functioning official business e-mail which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by TRON.tdi or e-mail only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions via TRON.tdi and by e-mail, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

European Commission  
Directorate-General for Trade  
Directorate G  
Office: CHAR 04/039  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË

TRON. tdi: <https://tron.trade.ec.europa.eu/tron/tdi>

Email: [TRADE-AS646a-AD643a-EBIKES@ec.europa.eu](mailto:TRADE-AS646a-AD643a-EBIKES@ec.europa.eu)

## 7. Non-cooperation

In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 18 of the anti-dumping basic Regulation and Article 28 of the basic anti-subsidy Regulation.

Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 of the basic Regulation and/or Article 28 of the basic anti-subsidy Regulation, the result may be less favourable to that party than if it had cooperated.

Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. In this case the interested party should immediately contact the Commission.

## 8. Hearing Officer

Interested parties may request the intervention of the Hearing Officer for trade proceedings. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and any other request concerning the rights of defence of interested parties and third parties as may arise during the proceeding.

The Hearing Officer may organise hearings and mediate between the interested party or parties and the Commission services to ensure that the interested parties' rights of defence are being fully exercised. A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. The Hearing Officer will examine the reasons for the requests. These hearings should only take place if the issues have not been settled with the Commission services in due course.

Any request must be submitted in good time and expeditiously so as not to jeopardise the orderly conduct of proceedings. To that effect, interested parties should request the intervention of the Hearing Officer at the earliest possible time following the occurrence of the event justifying such intervention. The Hearing Officer will examine the reasons for requests for interventions, the nature of the issues raised and the impact of those issues on the rights of defence, having due regard to the interests of good administration and the timely completion of the investigation.

For further information and contact details interested parties may consult the Hearing Officer's web pages on DG Trade's Internet: <http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/>.

#### 9. Processing of personal data

Any personal data collected in this investigation will be treated in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(18)</sup>.

A data protection notice that informs all individuals of the processing of personal data in the framework of Commission's trade defence activities is available on DG Trade's Internet: <http://ec.europa.eu/trade/policy/accessing-markets/trade-defence>.

#### 10. Information to customs authorities

As of 7 July 2022, and pending the outcome of this re-examination, the final anti-dumping and countervailing duties liability on imports of cycles, with pedal assistance, with an auxiliary electric motor, currently falling under CN codes 8711 60 10 and ex 8711 60 90 (TARIC code 8711 60 90 10), originating in the People's Republic of China and produced by Giant Electric Vehicle Kunshan Co. Ltd (TARIC additional code C383) is suspended.

Since the amount of final liability resulting from the re-examination is uncertain at this stage, the Commission requests national customs authorities to await the outcome of this investigation before deciding on any repayment claim concerning the anti-dumping and/or countervailing duties annulled by the General Court with respect to Giant Electric Vehicle Kunshan Co. Ltd.

Consequently, the anti-dumping and countervailing duties paid respectively under 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 and Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of cycles, with pedal assistance, with an auxiliary electric motor, originating in the People's Republic of China, currently falling under CN codes 8711 60 10 and ex 8711 60 90 (TARIC code 8711 60 90 10), originating in the People's Republic of China and produced by Giant Electric Vehicle Kunshan Co. Ltd (TARIC additional code C383) should not be repaid or remitted until the outcome of this investigation.

#### 11. Disclosure

All interested parties which have been registered as such during the investigations leading to adoption of the regulations at issue will be informed of the essential facts and considerations on the basis of which the Commission intends to implement the abovementioned judgments in due time and will be given an opportunity to submit their views before a final decision is taken.

---

<sup>(18)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).