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

COUNCIL REGULATION (EC) No 171/2008

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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*).

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 171/2008. (See end of Document for details)*

(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.

(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*[6].

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,

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— 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.

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 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.

2. Existence of circumvention during the RIP

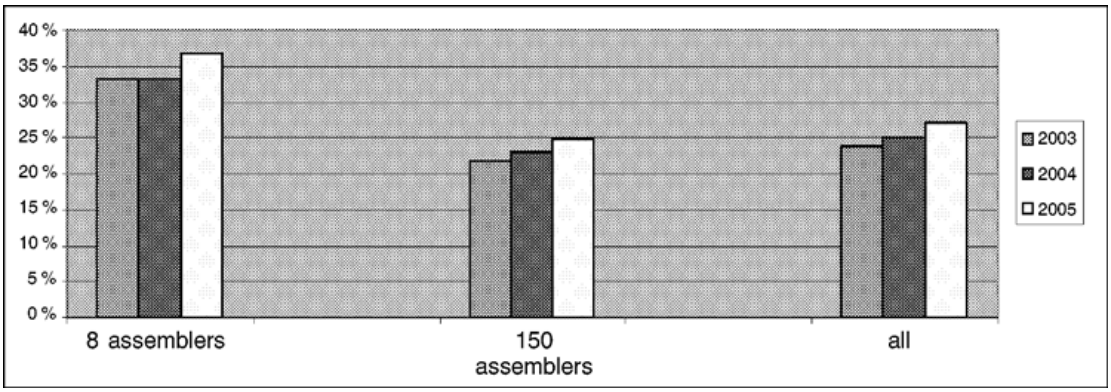
(22) It was examined whether during the RIP the Community assemblers circumvented the anti-circumvention measures in force.

(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