Commission Implementing Regulation (EU) 2017/678 of 10 April 2017 making imports of bicycles consigned from Sri Lanka, whether declared as originating in Sri Lanka or not, in so far as it concerns the Sri Lankan company City Cycle Industries, subject to registration

COMMISSION IMPLEMENTING REGULATION (EU) 2017/678

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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[(1)] ('basic Regulation'), and in particular Articles 10(4) and 14(5) thereof,

After having informed the Member States,

Whereas:

A. **PRODUCT CONCERNED**

(1) The product concerned by this registration is bicycles and other cycles (including delivery tricycles, but excluding unicycles), not motorised, falling within CN codes ex 8712 00 30 and ex 8712 00 70 and consigned from Sri Lanka, whether declared as originating in Sri Lanka or not, in so far as it concerns the Sri Lankan company City Cycle Industries.

B. **THE COURT JUDGEMENT**

(2) In its judgment of 19 March 2015 in Case T-413/13 *City Cycle Industries* v *Council*[(2)], the General Court of the European Union ('the General Court') annulled 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[(3)] ('contested Regulation'), to the extent that it applies to the Sri Lankan company City Cycle Industries.

(3) By its judgment of 26 January 2017, the European Court of Justice ('ECJ') dismissed the appeals submitted against that judgment by the Union industry (C-248/15 P), the European Commission (C-254/15 P) and the Council of the European Union (C-260/15 P).

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/678. (See end of Document for details)*

(4) In particular, the Court of Justice found, in paragraph 73 of its judgment, that recital 78 of the contested Regulation did not contain any individual analysis of circumvention practices in which City Cycle Industries may have been engaged. The Court of Justice, in paragraphs 75 and 76, also 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 and, second, that some of the producer-exporters had failed to cooperate.

(5) As a consequence of that judgment, imports into the European Union of bicycles are no longer subject to the anti-dumping measures by the contested Regulation in so far as in concerns City Cycles Industries.

(6) Following the ECJ judgment, the Commission decided to partially reopen 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 to resume it at the point at which the irregularity occurred. The reopening is limited in scope to the implementation of the judgment of the ECJ with regard to City Cycle Industries.

C. REQUEST

(7) Following the ECJ judgment, the European Bicycle Manufacturers Association and Maxcom Ltd (‘the applicants’) requested that imports of the product concerned in so far as it concerns City Cycle Industries are made subject to registration pursuant to Article 14(5) of the basic Regulation so that measures may subsequently be applied against those imports from the date of such registration.

D. GROUNDS FOR THE REGISTRATION

(8) The applicants submitted that there is a real, immediate danger that City Cycle Industries' export to the Union will resume in significant quantities as City Cycle Industries was able in the past to quickly set up assembly circumvention practices for bicycles on a large scale in Sri Lanka and that the Sri Lankan company had a major customer in the Union for the circumventing bicycles. In addition, because of the low investment required for assembly operations, and the fact that the Sri Lankan company already has the necessary know-how and experience with this type of activities, the applicants submitted that it is likely that City Cycle Industries will go back very quickly to a similar high level of circumventing exports from Sri Lanka.

(9) According to Article 14(5) of the basic Regulation, the Commission may direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports may be made subject to registration following a request from the Union industry which contains sufficient evidence to justify such action.

(10) The request contains sufficient evidence to justify registration.

(11) The ECJ judgment is limited to the individual analysis of circumvention practices in which City Cycle Industries may have been engaged. It is recalled that findings reached in the contested Regulation which were not contested within the time limits for a challenge or which were contested but rejected by the General Court's judgment or not examined by the General Court and therefore did not lead to the annulment of the contested Regulation, remain valid.

(12) In view of the above, it is considered that the remedial effect of the anti-circumvention measure is likely to be seriously undermined, unless it is applied retroactively. Accordingly, the conditions for registration in this case are met.

E. PROCEDURE

(13) In view of the above, the Commission has concluded that the applicants' request contains sufficient evidence to make imports of the product concerned subject to registration, in accordance with Article 14(5) of the basic Regulation.

(14) All interested parties are invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

F. REGISTRATION

(15) Pursuant to Article 14(5) of the basic Regulation, imports of the product concerned should be made subject to registration in order to ensure that, should the reopened investigation result in findings leading to the re-imposition of anti-dumping duties, those duties can, if the necessary conditions are fulfilled, be levied retroactively in accordance with applicable legal provisions. Any future liability would emanate from the findings of the reopened anti-dumping investigation.

G. PROCESSING OF PERSONAL DATA

(16) Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council[(4)],

HAS ADOPTED THIS REGULATION:

Article 1

1 The customs authorities are hereby directed, pursuant to Article 14(5) of Regulation (EU) 2016/1036, to take the appropriate steps to register the imports into the European Union of bicycles and other cycles (including delivery tricycles, but excluding unicycles), not motorised, falling within CN codes ex 8712 00 30 and ex 8712 00 70 (TARIC codes 8712 00 30 10, 8712 00 70 91) consigned from Sri Lanka, whether declared as originating in Sri Lanka or not in so far as it concerns City Cycle Industries (TARIC additional code B131). Registration shall expire nine months following the date of entry into force of this Regulation.

2 All interested parties are invited to make their views known in writing, to provide supporting evidence or to request to be heard within 20 days from the date of publication of this Regulation.