COMMISSION IMPLEMENTING REGULATION (EU) 2023/610

of 17 March 2023

reimposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China as regards Giant Electric Vehicle (Kunshan) Co., Ltd following the judgment of the General Court in case T-243/19

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ([1]) ('the basic anti-subsidy Regulation'), and in particular Article 15 and Article 24(1) thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

(1) By Regulation (EU) 2019/72 ([2]), the European Commission imposed countervailing duties on imports of electric bicycles ('e-bikes'), originating in the People's Republic of China ('the contested Regulation').

1.2. The Judgement of the General Court of the European Union

(2) Giant Electric Vehicle (Kunshan) Co., Ltd ('Giant' or 'the applicant', or 'GEV') challenged the contested Regulation before the General Court of the European Union ('the General Court'). On 27 April 2022, the General Court issued its judgment in case T-243/19 ([3]) regarding the contested Regulation ('the judgment').

(3) 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 in Article 8(2) of the basic anti-subsidy Regulation, such as significant depression of Union industry prices or prevention of price increases to a notable extent. However, since the Commission relied on the calculation of price undercutting in the context of 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 deducted from the applicant's prices (or were not present as regards OEM ([4]) sales since the downstream marketing of the product concerned ([5]) was carried out by the independent buyer), 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 the Union industry's prices, the importance or existence of which had not been properly established.

(4) Considering the importance the Commission had attached to the existence of price undercutting in its finding of injury and in its conclusion on the causal link between the 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 link, existence of which is an essential element for the imposition of measures.

([1]) OJ L 176, 30.6.2016, p. 55.
([2]) 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 (OJ L 16, 18.1.2019, p. 5).
([3]) Case T-243/19 *Giant Electric Vehicle Kunshan Co., Ltd* v *European Commission*, EU:T:2022:260.
([4]) Original Equipment Manufacturer.
([5]) As defined in the regulations at issue.

(5) Finally, the General Court noted that irrespective of the application by analogy of Article 2(9) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ([6]) on protection against dumped imports from countries not members of the European Union ('basic anti-dumping Regulation') for the purposes of assessing the existence of injury within the meaning of 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 ([7]).

(6) 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 ([8]). 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 contested Regulation and lower still than the amount of countervailable subsidies established therein. In that case, in accordance with Article 15(1) of the basic anti-subsidy Regulation, the amount of the respective duty should be reduced to a rate which would be adequate to remove the injury ([9]).

(7) In light of the above, the General Court annulled the contested Regulation in so far as Giant was concerned.

1.3. **Implementation of the General Court's Judgment**

(8) Article 266 of the Treaty on the Functioning of the European Union ('TFEU') provides that the Institutions must take the necessary measures to comply with its judgments. In case of annulment of an act adopted by the Institutions in the context of an administrative procedure, such as the anti-subsidy investigation in this case, 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 ([10]).

(9) 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 ([11]). 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-subsidy procedure. In a situation where for instance a Regulation imposing definitive countervailing measures is annulled, that means that subsequent to the annulment, the anti-subsidy proceeding is still open, because the act concluding the anti-subsidy proceeding has disappeared from the Union legal order ([12]), except if the illegality occurred at the stage of initiation.

(10) In the present case, the General Court annulled the contested Regulation for one 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.

([6]) 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).

([7]) Case T-243/19 *Giant Electric Vehicle Kunshan Co., Ltd* v *European Commission*, EU:T:2022:260, paragraph 118.

([8]) Case T-243/19 *Giant Electric Vehicle Kunshan Co., Ltd* v *European Commission*, EU:T:2022:260, paragraph 114.

([9]) Case T-243/19 *Giant Electric Vehicle Kunshan Co., Ltd* v *European Commission*, EU:T:2022:260, paragraph 115.

([10]) 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, paragraph 115.

([11]) 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.

([12]) 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.

(11) The remaining findings and conclusions in the contested Regulation which were not contested, or which were contested but not examined by the General Court remain valid and are not affected by this reopening ([13]).

(12) Following the General Court's judgment, on 6 July 2022 the Commission published a notice ('the re-opening notice') re-opening the original investigation concerning imports of electric bicycles originating in the PRC, that led to the adoption of the contested Regulation, insofar as it concerns Giant Electric Vehicle (Kunshan) Co., Ltd and to resume the investigation at the point at which the irregularity occurred ([14]).

(13) The re-opening was limited in scope to the implementation of the judgment of the General Court with regard to Giant.

(14) On 6 July 2022, the Commission also made imports of electric bicycles, originating in the PRC, manufactured by Giant Electric Vehicle (Kunshan) Co., Ltd, subject to registration and instructed national customs authorities to wait until the outcome of the re-examination is published in the *Official Journal of the European Union* before deciding on any claims for reimbursement of the annulled duties ('the registration Regulation') ([15]).

(15) The Commission informed interested parties of the re-opening and invited them to make their views known in writing and to request a hearing within the time-limit set out in the re-opening notice.

(16) One interested party, Giant, requested a hearing within the time-limit set out in the re-opening notice and was granted the opportunity to be heard.

(17) Following final disclosure, both Giant and the EBMA requested hearings and were granted the opportunity to be heard.

(18) No interested party requested a hearing with the Hearing Officer in trade proceedings.

1.4. **Procedural steps for the implementation of the General Court's Judgment**

(19) Following the reopening, the Commission sent information requests to the sampled Union producers and their related trading companies.

(20) Replies to the information requests were received from all the sampled Union producers.

(21) The Commission conducted verification visits pursuant to Article 26 of the basic anti-subsidy Regulation at the premises of the following companies:

— Accell Group (Heerenveen, the Netherlands);

— Prophete GmbH & Co. KG (Rheda-Wiedenbruck, Germany);

— Derby Cycle Holding GmbH (Cloppenburg, Germany);

— Koninklijke Gazelle NV (Dieren, the Netherlands).

([13]) Case T-650/17, Jinan Meide Casting Co., Ltd, ECLI:EU:T:2019:644, paragraphs 333-342.

([14]) 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 (OJ C 260, 6.7.2022, p. 5).

([15]) Commission Implementing Regulation (EU) 2022/1162 of 5 July 2022 making imports of electric bicycles originating in the People's Republic of China subject to registration following the reopening of the investigations in order to implement the judgments of 27 April 2022 in cases T-242/19 and T-243/19, with regard to Implementing Regulation (EU) 2019/73 and Implementing Regulation (EU) 2019/72 (OJ L 179, 6.7.2022, p. 38).

1.5. **Investigation period**

(22) This investigation covers the period from 1 October 2016 to 30 September 2017 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2014 to the end of the investigation period ('the period considered').

2. **COMMENTS FROM INTERESTED PARTIES ON THE REOPENING OF THE INVESTIGATION**

(23) The Commission received comments specific to the reopening of the investigation from Giant and the importer Rad Power Bikes NL.

(24) Giant claimed that pursuant to Article 11(9) of the basic anti-subsidy Regulation, for proceedings initiated pursuant to Article 10(11), an investigation should, whenever possible, be concluded within one year. In any event, such investigations must, in all cases, be concluded within 13 months of initiation, in accordance with the findings made pursuant to Article 13 for undertakings or the findings made pursuant to Article 15 for definitive action. Giant further argued that Article 11.11 of the WTO Agreement on Subsidies and Countervailing Measures ('WTO SCM Agreement') provides that investigations must, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

(25) Giant argued that the mandatory nature of the time limits was confirmed in the context of the WTO SCM Agreement ([16]).

(26) Giant further argued that the Notice of reopening explicitly recognises that the current proceeding is the continuation of the original investigation and since the original anti-subsidy investigation was initiated on 21 December 2017, in order to comply with the mandatory deadline in Article 11(9) of the basic anti-subsidy Regulation, the investigation had to be completed by 20 January 2019. In consequence, they argued, the reopening of the original investigation in July 2022 results in extending the investigation beyond the mandatory time limit for concluding investigations set out in Article 11(9) of the basic anti-subsidy Regulation and is also inconsistent with the time limits set out in Article 11.11 of the WTO SCM Agreement.

(27) The Commission rejected this argument. According to settled case-law relating to the analogous provision in the basic anti-dumping Regulation, the deadline to conclude an original investigation does not apply to situations where a proceeding is reopened following a court judgment. Thus, Article 11(9) covers only the initial procedures and not those procedures that have been reopened following a judgment of annulment or invalidity. The WTO case cited by Giant appears to be irrelevant since it does not put into question that Article 11.11 of the WTO SCM extends beyond original investigations.

(28) Giant also argued that the Commission is not entitled to reopen the original anti-subsidy investigation as regards Giant, as the substantive error found by the General Court not only affected the investigation in relation to Giant, but also the overall injury and causation analyses which relied, at least in part, on the findings in relation to Giant. Giant further argued that in order to comply with the General Court's judgment in case T-243/19, the Commission was not entitled to reopen the original investigation, but should repeal the countervailing measures on e-bikes in so far as Giant was concerned.

(29) Rad Power Bikes NL also argued that the General Court's findings would require the Commission to rescind the measures imposed.

(30) The Commission disagreed with those claims that it would not be possible to reopen an investigation to cure an illegality found by the European Courts. In fact, the General Court found in *Jindal* ([17]) that the Commission can re-open an investigation, resume it at the point at which the illegality occurred, correct the irregularity and re-impose measures during the period of application of the regulation at issue, even in the case of a substantive/methodological error. The Commission also failed to see how any of the WTO provisions or case law cited by Giant would support its assertions in that they do not deal with correction of illegalities after a court case.

([16]) Panel Report, *Mexico – Olive Oil*, paragraphs 7.121 and 7.123.
([17]) Case T-300/16 *Jindal Saw and Jindal Saw Italia* v *Commission*.

(31) Moreover, in this re-opened investigation, as explained in Sections 3 and 4, the Commission has corrected the methodological error, as required by the General Court in its judgement in case T-243/19, by revising the undercutting calculations of Giant. The Commission has also recalculated the injury elimination level of Giant by removing the same methodological error. Given the General Court's conclusion that this issue also affects the overall injury and causality findings, the Commission has revised its analysis of both injury and causality as explained below in Sections 3 and 4. Therefore, the Commission considered that its revised findings fully comply with the General Court's judgement in case T-243/19. Since the revised findings led to the duty level being reduced but not eliminated, it was therefore not necessary to repeal the countervailing measures on e-bikes as far as Giant is concerned. The Commission, therefore, rejected these arguments.

(32) Giant also argued that, should the Commission continue the reopened investigation, it must also correct all other errors challenged by Giant before the General Court. In particular, Giant argued that in the context of the reopened anti-subsidy investigation, the Commission should also address the errors it made with respect to the assessment of subsidies and more specifically: (i) its finding that a subsidy was granted through the GEV's purchase of engines and batteries; (ii) its calculation of the subsidy amount whereby the Commission wrongfully included benefits which were unrelated to e-bikes released for free circulation in the EU; (iii) its finding that the use of bank acceptance notes constitutes a financial contribution within the meaning of Article 3(1) of the basic anti-subsidy Regulation; (iv) its finding relating to the benefit allegedly conferred by the use of bank acceptance notes; (v) its finding relating to the specificity of the alleged subsidy granted through bank acceptance notes, and (vi) its finding that GEV obtained a benefit through the acquisition of land use rights.

(33) The Commission rejected this argument. In the General Court's conclusion in paragraph 117 of the judgement in Case T-243/19, the General Court found that the regulation should be annulled, as far as it concerns Giant, because the methodological error found in the calculation of price undercutting was liable to call into question the legality of the contested Regulation by invalidating the Commission's analysis of injury and causality. The Court did not consider it necessary to examine or assess the merits of any other claims put forward by the applicant. As indicated in recitals (8) and (11), Article 266 TFEU provides that the Institutions must take the necessary measures to comply with the General Court's judgments and the remaining findings and conclusions in the contested Regulation which were not contested, or which were contested but not examined by the General Court, remain fully valid. Therefore, since the scope of the reopened investigation is not to review the entire case, but to implement the specific errors found by the General Court, the Commission did not find it necessary to review the subsidy margin of Giant.

(34) Giant further pointed out that in both the original and the reopened investigations, the Commission had not fully disclosed the information necessary for it to evaluate whether a fair comparison had been made between Giant's export prices and those of the Union industry. Therefore, Giant requested that, in the context of the re-opened investigation, the Commission should disclose relevant information concerning the sales channels of the sampled Union producers.

(35) Although the Commission maintained its position on confidentiality of the specific details of the sales made by the Union industry on the Union market, the Commission considered it appropriate to inform Giant about the following. The four sampled Union producers sold around 46 % of their sales volume through related traders. A total of 10 related traders sold e-bikes to unrelated companies, in addition to the direct sales made by the sampled producers. Therefore, the direct sales represented around 54 % of the Union sales volume.

(36) Giant argued that contrary to what the Commission suggested in its Notice of reopening, the Commission was required to carry out a fair comparison, between the prices of the imported e-bikes and the prices of e-bikes sold by the Union producers on the Union market. Giant argued that, pursuant to Article 8(1) and (2) of the basic anti-subsidy Regulation, there is a positive obligation on the Commission to carry out such a price comparison, which can be between the prices of the imported e-bikes and the Union industry's actual prices, to examine the price impact of the imports concerned. This fair comparison should take into account the correct point of competition of the sales prices concerned. It should also take into account differences in whether such sales were of branded products or on an OEM level.

(37) The Commission took account of the arguments made by Giant and the comments in the General Court's judgment in its revised undercutting, injury, causality and injury elimination analysis and findings in Sections 3 and 4 below.

(38) Giant also pointed out that the registration Regulation explicitly recognised that 'the final liability for payment of anti-dumping and countervailing duties … will emanate from the findings of the re-examination' ([18]) and therefore, according to Giant, it follows that any final liability can only apply to future imports, i.e. products which enter free circulation after the time when such duties enter into force. Giant argued that the above position is supported by the Opinion of the Advocate General in Case C-458/98 (*IPS*) as well as the views expressed in the past by the Commission itself ([19]). Therefore, Giant argued that any recalculated duties could only be imposed with respect to future imports of e-bikes produced by Giant, i.e. e-bikes which will enter free circulation *after* the publication of the Regulations re-imposing the duties. Giant further argued that the re-imposition of recalculated duties with respect to past imports would also be contrary to the nature of the countervailing duties, which are not punitive measures aimed to compensate for past injury suffered by the Union industry but are a means of forestalling future injury ([20]).

(39) The Court of Justice has consistently held that Article 10(1) of the basic anti-dumping Regulation does not preclude the re-imposition of anti-dumping duties on imports that were made during the period of application of the regulations declared to be invalid ([21]). The Commission considers that those findings apply equally to countervailing duties since also Article 16 of the basic anti-subsidy Regulation currently in force does not preclude acts from re-imposing countervailing duties on imports that were made during the period of application of the regulations declared to be invalid. Consequently, as explained in recital (14) of the registration Regulation, the resumption of the administrative procedure and the eventual re-imposition of duties cannot be considered as contrary to the rule of non-retroactivity ([22]). Consequently, Giant's claim that the duties cannot be re-imposed on imports which entered free circulation prior to the publication of the (future) Commission Implementing Regulation was rejected.

(40) Rad Power Bikes NL commented that it imported products from other Chinese exporters, which were similar to those imported from Giant and that these imports were subject to duties which were calculated and imposed on the basis of the relevant injury elimination level. It therefore argued that when recalculating the applicable duties for Giant, the Commission must also revise and reduce the applicable duty rates for the other Chinese exporters subject to the duties, both for those granted individual duty rates and for the other non-sampled cooperating Chinese exporters.

(41) As explained in recital (33), the scope of the reopened investigation is not to review the entire findings of the contested Regulation, but to implement the specific findings made by the General Court, in so far as they concern Giant. The General Court did not annul the contested Regulation as regards other exporting producers. Therefore, the Commission did not find it necessary or appropriate to revise its original findings for the other Chinese exporters subject to the duties. The Commission, therefore, rejected that argument.

(42) In their comments following the final disclosure Giant reiterated its claims regarding the legality of the re-imposition of Giant's revised countervailing duties retroactively as stated in recital (38). However, as no new arguments were raised, the rejection of its claim is confirmed.

([18]) Registration Regulation, recital 22.
([19]) Case C-458/98 P, *Industrie des poudres sphériques* v *Council*, Opinion of Advocate General Cosmas, ECLI:EU:C:2000:138, paragraph 77.
([20]) Case C-458/98 P, *Industrie des poudres sphériques* v *Council*, Opinion of Advocate General Cosmas, ECLI:EU:C:2000:138, paragraph 76.
([21]) C-256/16 Deichmann, EU:C:2018:187, paragraphs 77 and 78 and C-612/16, *C & J Clark International Ltd* v *Commissioners for Her Majesty's Revenue & Customs*, judgment of 19 June 2019, paragraph 57.
([22]) Case C-256/16 *Deichmann SE* v *Hauptzollamt Duisburg*, paragraph 79 and Case C-612/16, *C & J Clark International Ltd* v *Commissioners for Her Majesty's Revenue & Customs*, judgment of 19 June 2019, paragraph 58.

3. RE-EXAMINATION OF GIANT'S UNDERCUTTING MARGIN AND THE INJURY FINDINGS

3.1. Determination of undercutting with respect to Giant

(43) As noted in recital (3), the General Court found that since the Commission relied on the calculation of price undercutting in the context of Article 8(2) of the basic anti-subsidy Regulation, by taking into account in relation to the prices of Union producers certain elements which it had deducted from Giant's prices (or were not present as regards OEM sales), the Commission did not make a fair comparison when calculating Giant's price undercutting margin. Therefore, the importance or existence of such undercutting had not been properly established.

(44) As explained in recital (610) of the contested Regulation, the Commission determined the price undercutting during the investigation period by comparing:

— the weighted average sales prices per product type of the four sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and

— the corresponding weighted average prices per product type of the imports from the sampled exporting producers in the PRC to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for customs duties of 6 % and importation costs; as mentioned at recitals (616) to (618) of the contested Regulation, where sales were made via related traders, the export prices were adjusted in accordance with Article 2(9) of the basic anti-dumping Regulation by analogy. The selling, general and administrative ('SG&A') expenses of the related trader and the profit of a sample of unrelated importers (9 % of the sales price) were deducted.

(45) In order to ensure a fair comparison between Giant's prices and the prices of the Union producers, the Commission recalculated the undercutting margin of Giant by adjusting the weighted average sales prices of the sampled Union producers referred to in recital (44) in two respects.

(46) Firstly, where sales were made by the sampled Union producers via related traders, a deduction was made from the sales price to independent customers (of all types) to account for the actual SG&A expenses of the trader and profits (9 %). For one Union producer, a particular arrangement similar to tolling was identified. In this case, where the costs of the related trader concerned production activities, those costs were not deducted. The profit level used in this calculation is the same profit level established for the application of Article 2(9) of the basic anti-dumping Regulation by analogy mentioned in recitals (616) to (618) of the contested Regulation to the sampled exporting producers, and which was calculated from the cooperating unrelated importers.

(47) Secondly, where it was necessary to compare prices at an OEM level, a further deduction of 2,3 % was made to the relevant Union industry prices to account for design, marketing and research and development (R & D) costs. This deduction was established as outlined in recital (771) of the contested Regulation.

(48) No further adjustment was deemed necessary for the level of trade in the sense of type of customer because the investigation found that there is no consistent and distinct price difference between sales to traders and retailers in the Union.

(49) In their comments following final disclosure Giant argued that the comparison between its export prices and those of the Union industry should be made at the point of the first sale to an unrelated customer, without adjustments for SG&A and profit on both sides of the calculation. Giant claimed that this approach was followed by the Commission when implementing the General Court's judgment in the Jindal case. Giant argued that by using this method a fair comparison would be achieved.

(50) The Commission recalled that the comparison between the exporting producer's and the Union industry's prices in the Jindal case was made at the level of unrelated customers due to the particular circumstances in that case, where the market was geographically divided and competition took place at the level of tenders. Each case is implemented on the basis of its specific facts and circumstances in light of the particular judgment. Giant has failed to explain why the circumstances in this case would warrant the same approach as in the Jindal case and why the approach followed by the Commission is inconsistent with the Court's judgment. The Commission further noted that the export prices in the original investigation were adjusted, where appropriate, for SG&A of the related traders and a notional profit, in accordance with the Commission's practice of applying the same methodology as under Article 2(9) of the basic anti-dumping Regulation by analogy. This approach was explicitly confirmed by the Court of Justice in the Hansol Judgment ([23]), which highlighted that it falls within the broad discretion the Commission enjoys in the application of Article 3(2) of the basic anti-dumping Regulation. The claim was, therefore, rejected.

([23]) Judgment of 12 May 2022, C-260/20 P, Hansol, paragraph 105.

(51) Giant further argued that, in the alternative to the claim described in recital (49), for the Union industry's sales made directly to retailers, the Commission should make additional deductions from the Union producer's sales prices for SG&A and profits corresponding to the internal sales departments.

(52) However, the Commission recalled that the approach outlined in recitals (46) to (48) ensured a fair comparison by adjusting the export prices and those of the Union industry in the same manner for the same sales channels by using the same methodology. This meant that both, the export prices and the Union industry's sales prices were adjusted for SG&A and profit if sales were made via related traders, whereas direct sales were not adjusted. Adjusting the Union industry direct sales prices as suggested by Giant would therefore create an asymmetry to the disadvantage of the Union industry in relation to the export prices from Giant for their corresponding sales, because no such deductions were made to the sales of Giant's producing entity in China for direct sales. This would also be contrary to the judgment of the General Court for the same reasons of asymmetry the Court relied on when it ruled in favour of Giant. In addition, the Commission noted that further adjustments in respect of design, marketing as well as research and development ('R&D') costs and the level of trade have already been made, where appropriate, as explained at recitals (47) and (48), to ensure full symmetry between the respective situations of Giant and the Union industry, in compliance with the judgment. Therefore, this claim was rejected.

(53) Giant also claimed that its OEM sales should be compared with Union industry sales prices which had been subject to SG&A and profit deductions where appropriate.

(54) The Commission confirmed that this approach was followed.

(55) In their comments following the final disclosure, the Union industry argued that the disclosure of the calculations of revised Union industry prices was incorrect because of the methodology employed to incorporate credit notes. The Union producers claimed that this affected both the calculation of net prices and the adjustments of SG&A and profit.

(56) The Commission evaluated whether the revised methodology, suggested by the sampled Union producers, had any impact on the undercutting and underselling margins. As a consequence, the Commission revised its calculations, which had, however no material impact on those margins. The revised calculations were disclosed to the sampled Union producers and the fact that calculations were revised was also disclosed to Giant. These parties were granted a period to comment.

(57) In its comments of 13 February 2023 the Union industry pointed out an error in the calculations of the credit notes for one Union producer. Following the correction of this error the undercutting margin of Giant was 11,5 %. The new calculations were disclosed to all interested parties on 14 February 2023 and the parties were granted a further period of time to comment. No further comments were received.

(58) Also in its comments of 13 February 2023 the Union industry claimed that, in its treatment of credit notes, the Commission should have only calculated the SG&A and profit amounts based on the EXW value of each sale transaction. However, bearing in mind the SG&A was calculated per e-bike and the profit margin was calculated on the invoice value, this claim was rejected.

(59) The Union industry claimed during the hearing that for all sales where the Commission deducted the profit of the related importer from the Union industry sales prices, the profit rate of 9 % was too high as it was much higher than the target profit established in the original investigation (4,3 %). The claim further explained that the 9 % profit rate was not justified by 'any information on the case file' of the reopened investigation. Giant made a comment to rebut this claim stating that it was not appropriate to change the profit rate applied because there were no grounds to overturn the notional profit rate calculated in the original investigation.

(60) The rate for target profit and a notional rate for the profit of a related importer were both set in the original investigation (based on data on the case file) and were not scrutinised by the General Court or mentioned in the Judgment which led to the reopening of this investigation. Therefore, the Commission is not bound to re-investigate this matter in the current implementation. In addition, the target profit (i.e. the profit achievable by the Union industry for domestic sales under normal conditions of competition) and the profit of a trader (a notional amount covering profit normally borne by an importer) are two separate concepts and are governed by different provisions of the basic Regulation. A direct comparison between the two concepts is therefore inappropriate and irrelevant to the setting of either profit margin. This claim was therefore rejected.

(61) The Union industry also claimed that the SG&A and profit deduction was not warranted because of the relationship between two of the Union producers and their related traders. In particular, it was stated that no SG&A and profit should be deducted from the sales price of the sales made via certain traders as the producer was operating under a tolling agreement. The Union industry supplied agreements between the relevant production and sales companies to support their claim.

(62) Regarding the producer that is also mentioned in recital (61), it had a particular arrangement 'similar to tolling'. The Commission reviewed the exact terms of this arrangement and concluded that a contract manufacturing system was operational, rather than a tolling agreement, and that both the producer and the related trader had SG&A costs. The agreement also demonstrated a contractual relationship between related parties. The Commission maintained therefore that it was not appropriate to fully exclude SG&A and profit deductions from this producer's sales prices via related parties. The Commission did take into account SG&A costs which were associated to costs incurred typically at the related trader and not those for functions normally associated with a producer. Furthermore, the producer concerned had SG&A costs relating to its direct sales. The Commission therefore concluded that SG&A and profit should be deducted from the sales price of the related trader and rejected this claim.

(63) For the second producer, the Union industry also submitted an agreement between the producer and the related trader to support its claim that the Commission should not deduct SG&A and profit from the sales prices of its related traders. Giant submitted a rebuttal to this argument stating that the approach for the Union industry should be the same as the approach applied to Giant.

(64) In examining this matter the Commission noted that the agreement submitted for this second producer was also not a tolling agreement, but a manufacturing agreement between related parties, defining the roles of the producer and the related trader and included other clauses such as the methodology for the calculation of transfer prices. The agreement did not confirm that during the IP of the original investigation e-bikes were manufactured under a tolling agreement, or any other arrangement which would mean that it was not appropriate to deduct SG&A costs from the sales prices of the related traders. In fact the agreement demonstrated a contractual relationship between related parties. A related trader also acted as a producer, and it sold e-bikes directly to the market as well as via other related traders. This claim was, therefore, rejected.

(65) The Union industry also claimed that the sales of one Union producer should be adjusted upwards or not taken into account in the price comparison because they related to sales to supermarket chains and online platforms, rather than other types of retail customers.

(66) The Commission did not consider it appropriate to exclude such sales because the sample of Union producers selected in the original investigation was deemed to be representative of the Union industry. In addition, in recital (48) it was confirmed that further adjustments to prices, beyond those already made, were not appropriate for different types of customers.

(67) The Union industry claimed that its OEM sales should not be compared with the export sales unless an adjustment was made to its prices to ensure a fair comparison.

(68) The Commission noted that the volume of OEM sales by the Union industry was very low and the majority of such sales were not used in the undercutting and underselling calculations because there was no match to an imported type. Therefore, it was concluded that an adjustment for the Union industry's OEM sales should not be considered further as the issue would have no material impact on the undercutting and underselling margins.

(69) Consequently, the revised undercutting margin during the original investigation period for Giant of 11,5 % is confirmed.

3.2. **Determination of undercutting with respect to other Chinese exporters**

(70) In case T-243/19, the General Court noted that the methodological error found, which meant that the Commission did not make a fair comparison in the calculation of Giant's undercutting margin, is likely also to have a bearing on the calculation of price undercutting established in respect of the other sampled exporting producers ([24]).

(71) In order to ensure a fair comparison between the prices of the other sampled exporting producers and the prices of the Union producers, the Commission also recalculated the undercutting margins of the other sampled exporting producers, taking into account the issues referred to in recitals (44) to (47).

(72) The result of the comparisons showed an average undercutting margin for imports from the sampled exporters (including Giant) of 17,1 %. Bearing in mind the revision to the undercutting margin of Giant explained at recital (56) above this figure was finally confirmed at 17,0 %.

3.3. **Revised conclusion on injury**

(73) The Commission noted that following the correction of the methodological error relating to the calculation of price undercutting identified by the General Court in case T-243/19 ([25]), the levels by which Chinese imports have undercut the Union industry's prices have decreased to 17,0 % on average as mentioned in recital (72). Although the levels of undercutting have decreased, there has still clearly been significant price undercutting by the dumped imports from the PRC.

(74) The Commission's findings with regard to the other injury indicators as mentioned in recitals (681) to (693) of the contested Regulation, remain fully valid.

(75) Taking into account the revised significant undercutting margins referred to in recital (73) and the evidence of the negative development of nearly all injury indicators explained in recitals (630) to (680) of the contested Regulation, the Commission concluded that the Union industry suffered material injury within the meaning of Article 8(4) of the basic anti-subsidy Regulation.

4. **CAUSATION**

(76) The Commission further examined whether there would still be a causal link between the dumped imports and the injury suffered by the Union producers, in view of the revised undercutting margins for imports from the sampled Chinese exporting producers.

(77) Notwithstanding the reduction in the undercutting margin for all sampled Chinese exporters, this did not alter the fact that imports from the sampled Chinese exporters were undercutting the Union industry's sales prices to a significant extent. Thus, the revised undercutting margins did not alter the original finding made by the Commission about the existence of the causal link between the injury suffered by the Union producers and the subsidised imports from the PRC in recital (718) of the contested Regulation.

(78) The revised undercutting margins also did not alter the analysis and findings concerning other causes of injury as presented in Section 5.2 of the contested Regulation.

([24]) Case T-243/19, *Giant Electric Vehicle Kunshan* v *Commission*, ECLI:EU:T:2022:259, paragraph 113.
([25]) Case T-243/19, *Giant Electric Vehicle Kunshan* v *Commission*, ECLI:EU:T:2022:259, paragraph 82.

(79) In the absence of any further comments, the Commission concluded that the material injury to the Union industry was caused by the dumped imports from the PRC and the other factors, considered individually or collectively, did not attenuate the causal link between the injury and the subsidised imports.

5. RE-EXAMINATION OF THE INJURY MARGIN WITH RESPECT TO GIANT

(80) Bearing in mind the comments of the General Court in paragraph (115) of the Judgement in case T-243/19, the Commission also recalculated the injury elimination level of Giant.

(81) In the original investigation the Commission determined the injury elimination level during the investigation period by comparing:

— the weighted average target prices per product type of the four sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level;

— the corresponding weighted average prices per product type of the imports from the sampled exporting producers in the PRC to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for customs duties of 6 % and importation costs; where sales were made via related traders, the export prices were adjusted in accordance with Article 2(9) of the basic anti-dumping Regulation by analogy. The SG&A costs of the related trader and the profit of a sample of unrelated importers (9 % of the sales price) were deducted; and

— where the export prices related to OEM sales, the Union industry target prices were reduced by 2,3 % reflecting the R & D and marketing costs of the sampled Union industry producers, which were not reflected in prices of OEM sales of Giant.

(82) In order to ensure a fair comparison between Giant's prices and the prices of the Union producers, the Commission recalculated the injury elimination level of Giant by adjusting the weighted average target prices of the sampled Union producers referred to in recital (81).

(83) Where sales were made by the sampled Union producers via related traders, a deduction was made from the price to independent customers to account for the actual SG&A expenses of the traders and profits (9 %). The SG&A amount varied according to the trader concerned. Where the costs of the related trader concerned did not relate to the marketing of products, but to production activities (such as production planning and sourcing of raw materials), these costs were not deducted because they did not relate to the normal functions of a related trader marketing the products in the Union market. The profit level used in this calculation is the profit level established in the original investigation for the cooperating unrelated importers.

(84) No further adjustment was deemed necessary to account for the OEM/branding level as this adjustment, amounting to 2,3 %, had already been made.

(85) No further adjustment was deemed necessary for the level of trade in the sense of type of customer because the investigation found that there is no consistent and distinct price difference between sales to traders and retailers in the Union.

(86) The claims made by both Giant and the Union industry in their comments to final disclosure in respect of the undercutting calculation at Section 3 apply equally to the underselling margins in this section.

(87) In the light of the treatment of the comments raised by interested parties the revised underselling margin for Giant is 13,8 %.

6. DEFINITIVE COUNTERVAILING MEASURES

6.1. Injury elimination level

(88) On the basis of the conclusions reached by the Commission on subsidisation, injury and causation in this re-opened anti-subsidy investigation, a definitive countervailing duty shall be re-imposed on imports of the product concerned originating in China and manufactured by Giant.

(89) Given that the re-established injury margin for Giant (13,8 %) is higher than the subsidy amount (3,9 %), in accordance with the applicable rules in the original investigation, the countervailing duty rate should be set at the level of the amount of subsidisation. Accordingly, the re-imposed countervailing duty rate for Giant is as follows:

Definitive countervailing duty

Company	Amount of subsidisation	Injury elimination level	Countervailing duty rate
Giant Electric Vehicle (Kunshan) Co., Ltd	3,9 %	13,8 %	3,9 %

(90) The level of countervailing duty resulting from this investigation, which did not change compared to the level of countervailing duties imposed pursuant to the contested Regulation, applies without any temporal interruption since the entry into force of the contested Regulation (namely, as of 19 January 2019 onwards). Customs authorities are instructed to collect the appropriate amount on imports concerning Giant Electric Vehicle (Kunshan) Co., Ltd.

(91) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to re-impose a definitive countervailing duty on imports of e-bikes from the PRC from the exporting producer Giant Electric Vehicle (Kunshan) Co., Ltd.

(92) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([26]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(93) The measures provided for in this regulation are in accordance with the opinion of the Committee referred to in Article 25(1) of the basic anti-subsidy Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed 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 manufactured by Giant Electric Vehicle (Kunshan) Co., Ltd as of 19 January 2019.

2. The rates of the definitive countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and manufactured by Giant Electric Vehicle (Kunshan) Co., Ltd shall be 3,9 % (TARIC additional code C383).

Article 2

The definitive countervailing duty imposed by Article 1 shall also be collected on imports registered in accordance with Article 1 of Implementing Regulation (EU) 2022/1162 making imports of electric bicycles originating in the People's Republic of China subject to registration following the reopening of the investigations in order to implement the judgments of 27 April 2022 in cases T-242/19 and T-243/19, with regard to Implementing Regulation (EU) 2019/73 and Implementing Regulation (EU) 2019/72.

([26]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

Article 3

Customs authorities are directed to discontinue the registration of imports, established in accordance with Article 1(1) of Implementing Regulation (EU) 2022/1162, which is hereby repealed.

Article 4

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

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

Done at Brussels, 17 March 2023.

For the Commission
The President
Ursula VON DER LEYEN