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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 171/2008

of 25 February 2008

maintaining Council Regulation (EC) No 71/97 on the extension of the anti-dumping duty imposed on imports of bicycles originating in the People's Republic of China to imports of certain bicycle parts from the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the basic Regulation), and in particular Articles 9, 11(3) and 13(4) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

- (1) In September 1993, the Council, by Regulation (EEC) No 2474/93⁽²⁾, imposed a definitive anti-dumping duty of 30,6 % on imports of bicycles originating in the People's Republic of China (PRC). This duty was increased to 48,5 % by the latest review, by Council Regulation (EC) No 1095/2005⁽³⁾ (*the principal measure*).
- (2) In January 1997, following an investigation into the alleged circumvention of the above anti-dumping duty in the form of assembly of bicycles in the Community by using Chinese bicycle parts, the Council, by Regulation (EC) No 71/97⁽⁴⁾ extended the anti-dumping duty on bicycles originating in the PRC to imports of essential bicycle parts originating in the PRC, pursuant to Article 13 of the basic Regulation (*the anti-circumvention measure*). The anti-circumvention measure also stipulated that an exemption scheme should be established, in order

to enable assemblers not circumventing the measure on bicycles to import Chinese bicycle parts free of anti-dumping duty, by exempting them from the measure extended to bicycle parts.

- (3) In June 1997, the Commission adopted Regulation (EC) No 88/97⁽⁵⁾ on the authorisation of the exemption of imports of certain bicycle parts originating in the PRC from the above extension, thereby laying down the legal framework for the operation of the exemption scheme (*the exemption scheme*).
- (4) As a result of the above three measures, at present an anti-dumping duty of 48,5 % is in force on bicycles originating in the PRC, and this duty is extended to certain bicycle parts originating in the PRC, but Community assemblers not circumventing may be exempted from the latter i.e. from the duty on bicycle parts.
- 2. Grounds for the review**
- (5) Since the extension of the measures to imports of certain bicycle parts, the Commission has granted exemption from the anti-circumvention measure to a large number of companies based in the Community. The Commission has continued to receive exemption requests, thus the number of parties requesting an exemption has significantly increased. At the same time, there have been no apparent indications of circumvention practices by companies having been granted an exemption.
- (6) Furthermore, the Commission had at its disposal sufficient *prima facie* evidence that if the anti-circumvention measure was removed, there would be no continuation or recurrence of circumvention practices.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽²⁾ OJ L 228, 9.9.1993, p. 1.

⁽³⁾ OJ L 183, 14.7.2005, p. 1.

⁽⁴⁾ OJ L 16, 18.1.1997, p. 55.

⁽⁵⁾ OJ L 17, 21.1.1997, p. 17.

- (7) In addition, the anti-circumvention measure has been in force for 10 years and it has never been reviewed since its introduction.
- (8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review in accordance with Article 13(4) and 11(3) of the basic Regulation, on 28 November 2006, the Commission initiated this review of the anti-circumvention measure, by publishing a notice of initiation in the *Official Journal of the European Union* ⁽¹⁾.

3. Investigation

- (9) The aim of the investigation was to assess the need for the continuation of the anti-circumvention measure.

3.1. Investigation period

- (10) The investigation covered the period from 1 October 2005 to 30 September 2006 (review investigation period or RIP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of circumvention covered the period from 2003 up to the end of the RIP (period considered).

3.2. Parties concerned by the investigation

- (11) The Commission officially advised the known Community assemblers and their associations of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (12) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (13) In view of the apparent large number of Community assemblers involved in this review investigation, it was considered appropriate to apply sampling, in conformity with Article 17 of the basic Regulation. In order to enable the Commission to select a sample, the above parties were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the investigation and to provide the Commission with the information requested in the notice of initiation.
- (14) A large number of Community assemblers — 158 companies — properly completed the sampling form and agreed to cooperate further in the investigation. Out of these 158 companies eight, which were found to be representative of the Community industry in terms of volume of assembly and sales of bicycles in the Community, were selected for the sample. The eight sampled Community assemblers accounted for almost one third of the total production of the

Community industry during the RIP, whilst the 158 Community assemblers represented almost the totality of the production in the Community. This sample constituted the largest representative volume of production and sales of bicycles in the Community which could reasonably be investigated within the time available.

- (15) In accordance with Article 17(2) of the basic Regulation, the parties concerned were consulted on the sample chosen and raised no objection thereto.
- (16) Questionnaires were therefore sent to the eight sampled Community assemblers, and replies to the questionnaires were received from them.
- (17) The Commission sought and verified all the information it deemed necessary for its analysis, and carried out verification visits at the premises of the following sampled Community assemblers:

- Planet'Fun S.A., Périgny, France,
- Decathlon Italia SRL, Milano, Italy,
- F.lli Masciaghi SPA, Basiano, Italy,
- Denver SRL, Dronero-Cuneo, Italy.

B. PRODUCT UNDER REVIEW

- (18) The product under review is essential bicycle parts:
- painted or anodized or polished and/or lacquered bicycle frames, currently classifiable within CN code ex 8714 91 10,
 - painted or anodized or polished and/or lacquered bicycle front forks, currently classifiable within CN code ex 8714 91 30,
 - derailleur gears, currently classifiable within CN code 8714 99 50,
 - crank-gear, currently classifiable within CN code 8714 96 30,
 - free-wheel sprocket-wheels, currently classifiable within CN code 8714 93 90, whether or not presented in sets,
 - other brakes, currently classifiable within CN code 8714 94 30,

⁽¹⁾ OJ C 289, 28.11.2006, p. 15.

- brake levers, currently classifiable within CN code ex 8714 94 90, whether or not presented in sets,
- complete wheels with or without tubes, tyres and sprockets, currently classifiable within CN code ex 8714 99 90, and,
- handlebars, currently classifiable within CN code 8714 99 10, whether or not presented with a stem, brake and/or gear levers attached,
- originating in the People's Republic of China (the product concerned). These CN codes are only given for information.

investigation and the parts concerned are from the country subject to measures; and

- (b) the parts constitute 60 % or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25 % of the manufacturing cost; and
- (c) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.'

C. CIRCUMVENTION OF THE ANTI-CIRCUMVENTION MEASURES AND LASTING NATURE LASTING NATURE

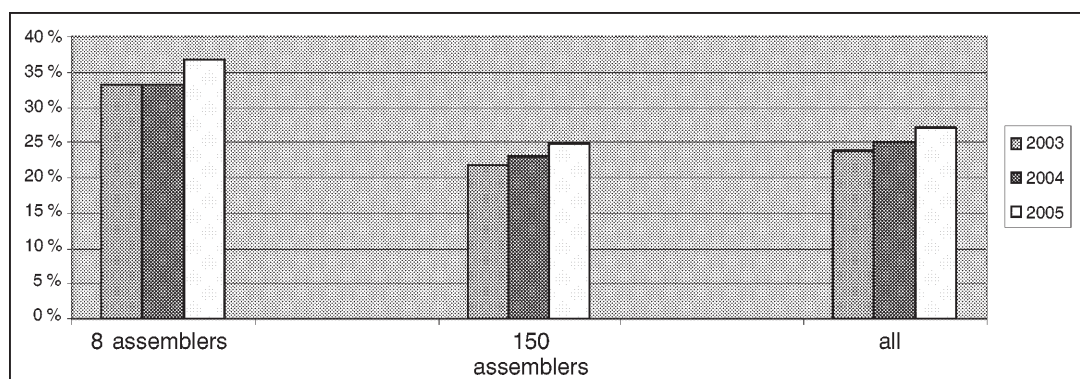
1. Legal framework

- (19) In order to assess the need for the continuation of the anti-circumvention measure as mentioned above in recital (9), this review examined whether circumvention in the form of assembly operations was taking place during the RIP, and whether these circumstances were of a lasting nature.
- (20) More specifically, it was examined whether the criteria for circumvention in the form of assembly operations, as laid down in Article 13(2) of the basic Regulation, were fulfilled during the RIP, and whether these criteria are likely to be fulfilled should the anti-circumvention measure be removed.
- (21) For ease of reference, these criteria are set out below:
 - '(a) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping

2. Existence of circumvention during the RIP

- (22) It was examined whether during the RIP the Community assemblers circumvented the anti-circumvention measures in force.
- (23) All companies cooperating in the investigation were Community assemblers exempted from the anti-circumvention measure, i.e. they could import and use Chinese bicycle parts for their bicycle assembly free of anti-dumping duty, if the proportion of such Chinese parts did not exceed 60 % of the total value of the parts of the assembled bicycles. The investigation showed that the sampled Community assemblers complied with this rule as it could not be found that their use of Chinese parts exceeded 60 %.
- (24) After the evaluation of the eight sampled Community assemblers and of the 158 complete sampling returns, it was established that the average proportion of Chinese parts from the sampled eight assemblers was 37 %, i.e. far below the 60 % threshold. The overall proportion of all cooperating assemblers was even lower and stood at 29 % during the RIP.

- (25) The above proportions for the years 2003, 2004 and 2005 are shown in the chart below:



- (26) As one of the circumvention criteria was not fulfilled, these assemblers were found not to be circumventing the existing measures and to comply with the conditions related to their exemptions.
- (27) The percentage of cooperating Community assemblers was very high, i.e. above 90 % in terms of volume of bicycles sold by EC assemblers, and no evidence was found that the principal measure would have been circumvented by other bicycle assemblers. Therefore, and in the absence of evidence pointing to the contrary, it can be concluded that no circumvention of the principal measure was taking place during the RIP.

3. Lasting nature

- (28) Pursuant to Article 11(3) of the basic Regulation, it was further examined whether the non-existence of circumvention practices would be of a lasting nature, i.e. if circumvention was not likely to recur should the anti-circumvention measure be removed.

3.1. Start or substantial increase of the assembly operation

- (29) It was firstly analysed if assembly operations would start or substantially increase following the removal of the anti-circumvention measure. In this respect, it is recalled that during the initial anti-circumvention investigation it was found that after the imposition of the principal measures of Chinese bicycles in 1993, assembly of Chinese bicycle parts substantially increased until 1997 when the anti-circumvention measure was imposed. There were significant changes in the pattern of trade: imports of Chinese bicycles dropped sharply, whereas imports of Chinese parts started to increase quickly. This past experience indicates that there is a risk that in the absence of an anti-circumvention measure, imports of Chinese parts and the assembly of bicycles using these parts could substantially increase again.
- (30) In addition, the investigation has shown that Chinese bicycle parts are in general cheaper than bicycle parts of any other origin. Consequently, if some Community assemblers would increase the use of Chinese parts, then others would probably also start using more Chinese parts, in order to stay competitive.
- (31) In view of the above, it cannot be excluded that the removal of the anti-circumvention measure would result in a substantial increase of imports of Chinese parts and of assembly operations.

3.2. Criterion regarding the 60 % threshold of Chinese parts

- (32) It was examined whether the proportion of Chinese parts used by EC assemblers is likely to exceed 60 % of the

value of all parts used in the assembly of bicycles, in case the anti-circumvention measure was removed.

- (33) It is recalled that, as mentioned above in recital (24), the overall average proportion of Chinese parts was 29 % during the RIP, i.e. far below the 60 % threshold. The average proportion of the eight sampled producers was somewhat higher: 37 %.
- (34) The investigation has revealed that the following may, to a certain extent, explain why EC assemblers used far lower proportions of Chinese parts than 60 % as allowed by the rules related to their exemption:
- most importantly, each model of the exempted EC producers has to be in line with the 60 % rule, and the high quality models (where fewer, if any, Chinese parts are used) distort the average ratio of Chinese parts,
 - constant fluctuations in prices of imported parts, transport costs and exchange rates and other practical reasons require a room of manoeuvre to be kept by the EC assemblers in order not to risk losing their right of exemption.
- (35) However, it is very difficult to determine whether the above arguments provide an adequate explanation for the significant gap between the current proportion of Chinese bicycle parts used by EC assemblers and the 60 % limit allowed by the rules related to circumvention and to the exemption scheme.
- (36) In addition, some of the Community assemblers claimed that they only imported less than 60 % of Chinese bicycle parts in order to comply with their obligations stemming from the exemptions granted to them.
- (37) In fact, as already stated in recital (30), Chinese bicycle parts are in general cheaper than bicycle parts of any other origin and for this reason the Community assemblers may start using more Chinese parts in order to keep pace with their competitors.
- (38) The picture is therefore somewhat mixed. On the one hand, in view of the substantial gap between the actual and the allowed proportion of Chinese parts used, the risk that the bicycle assemblers would exceed the 60 % threshold in the short term does not appear to be evident.

- (39) On the other hand, in the medium term, Chinese bicycle assemblers would still have a rather strong incentive to import more than the 60 % limit allowed and could hence start again circumventing the principal measure by way of exporting to the EC so-called semi-knocked down kits or completely knocked down kits, i.e. almost complete bicycles in separate containers. This would actually bring back the circumvention that took place in the 1990s before the introduction of the anti-circumvention measure and would then result in a clear excess of the 60 % threshold.
- (40) On balance, as the incentive to import more than the allowed 60 % threshold is indeed quite strong, it appears that there is a certain risk that the 60 % limit would be exceeded should measures be removed.
- (41) As concerns the 25 % added-value rule, which is an exception to the criterion regarding the 60 % threshold, it has been found that the average value added by the EC assemblers — on the basis of the 158 replies to the sampling forms — was 20 % during the RIP. As concerns the eight sampled companies, their average value added was 22 % during the RIP. Given the low level of part production in the Community, this added value would most likely not surpass the 25 % threshold, in the event that the proportion of Chinese parts were to exceed the 60 % threshold. Therefore, it is unlikely that Community assemblers would add more than 25 % value.

3.3. *Undermining of the remedial effects of the duty in terms of sales prices or quantities, and dumping*

- (42) It had to be examined whether the remedial effects of the anti-dumping duty would be undermined and whether dumping would recur should the anti-circumvention measure be removed. However, in the current market conditions, i.e. while the anti-circumvention measure and the related exemption scheme exist, it was impossible to carry out a reasonable analysis whether the duties would be undermined in terms of sales prices and whether dumping would exist, because for the calculation EC prices should have been based on a situation where bicycles were composed solely of Chinese parts. In contrast, EC bicycles assembled during the RIP were made of parts of various origins including the EC, the PRC and other third countries.

- (43) It is, however, recalled that during the investigation leading to the anti-circumvention measure in 1997 it was proved that the remedial effect of the duty on Chinese bicycles was undermined in terms of sales prices, and dumping existed. In the absence of comparable prices during the RIP, the findings of this earlier investigation for undermining and dumping, as set out in recitals (19) to (24) of the anti-circumvention measure, remain valid.

D. CONCLUSIONS

- (44) The review has shown that currently no circumvention appears to be taking place. However, it has also shown that the risk of recurrence of circumvention cannot be fully excluded. On the basis of the analysis carried out above, there seems to be a risk, though limited, that in the medium term, the current non-existence of circumvention will not last should the anti-circumvention measure be removed, as Community assemblers could substantially increase assembly operation by using more Chinese bicycle parts than the 60 % threshold, which would then undermine the remedial effects of the anti-dumping duty on Chinese bicycles.
- (45) Therefore, the anti-circumvention measure shall be maintained, in order to ensure that the principal measure, i.e. the anti-dumping duty on bicycles, is effective and cannot be undermined by circumvention in the form of assembly operations,

HAS ADOPTED THIS REGULATION:

Article 1

The extension of the antidumping duty imposed on imports of bicycles originating in the People's Republic of China to imports of certain bicycle parts originating in the People's Republic of China by Regulation (EC) No 71/97, is hereby maintained, and the review concerning these imports is terminated.

Article 2

This Regulation shall enter into force on the day following 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, 25 February 2008.

For the Council
The President
A. VIZJAK