

December 17, 2018

VIA REGULATIONS.GOV

PUBLIC DOCUMENT

The Honorable Robert E. Lighthizer
United States Trade Representative
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Re: **Section 301 Investigation: China's Acts, Policies, and Practices Related to
Technology Transfer, Intellectual Property and Innovation**
Docket No. USTR-2018-0032
**HTSUS No. 8711.60.0000 (Motorcycles (incl. mopeds) and cycles, w/electric
motors for propulsion)**
Exclusion Request for E-Bikes

Dear Ambassador Lighthizer:

The Bicycle Product Suppliers Association ("BPSA") and the PeopleForBikes Coalition ("PFB") respectfully submit this exclusion request in the above-referenced matter.¹ These comments are submitted in response to the notice published on September 18, 2018,² which requires that comments be submitted no later than December 18, 2018. Accordingly, these comments are timely.

¹ These comments accompany the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation – Form to Request Exclusion of Product ("Exclusion Request Form"), which was submitted electronically via www.regulations.gov to Docket No. USTR-2018-0032.

² *Procedures To Consider Requests For Exclusion Of Particular Products From The Additional Action Pursuant To Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 447236 (September 18, 2018) ("September Notice") (establishing a process by which U.S. stakeholders may request that particular products classified within a tariff heading subject to additional 25 percent duties be excluded from such additional duties); *see also*, *Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Act, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 28710 (June 20, 2018) (proposed \$16 billion action) and *Notice of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 47236 (Aug. 16, 2018) (final \$16 billion action subjecting imports from China pursuant to HTSUS No. 8711.60.0000 to an additional 25 percent *ad valorem* duty).

A. The Bicycle Product Suppliers Association and the PeopleForBikes Coalition

The BPSA and PFB are 501(c)(6) trade associations that represent manufacturers and suppliers of bicycles, parts, and accessories in the United States. The BPSA has been representing the needs of bicycle manufacturers and suppliers in the United States for 105 years. Founded in 1999, PFB is coalition of bicycle companies that work together to support a stronger bicycle industry and safer places for their customers to ride. Our members include brands and companies of all sizes.

Many of our members specialize in the production of electric bicycles (“e-bikes”) as their primary product, and almost every company in our industry is examining opportunities to compete in this critical market segment. Together, both BPSA and PFB have worked together since 2014 to improve policies for e-bikes and to improve clarity surrounding their regulation for manufacturers, suppliers, retailers, and riders. E-bikes are evolving quickly into one of our most important market segments. Significantly, they are the fastest growing segment of U.S. sales for our industry, buoying a reduced volume of sales in other market segments. E-bike purchases are replacing sales in declining market segments, such as road bikes, with a high value and healthy margin product that is ensuring the profitability of America’s network of bikes shops – the majority of which are small businesses.

B. Exclusion Request

The BPSA and PFB oppose the imposition of additional duties on e-bikes, which are classified within HTSUS tariff subheading 8711.60.0000. The relevant tariff subheading is a broad basket category that includes Motorcycles (incl. mopeds) and cycles, w/electric motors for propulsion. E-bikes account for a small component of this tariff subheading, whether examined by import quantity or value. In short, e-bikes merit an exclusion from the imposition of a higher tariff because: (i) U.S. Customs and Border Protection (“CBP”) would have no difficulty administering the exclusion; (ii) e-bikes are overwhelmingly produced in China and shifting the supply chain to third country markets would not satisfy U.S. demand in this increasingly important market segment; (iii) the additional 25 percent in duties is causing severe economic harm to members of the BPSA and PFB as well as U.S. retailers – most of whom are small businesses – and consumers; and (iv) e-bikes are not strategically important or related to “Made in China 2025” or other Chinese industrial programs.

C. The BPSA Supports The Administration’s Goals But Respectfully Urges Removing E-Bikes From Any Increased Tariff

Like the administration and other U.S. businesses that innovate and seek to protect their intellectual property assets, the BPSA and PFB are concerned about China’s growing use of trade and investment policies which place innovative U.S. companies at a competitive disadvantage. While the BPSA and PFB strongly support efforts to address such discriminatory practices, our members

do not support the imposition of an additional 25 percent tariff on e-bikes. If implemented, this measure would negatively impact U.S. businesses and consumers immediately yet have no discernable impact on encouraging China to change its practices. For the reasons stated herein, we respectfully request that e-bikes be removed from any increase in tariffs.

D. Discussion

These comments identify the product at issue, *i.e.*, e-bikes, and why the BPSA and PFB are seeking the exclusion of e-bikes from the additional 25 percent tariff.³

1. Product Identification

- a. Identification Of The Particular Product In Terms Of The Physical Characteristics (e.g., Dimensions, Material Composition, Or Other Characteristics) That Distinguish It From Other Products Within The Covered 8-Digit Subheading⁴

The BPSA and PFB request that the Office of the U.S. Trade Representative (“USTR”) exclude low-speed electric bicycles or “e-bikes,” which are identified by the Consumer Product Safety Commission (“CPSC”) as:⁵

a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

- b. The 10-Digit Subheading Of The HTSUS Applicable To The Particular Product Requested For Exclusion⁶

The e-bikes enter the United States under tariff subheading HTSUS No. 8711.60.0000 (Motorcycles (incl. mopeds) and cycles, w/electric motors for propulsion).

³ See September Notice at 47236-47237 (Section B.1 – Requests for Exclusion of Particular Products) (noting the product identification and factors to address in requesting an exclusion).

⁴ See response to Question 2 of the Exclusion Request Form.

⁵ 15 U.S.C. § 2085(b), as amended.

⁶ See response to Question 3 of the Exclusion Request Form.

c. Information On The Ability Of U.S. Customs And Border Protection To Administer The Exclusion

In practice, e-bikes are easily distinguished from the other goods categorized under HTSUS No. 8711.60.0000, which is a broad basket category that includes e-bikes as well motorcycles and mopeds that have electric motors for propulsion. In contrast to these other goods identified under this HTSUS subheading, e-bikes are nearly identical in appearance to standard human-powered bicycles, and they are typically identified as a type of bicycle on any relevant packaging or documentation. Unlike any other product in this HTSUS subheading, imported e-bikes also come with a certificate of compliance stating that they meet current Consumer Product Safety Commission requirements for bicycles (listed at 16 C.F.R. § 1512) as required by federal law.⁷ By contrast, motorcycles and other products are subject to the National Highway Traffic Safety Administration (“NHTSA”) vehicle standards.

Because the particular products for which the BPSA and PFB seek an exclusion are clearly defined, are classified under tariff subheading 8711.60.0000, and can be easily inspected by U.S. Customs and Border Protection (“CBP”) agents at the border, CBP should have no difficulty in administering the exclusions.

d. Annual Quantity and Value of the Chinese-Origin Products

The annual quantities and values of the Chinese-origin e-bikes that members of the BPSA and PFB purchased⁸ in each of the last three years is provided at Question 10 of the Exclusion Request Form.⁹

⁷ See 49 U.S.C. § 30102 (transportation definitions noting Pub. L. 107–319, §2, Dec. 4, 2002, 116 Stat. 2776, provided that: “For purposes of motor vehicle safety standards issued and enforced pursuant to chapter 301 of title 49, United States Code, a low-speed electric bicycle (as defined in section 38(b) of the Consumer Product Safety Act [15 U.S.C. 2085(b)]) shall not be considered a motor vehicle as defined by section 30102[(a)](6) [now 30102(a)(7)] of title 49, United States Code.”).

⁸ Because the Exclusion Request Form uses the word “purchased,” the BPSA and PFB use the same word in this submission. A more accurate description would be the annual quantities and values of the Chinese-origin e-bikes that members of the BPSA and PFB imported in each of the last three years.

⁹ The figures provided are based on the member data supplied by those BPSA and PFB members who responded to the survey. The BPSA and PFB understand that these data are representative of the industry.

e. The Percentage Of The Total Gross Sales In 2017 That Sales Of The Chinese-Origin Product Accounted For¹⁰

The response in Question 11a is the BPSA and PFB's best estimation based on available data. The BPSA and PFB understand this question to be requesting data regarding members' total sales across all bicycle categories rather than just the e-bike category. Members did not provide overall sales figures to the industry associations, so the BPSA and PFB were able only to provide an estimate in response to Question 11a, which is consistent with the September Notice.¹¹ The BPSA and PFB understand that the response provided is representative of the industry.

The estimate submitted on the Exclusion Request Form is based on the following calculations and assumptions: (1) currently e-bikes account for roughly 10 percent of the bicycle industry's sales in dollars;¹² (2) the BPSA and PFB understand that total sales of their members are in line with these industry figures; and, (3) BPSA and PFB members report importing 78 percent of their e-bike units from China during calendar year 2017. The combination of the industry data and the data reported by BPSA and PFB members result in the estimate that total sales dollars derived from Chinese-origin e-bikes sales is roughly 7.8 percent.¹³

2. Rationale for the Requested Exclusion

a. Whether The Particular Product Is Available Only From China

E-bikes are available primarily from China, i.e., over 75% of imports by BPSA and PFB members who responded to the BPSA and PFB survey report their imports into the United States are from China – 88% in 2015, 78% in 2016, and 78% in 2017.¹⁴ Of those reporting, in 2017, there were 47,805 units imported into the United States from China, whereas 13,590 units were imported from somewhere other than China. Of these third country imports, the overwhelming majority were imported from Taiwan, i.e., roughly 84% of the non-Chinese-origin product or 11,410 units. Germany and Thailand were the next largest markets that produced e-bikes for export to the United States (at roughly 9% or 1,203 units and 4% or 600 units, respectively). In short, members report

¹⁰ See response to Question 11 of the Exclusion Request Form.

¹¹ See September Notice at 47237.

¹² "E-bikes see strong sell-in and sell-through in US market," *Bicycle Retailer & Industry News* dated August 15, 2018 at 15 (industry magazine containing special report on e-bike sales).

¹³ The percent of total sales that Chinese-origin e-bikes account for is significantly higher for some individual members whose companies exclusively supply e-bikes or predominantly supply e-bikes and who source the overwhelming proportion of their products from China.

¹⁴ The figures provided are based on the member data supplied by those BPSA and PFB members who responded to the survey. The BPSA and PFB understand that these data are representative of the industry.

that the Taiwanese market has limited capacity to increase production and other third country markets do not have the ability to cost-effectively ramp up production in the near-term to handle a full shift in production from China. Only one BPSA member reported any domestic production, which was likely assembly and certainly *de minimus*, i.e., 25 units in 2017 and none for 2016 or 2015.¹⁵

b. Whether The Imposition Of Additional Duties On The Particular Product Would Cause Severe Economic Harm To The Requestor Or Other U.S. Interests

Additional duties on e-bikes would cause severe economic harm to BPSA and PFB members, the retailers that sell their products, and the customers that purchase e-bikes. BPSA and PFB member companies have no real viable domestic or third-country alternative to Chinese manufactured e-bikes. As explained above, the BPSA and PFB members who agreed to share data for this submission confirm that over 75 percent of the e-bikes imported into the United States are from China and there is no viable opportunity to increase production from alternative third country market sources or from those in the United States in quantities that would satisfy demand in the U.S. market.¹⁶ This means that the BPSA and PFB members must absorb the additional 25 percent in duties. The increase in duties would result in a concomitant decrease in sales. This would cause severe economic harm because of the significant importance of the e-bike segment of the market to the industry.

Between 2016 and 2018, there has been a steady decline in the total number of bicycles sold in nearly every market segment.¹⁷ Kids bicycle imports have decreased from 4,058,100 to 3,826,715 between 2016 and 2018.¹⁸ 24 inch bicycles (a market segment similar to 20 inch bicycles), has dropped from 1,237,536 to 1,065,595.¹⁹ The same is true for the mountain bike/comfort and road bike segments, which have seen drops from 3,803,934 to 3,389,718 and 1,317,977 to 1,123,943, respectively.²⁰ The only market segment where there is an increase in unit sales between 2016

¹⁵ Because 25 units were likely assembled in the United States as reported in response to the internal BPSA and PFB survey the response to Question 8 of the Exclusion Request Form is “yes.”

¹⁶ Uber’s submission in response to the September Notice notes that “In 2017, 96 percent of all electric bicycles imported into the United States were produced in China.”

¹⁷ The exception is 20 inch bicycles, which includes kids and BMX bikes, where the numbers have remained relatively flat over the period, i.e., 2,516,011 (2016), 2,446,833 (2017), and 2,546,330 (2018). “US Bicycle Imports Through September 2018 Year to Date,” *Bicycle Retailer & Industry News* dated December 1, 2018 at 15 (industry magazine containing chart highlighting relevant data).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

and 2018 is in the e-bike category,²¹ where imports have sky-rocketed from 40,477 (2016) to 142,179 (2017) to 226,295 (in 2018).²² E-bikes also offer a higher value product with a larger profit margin, and the mom-and-pop specialty retail shops – the neighborhood bike shop – are increasingly depending on such sales to buoy the decreased sales and profit margins of all other market segments. Subjecting e-bikes to an additional 25 percent duty will have a direct and negative impact not only on the BPSA and PFB members but also the small- and medium-sized businesses that are depending on these sales to help them make ends meet. E-bike sales are critical to the health and profitability of these businesses. Such sales accounted for 1 percent of sales dollars at specialty bicycle retailers in 2016 and 5.7 percent in 2017.²³ The BPSA and PFB believe this figure will meet or exceed 10 percent in 2018 and – absent additional, stifling tariffs of 25 percent – enjoy continued, sustained growth for the next several years. For these reasons, imposing additional duties on this particular product would cause severe economic harm to the BPSA and PFB as well as U.S. small- and medium-sized business.²⁴

c. Whether the Particular Product Is Strategically Important or Related to "Made in China 2025" or Other Chinese Industrial Programs

E-bikes are not strategically important or related to "Made in China 2025" or other Chinese industrial programs.²⁵ Bicycles do not represent industrially significant technology. E-bikes

²¹ The e-bike category is listed as "other" on the *Bicycle Retailer* chart. This category includes recombinaut bikes, unicycles, and tricycles, although e-bikes account for the vast majority of such sales.

²² *Bicycle Retailer & Industry News* dated December 1, 2018 at 15 (industry magazine containing chart highlighting relevant data). The explosion of e-bike sales is even greater than reported here as the figure for 2018 is understated – the table only tracks imports through September 2018, *i.e.*, the important Q4 numbers are not included, which will include holiday shopping sales.

²³ "E-bikes break through in stormy year," *Bicycle Retailer & Industry News* dated July 15, 2017 at 1, 16 (industry magazine containing special report on e-bike sales).

²⁴ U.S. consumers would also be adversely affected by the measure. Today many consumers are trying to take advantage of public transit options. E-bikes help busy commuters cover the crucial "last mile" (as it is known in the industry) in the public transportation equation. As many homes and business are close to public transit yet just far enough away to make its use affordable and convenient, public transit systems work hard to ensure that commuters can move efficiently from the standard transit lines to their home or work destination. E-bikes are an important tool in extending the reach of public transportation options and closing the last mile gap. Imposing additional duties on e-bikes would exacerbate to the last mile problem rather than help to constructively solve it. Moreover, an increasing number of bikeshare systems are adding e-bikes to their fleets, which is increasing bikeshare use by an estimated threefold factor. Bikeshare is the ultimate last mile solution and these tariffs are already showing a significant negative impact on bikeshare efforts.

²⁵ See Findings of the Investigation Into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974 published by the Office of the United States Trade Representative dated March 22, 2018 (the "USTR's Section 301 Findings") at 14 n.67 (explaining that "Made in China 2025" targets the following industries for promotion

merely add a motor to the bicycle. The standard electric motor produces less than 750 watts (1 h.p.). The maximum speed is less than 20 mph on a paved level surface when powered solely by such a motor while ridden by an operator who weighs 170 pounds.²⁶ Moreover, e-bikes are regulated as consumer products under the Consumer Product Safety Act and are subject to the same regulations that govern traditional, human-powered bicycles. Accordingly, e-bikes are governed by the bicycle safety standards set forth in 16 C.F.R. Part 1512. This is in sharp contrast to more powerful vehicles, such as electric mopeds and electric motorcycles, which also fall under HTSUS 8711.60.0000 but which are subject to the NHTSA vehicle standards.²⁷ This distinguishes them, for instance, as being classified as “new energy vehicles” like all electric or other non-fossil fuel powered vehicles. For these reasons, e-bikes are not strategically important or related to “Made in China 2025” or other Chinese industrial programs, and e-bikes do not represent industrially significant technology.

and development: (1) advanced information technology; robotics and automated machine tools; (3) aircraft and aircraft components; (4) marine vessels and marine engineering equipment; (5) advanced rail equipment; (6) new energy vehicles; (7) electrical generation and transmission equipment; (8) agricultural machinery and equipment; (9) new materials; and (10) pharmaceuticals and advanced medical devices); *see also*, Update Concerning China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation dated November 20, 2018 (the “**USTR’s Section 301 Update**”) at 7 n.22 (highlighting the industrial sectors that contribute to or benefit from “Made in China 2025” as aerospace, information and communications technology, robotics, industrial machinery, new materials, and automobiles). There is no allegation in USTR’s Section 301 Findings or USTR’s Section 301 Update that e-bikes have benefitted from the restrictive practices that pervade the industries highlighted by the “Made in China 2025” program or that U.S. e-bike importers has suffered unauthorized computer intrusions.

²⁶ See 15 U.S.C. § 2085(b), as amended.

²⁷ See 49 U.S.C. § 30102 (transportation definitions noting Pub. L. 107–319, §2, Dec. 4, 2002, 116 Stat. 2776, provided that: “For purposes of motor vehicle safety standards issued and enforced pursuant to chapter 301 of title 49, United States Code, a low-speed electric bicycle (as defined in section 38(b) of the Consumer Product Safety Act [15 U.S.C. 2085(b)]) shall not be considered a motor vehicle as defined by section 30102[(a)](6) [now 30102(a)(7)] of title 49, United States Code.”).

The Honorable Robert E. Lighthizer
December 17, 2018
Page 9

PUBLIC DOCUMENT

E. Conclusion

For the foregoing reasons, the BPSA and PFB respectfully request that USTR exclude e-bikes from the additional 25 percent duties imposed as a result of this Section 301 investigation.

* * *

As instructed in USTR's September Notice, the BPSA and PFB certify that the information provided is complete and correct to the best of their knowledge.

Please do not hesitate to contact the undersigned should you have any questions regarding this correspondence.

Respectfully submitted,



Alexander W. Koff

*Counsel to the Bicycle Product Suppliers Association and
the PeopleForBikes Coalition*