Commission Implementing Regulation (EU) 2020/1140 of 30 July 2020 on re-imposing a definitive anti-dumping duty on imports of bicycles whether declared as originating in Sri Lanka or not following the judgment of the Court of Justice in Case C-251/18 Trace Sport SAS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1140

of 30 July 2020

on re-imposing a definitive anti-dumping duty on imports of bicycles whether declared as originating in Sri Lanka or not following the judgment of the Court of Justice in Case C-251/18 Trace Sport SAS

THE EUROPEAN COMMISSION,

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

Having regard to 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 ('the basic Regulation')[(1)], and in particular Article 13 thereof,

Whereas:

A. MEASURES IN FORCE AND JUDGMENTS OF THE GENERAL COURT AND THE COURT OF JUSTICE OF THE EUROPEAN UNION

1. Measures in force

(1) In 2011, by Implementing Regulation (EU) No 990/2011, the Council imposed a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China ('the original measures')[(2)] following an expiry review under Article 11(2) of the basic Regulation.

(2) In 2013, by Implementing Regulation (EU) No 501/2013, the Council extended the original measures to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not (the 'contested Regulation')[(3)] following an anti-circumvention investigation under Article 13 of the basic Regulation (the 'anti-circumvention investigation').

2. Judgment of the General Court in T-413/13 and judgment of the Court of Justice of the European Union in in Joined Cases C-248/15P, C-254/15P and C-260/15P

(3) City Cycles Industries ('City Cycle') challenged the contested Regulation in the General Court.

(4) By its judgment of 19 March 2015, in Case T-413/13 City Cycle Industries v Council, the General Court of the European Union annulled Article 1(1) and (3) of

Council Implementing Regulation (EU) No 501/2013, in so far as it concerned City Cycle Industries ('City Cycle').

(5) On 26 January 2017, the appeals brought forward against the judgment of the General Court of 19 March 2015, were dismissed by judgment of the Court of Justice in Joined Cases C-248/15P, C-254/15P and C-260/15P[(4)], City Cycle Industries v Council.

(6) Following the judgment of the Court of Justice, on 11 April 2017 by Notice[(5)], the Commission partially reopened the anti-circumvention investigation concerning imports of bicycles consigned from Sri Lanka, whether declared as originating in Sri Lanka or not that led to the adoption of the contested Regulation and resumed it at the point at which the irregularity occurred. The reopening was limited in scope to the implementation of the judgment of the Court of Justice with regard to City Cycle. As a result of this reopening, the Commission adopted Implementing Regulation (EU) 2018/28 of 9 January 2018 re-imposing a definitive anti-dumping duty on imports of bicycles, whether declared as originating in Sri Lanka or not, from City Cycle Industries[(6)] (the 'City Cycle Regulation').

3. **Judgment of the Court of Justice of the European Union in case C-251/18**

(7) On 19 September 2019, in the context of a preliminary reference request made by the Rechtbank Noord-Holland, the Court of Justice ruled in Case C-251/18 Trace Sport SAS that the contested Regulation[(7)] is invalid in so far as it concerns imports of bicycles shipped from Sri Lanka, whether declared as originating in Sri Lanka or not. The Court of Justice concluded that the contested Regulation did not contain any individual analysis of circumvention practices in which Kelani Cycles and Creative Cycles may have been engaged. The Court of Justice found that the conclusion as to the existence of transhipment operations in Sri Lanka could not legally be based only on the two findings expressly made by the Council, that is, first, that there had been a change in the pattern of trade between the Union and Sri Lanka and, second, that some of the exporting producers had failed to cooperate. On this basis, the Court of Justice declared the contested Regulation invalid in so far as it concerns imports of bicycles shipped from Sri Lanka, whether or not declared as originating in that country.

4. **Consequences of the judgment in case C-251/18**

(8) In line with Article 266 of the Treaty of the Functioning of the European Union, the Union institutions need to take the necessary steps to comply with the judgment of 19 September 2019.

(9) It follows from the case-law that where a judgment of the Court of Justice annuls a regulation imposing anti-dumping duties or declares such a regulation to be invalid, the institution called upon to take such measures for the purpose of implementing that judgment does have the option of resuming the proceeding at the origin of that regulation, even if that option is not expressly set out in the applicable legislation[(8)].

(10) Furthermore, except where the irregularity found has vitiated the entire proceeding with illegality, the institution concerned has the option, in order to adopt

an act intended to replace the act that has been annulled or declared invalid, to resume that proceeding only at the stage when the irregularity was committed[9]. 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, in this case, the initiation of the anti-circumvention procedure by Commission Regulation (EU) No 875/2012[10].

(11) Thus, the Commission has the possibility to remedy the aspects of the contested Regulation which led to its declaration of invalidity, leaving those parts which were not affected by the judgment of the Court valid[11].

B. PROCEDURE

1. Procedure until the judgment

(12) The Commission confirms recitals 1 to 23 included of the contested Regulation. They are not affected by the judgment.

2. Reopening

(13) Following the judgment in Case C-251/18 Trace Sport SAS, on 2 December 2019, the Commission published an Implementing Regulation[12] reopening the anti-circumvention investigation concerning imports of bicycles consigned from Sri Lanka, whether declared as originating in Sri Lanka or not, that led to the adoption of the contested Regulation and resumed it at the point at which the irregularity occurred ('reopening Regulation').

(14) The reopening is limited in scope to the implementation of the judgment of the Court of Justice in Case C-251/18 Trace Sport SAS. In that judgment, the illegality identified by the Court of Justice pertains to the obligation for the institutions of the Union to bear the burden of proof arising from Article 13(3) of Regulation (EU) 2016/1036 as it stood at that time.

(15) Given that the City Cycle Regulation is not affected by the irregularity identified by the Court of Justice in Case C-251/18, the definitive anti-dumping duties on imports of bicycles consigned from Sri Lanka, whether declared as originating in Sri Lanka or not, from City Cycle Industries are not covered by this proceeding.

(16) The Commission informed the Sri Lankan exporting producers, the representatives of the Government of Sri Lanka, the Union industry and other interested parties known to be concerned from the anti-circumvention investigation of the reopening of the investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing with the Commission and/or the Hearing officer in trade proceedings within the time-limit set out in the reopening Regulation. None of the interested parties requested a hearing either with the Commission or the Hearing officer in trade proceedings.

3. Registration of imports

(17) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation shall be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied from the date on which registration of such imports was imposed.

(18) On 2 December 2019, by the reopening Regulation, the Commission made imports of bicycles consigned from Sri Lanka, whether declared as originating in Sri Lanka or not, subject to registration.

4. Product under investigation

(19) The product under investigation is the same as in the contested Regulation, i.e. bicycles and other cycles (including delivery tricycles, but excluding unicycles), not motorised, originating in the People's Republic of China ('China'), currently falling under CN codes ex 8712 00 30 and ex 8712 00 70 (TARIC codes 8712 00 30 10 and 8712 00 70 91), consigned from, Sri Lanka, whether declared as originating in, Sri Lanka or not.

C. ASSESSMENT FOLLOWING THE JUDGMENT

1. Preliminary remarks

(20) First, the Court of Justice held that the contested Regulation did not contain an individual analysis of circumvention practices in which Kelani Cycles and Creative Cycles may have been engaged. The Court of Justice found that the conclusion as to the existence of transhipment operations in Sri Lanka could not legally be based only on the two findings expressly made by the Council, that is, first, that there had been a change in the pattern of trade between the Union and Sri Lanka and, second, that some of the exporting producers had failed to cooperate.

(21) Second, the judgment does not question that the Council was entitled to consider Kelani Cycles as a non-cooperating party in the investigation and there was significant non-cooperation at national level in Sri Lanka (companies that did not cooperate or withdrew cooperation constituted 75 % of the total exports from Sri Lanka during the reporting period). Creative Cycles did not cooperate in the investigation. Recitals 35 to 42 of the contested Regulation are therefore confirmed.

2. Undermining of the remedial effect of the anti-dumping duty

(22) The Council had found, in recitals 93 to 96 of the contested Regulation, that there was evidence undermining of the remedial effect of the anti-dumping duty within the meaning of Article 13(1) of the basic Regulation. Those findings are confirmed.

3. Evidence of dumping

(23) The Council had found, in recitals 97 and 98 as well as 107 to 110 of the contested Regulation, evidence of dumping in relation to the normal values previously established for the like product in accordance with Article 13(1) of the basic Regulation. Those findings are confirmed.

4. Existence of circumvention practices

(24) The contested Regulation was declared invalid because the Council failed to provide sufficient substantiation as to the existence of circumvention practices for individual companies. It is recalled that the existence of circumvention practices can be established, inter alia, on the basis of transhipment or on the basis of assembly operations.

(25) During the anti-circumvention investigation, six Sri Lankan companies submitted a request for exemption in accordance with Article 13(4) of the basic Regulation. These six companies represented 69 % of the total imports from Sri Lanka to the Union during the reporting period defined in that investigation (1 September 2011 to 31 August 2012). Out of these six, three companies were exempted from the extended duties and one stopped cooperating. The exemption requests of the two remaining companies (Kelani Cycles and City Cycle Industries) were rejected as those companies could not show that they were not involved in circumvention practices. As mentioned in recitals 37 to 42 and 144, 146 to 149 of the contested Regulation, these findings were based on the facts available in accordance to Article 18 of the basic Regulation.

(26) The reopened investigation revealed that there was no available evidence at companies' level that could support the finding of transhipment. Therefore, it was concluded that no transhipment could be established.

(27) However, the available evidence showed that circumvention practices via assembly operations took place. The evidence was based on the existing data submitted by City Cycle and Kelani Cycles during the anti-circumvention investigation. The Council had not previously assessed that data in detail, because it considered that that was not necessary in order to demonstrate, to the required legal standard, existence of circumvention practices. However, as the Court has clarified the applicable legal standard, the Commission considered it appropriate to reassess all the evidence available in the administrative file in the light of the conclusions of the judgment of the Court of Justice in Case C-251/18 Trace Sport SAS.

(28) As stated in recitals 3 to 5, in 2017 the Commission re-opened the investigation regarding City Cycle. Recitals 22 to 25 of the City Cycle Regulation detailed the evidence regarding City Cycle, showing that circumvention practices via assembly operations were taking place in Sri Lanka. Furthermore, due to the company's insufficient cooperation and inability to demonstrate that it did not circumvent the measures on the basis of its own data, the exemption request of City Cycle under Article 13(4) of the basic Regulation could not be considered warranted. As mentioned in recital 15 the City Cycle Regulation remains unaffected by the judgment of the Court in case C-251/18.

(29) During the anti-circumvention investigation, Kelani Cycles was unable to prove that it merited an exemption, as explained in recitals 39, 40 and 146 to 149 of the contested Regulation. The company's cooperation was considered insufficient and Article 18(1) of the basic Regulation was applied.