Commission Implementing Regulation (EU) 2019/1997 of 29 November 2019 reopening the investigation following the judgment of 19 September 2019, in Case C#251/18 Trace Sport SAS, with regard to Council Implementing Regulation (EU) No 501/2013 of 29 May 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China 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

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 266 thereof,

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

Whereas:

1. PROCEDURE

(1) On 26 September 2012, the Commission, by way of Regulation (EU) No 875/2012[(2)], initiated an investigation concerning the possible circumvention of the anti-dumping measures imposed by Council Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China ('the PRC') following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009.

(2) On 5 June 2013, the Council extended the anti-dumping duty imposed by Council Implementing Regulation (EU) No 990/2011 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, by Council Implementing Regulation (EU) No 501/2013 of 29 May 2013[(3)] (the 'contested regulation').

(3) 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)

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/1997. (See end of Document for details)*

of Council Implementing Regulation (EU) No 501/2013, in so far as that regulation concerns City Cycle Industries ('City Cycle').

(4) The General Court firstly analysed, in paragraphs 82 to 97 of that judgment, the evidence communicated by City Cycle during the investigation. It concluded that that evidence did not show that City Cycle was in fact a bicycle exporter of Sri Lankan origin or that it met the criteria laid down in Article 13(2) of the basic Regulation. In the second place, in paragraph 98 of the judgment under appeal, the General Court nonetheless held that the Council had no evidence from which it could properly conclude, in recital 78 of the regulation at issue, that City Cycle was involved in transhipment operations. In the third place, in paragraph 99 of the judgment under appeal, the General Court stated that it could not be ruled out that the practices, processes or work for which there was insufficient due cause or economic justification other than the imposition of the initial anti-dumping duty, within the meaning of the second subparagraph of Article 13(1) of the basic Regulation, included City Cycle's engagement in transhipment operations.

(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 that judgment of the Court of Justice, 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.

(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 Council Implementing Regulation (EU) No 501/2013 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 Council Implementing Regulation (EU) No 501/2013 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 transshipment 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 Council Implementing Regulation (EU) No 501/2013 invalid in so far as it concerns imports of bicycles shipped from Sri Lanka, whether or not declared as originating in that country.

(8) In accordance with Article 266 of the Treaty on the Functioning of the European Union, the Union's institutions must take the necessary steps to comply with the judgment of the Court of Justice of the European Union.

(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[(5)].

(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[(6)]. 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-circumvention procedure by Commission Regulation (EU) No 875/2012.

(11) Thus, the Commission has the possibility to remedy the aspects of Council Implementing Regulation (EU) No 501/2013 which led to its declaration of invalidity, leaving those parts which were not affected by the judgment of the Court unaffected.[(7)]

(12) The Commission has therefore decided to reopen the anti-circumvention investigation in order to correct the illegality identified by the Court of Justice.

(13) Given that Commission Implementing Regulation (EU) 2018/28 of 9 January 2018 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 whether declared as originating in Sri Lanka or not from City Cycle Industries are not covered by this proceeding.

2. REOPENING PROCEDURE

2.1. Reopening

(14) In view of the above, the Commission reopens the anti-circumvention investigation concerning imports of bicycles and other cycles (including delivery tricycles, but excluding unicycles), not motorised, CN codes ex 8712 00 30 and ex 8712 00 70 (TARIC codes 8712 00 30 10 and 8712 00 70 91), consigned from Indonesia, Malaysia, Sri-Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not, that led to the adoption of Council Implementing Regulation (EU) No 501/2013 and resumes it at the point at which the irregularity occurred by publishing this Regulation in the *Official Journal of the European Union*.

(15) 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 the time.

(16) Therefore, the lack of sufficient reasoning in Council Implmenting Regulation (EU) No 501/2013 concerning the available evidence on the existence of circumventing practices in Sri Lanka must be corrected.

2.2. **Registration**

(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) The Commission, by regulation, may direct Customs authorities to cease registration in respect of imports into the Union of products manufactured by producers having applied for an exemption of registration and having been found to fulfil the conditions for an exemption to be granted.

2.3. **Written submission**

(19) Interested parties are invited to come forward and to make their views known, submit information and provide supporting evidence on issues pertaining to the reopening of the investigation within 20 days of the date of publication of this Regulation in the Official Journal of the European Union.

2.4. **Possibility to be heard by the Commission investigation services**

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

2.5. **Instructions for making written submissions and sending correspondence**

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

(22) All written submissions and correspondence provided by interested parties for which confidential treatment is requested shall be labelled *'Limited'*[8].

(23) Interested parties providing *'Limited'* information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic Regulation, which will be labelled *'For inspection by interested parties'*. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such information may be disregarded.

(24) Interested parties are invited to make all submissions and requests by e-mail or TRON.tdi (https://webgate.ec.europa.eu/tron/TDI)[9] including scanned powers of attorney and certification sheets. By using e-mail or TRON.tdi, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf. The interested parties must indicate their name, address, telephone and a valid e-mail address and they should ensure that the provided e-mail address is a functioning official business e-mail which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by e-mail only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by e-mail, interested parties should consult the communication instructions for interested parties referred to above.

Commission address for correspondence:

European Commission

Directorate-General for Trade

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E-mail: TRADE-R563-BICYCLES-CIRC@ec.europa.eu

2.6. **Non-cooperation**

(25) In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 18 of the basic Regulation.

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