Commission Regulation (EU) No 512/2013 of 4 June 2013 amending Regulation (EC) No 88/97 on the authorization of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93

COMMISSION REGULATION (EU) No 512/2013

of 4 June 2013

amending Regulation (EC) No 88/97 on the authorization of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Article 13(4) thereof,

Having regard to Council Regulation (EU) No 502/2013 of 29 May 2013 amending Implementing Regulation (EU) No 990/2011 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China following an interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009[(2)],

Having regard to the extension of the anti-dumping duty on bicycles imposed by Council Regulation (EEC) No 2474/93[(3)] to bicycle parts imposed by Council Regulation (EC) No 71/97[(4)],

After consulting the Advisory Committee,

Whereas:

(1) By Regulation (EC) No 71/97, the Council extended the anti-dumping duty imposed by Regulation (EEC) No 2474/93 on imports of bicycles originating in the People's Republic of China ('PRC') to imports of certain bicycle parts from that country ('extended anti-dumping duty'). Regulation (EC) No 71/97 also stipulated that an exemption scheme should be established on the basis of Article 13(4) of the basic Regulation ('the exemption scheme') to enable assemblers not circumventing the measure on bicycles to import Chinese bicycle parts free of antidumping duty, by exempting them from the measure extended to bicycle parts.

(2) The legal framework for the operation of the exemption scheme was provided for in Commission Regulation (EC) No 88/97[(5)] (hereinafter 'the Amended Regulation').

(3) Following a review of the extension of the anti-dumping duty imposed on imports of bicycles originating in the PRC to imports of certain bicycle parts from the PRC

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pursuant to Articles 11(3) and 13(4) of the basic Regulation, the Council, by Regulation (EC) No 171/2008[6], decided to maintain the anti-circumvention measures.

(4) Following an interim review investigation pursuant to Article 11(3) of the basic Regulation, the Council, by Regulation (EC) No 1095/2005[7], decided to increase the anti-dumping duty in force to 48,5 %.

(5) By Notice published in the *Official Journal of the European Union*[8] ('the Notice') the European Commission ('the Commission') initiated an interim review of the anti-dumping measures applicable to imports of bicycles originating in the PRC. In point 4.4 of the Notice interested parties were invited to comment on the functioning and possible future model of the exemption scheme. Comments were sought in particular in relation to the operation and management of the exemption scheme in its current form, including challenges faced by the small and medium-sized enterprises.

(6) No pertinent comments have been received. However, as a consequence of the experience gathered by the Commission, while applying the exemption scheme, it is considered necessary to introduce some amendments, which will facilitate its operation.

(7) Under the current exemption scheme, the definition of the investigation period, does not allow for an appropriate assessment of the quantity and value of Chinese parts used in EU bicycle assembly operations. The rules in force prescribe that, the investigation period has to be set at a time prior to the date of suspension of anti-dumping duties. During this period, applicants usually import small quantities from the PRC, as quantities above 299 parts per month would be subject to an anti-dumping duty. Consequently, it would appear that bicycles assembled during the investigation period comply with the rules set out in Article 13(2) of the basic Regulation which states that bicycle producers in the Union have to respect a ratio of less than 60 % of Chinese bicycle parts in their operation or the addition of more than 25 % value to all parts brought into the operation ('60/40 or 25 % value added' rule).

(8) It is only after the suspension has been granted that the companies start to import higher volumes. Yet, under the rules currently in force this period cannot be taken into consideration. Therefore, the underlying aim of the scheme 'to ensure the use of an appropriate proportion of parts originating in Europe' cannot be fully achieved.

(9) Against this background and for reasons of legal certainty, it is considered appropriate to amend the definition of the investigation period under Article 6(1) to include also the time after the date of suspension of payment of the extended anti-dumping duty. Compliance with the '60/40 or 25 % value added' rule will then be verified more appropriately for a period during which the importer pays no anti-dumping duties, i.e. after the suspension is granted.

(10) In order to allow an applicant to submit verifiable data of its imports of bicycle parts for the period prior to the suspension pursuant to Article 4(1)(b) of the Amended Regulation, the reference to irrevocable contractual obligation under Article 4(1)(a) is removed.

(11) Furthermore, the current scheme is unclear in respect of imports of bicycle parts used for the assembly of cycles fitted with an auxiliary motor, with or without side-cars,

sometimes referred to as electrical bicycles or pedelecs. Complete electrical bicycles and consequently the parts for the assembly of electrical bicycles are subject neither to the anti-dumping duty nor to the extended anti-dumping duty i.e. the assembly operations of electrical bikes remain outside the scope of Regulation (EC) No 71/97. Therefore, it is considered appropriate to extend the existing provisions under Article 14 for 'end use control' of parts intended for the assembly of electrical bicycles. The 'end-use-control' provisions enable national customs authorities to trace the final use of imported parts, i.e. use for assembly of classical bicycles or electrical bicycles.

(12) Furthermore, it is considered appropriate to delete Article 16(3) since required data can be retrieved from other sources.

(13) Finally, it is proposed to correct clerical errors and amend obsolete references in the Amended Regulation.

(14) In the interests of legal certainty and the principle of sound administration, it is necessary to provide that the amendments to the Amended Regulation provided for in this Regulation are to apply as soon as possible to all new and to all pending investigations.

(15) Regulation (EC) No 88/97 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 88/97 is hereby amended as follows:

(1) Article 3(1) is replaced by the following:

1. Requests shall be made in writing in one of the official languages of the Union and must be signed by a person authorised to represent the applicant. The request must be sent to the following address:

European Commission

Directorate-General for Trade

Directorate H Trade Defence

Rue de la Loi/Wetstraat 200

1049 Bruxelles/Brussel

BELGIQUE/BELGIË

E-mail: TRADE-bicycle-parts@ec.europa.eu;

(2) Article 4 is amended as follows:

(a) paragraph 1, points (a) and (b) are replaced by the following:

(a) it contains evidence that the applicant is using essential bicycle parts for the production or assembly of bicycles in quantities above the threshold set out in Article 14(c);

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(b) it provides prima facie evidence that the applicant's assembly operations fall outside the scope of Article 13(2) of Council Regulation (EC) No 1225/2009[9]; and;

(b) paragraph 4 is replaced by the following:

4. Where a request is held inadmissible, it shall be rejected by a Decision in accordance with the procedure referred to in Article 13(4) of Regulation (EC) No 1225/2009.;

(3) Article 5(1) is replaced by the following:

1. As from the date of receipt of a request complying prima facie with the conditions set out in Article 4(1) and (2) and pending a decision on its merits pursuant to Articles 6 and 7, payment of the customs debt in respect of the extended duty pursuant to Article 2(1) of the Reference Regulation shall be suspended in respect of any imports of essential bicycle parts declared for free circulation by the party under examination. A period of not less than 6 months prior to the receipt of the request is normally taken into consideration in order to establish prima facie compliance with the conditions set out in Article 4(1) and (2).;

(4) Article 6 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. The Commission will identify an investigation period in order to decide whether to grant an exemption which will normally cover a period of 12, but not less than 6 months as of the date of suspension of payment of the extended duty on essential bicycle parts. In conducting its examination, the Commission may request additional information from the applicant for the examination period and/or carry out on-the-spot verifications.;

(b) paragraph 3 is replaced by the following:

3. The examination of the merits of a request shall normally be concluded within 12 months after the receipt of all information as referred to in Article 6(1).;

(5) Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. Where the facts as finally ascertained show that the applicant's assembly operations do not fall within the scope of Article 13(2) of Regulation (EC) No 1225/2009, the applicant's exemption from the extended duty shall be authorised in accordance with the procedure referred to in Article 13(4) of Regulation (EC) No 1225/2009.;

(b) paragraph 3 is replaced by the following:

3. Where the criteria for exemption are not fulfilled, the request shall be rejected in accordance with the procedure referred to in Article 13(4) of Regulation (EC) No 1225/2009 and the suspension of the payment of the extended duty referred to in Article 5 shall be lifted.;

(6) Article 8(1)(a) is replaced by the following: