Council Regulation (EC) No 691/2007 of 18 June 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain saddles originating in the People's Republic of China

COUNCIL REGULATION (EC) No 691/2007

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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 Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 1999/2006[(2)] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of certain saddles, currently classifiable within CN codes 8714 95 00, ex 8714 99 90 and ex 9506 91 10, originating in the People's Republic of China (PRC).

(2) It is recalled that the investigation of dumping and injury covered the period from 1 January 2005 to 31 December 2005 (investigation period or IP). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2002 to the end of the investigation period (period considered).

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of a provisional anti-dumping duty on imports of certain saddles originating in the PRC, some interested parties submitted comments in writing. The parties, who so requested, were also granted an opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings. All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain saddles originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this

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disclosure. The oral and written comments submitted by the parties were considered, and, where appropriate, the findings have been modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

(4) One importer argued against the inclusion into the scope of the investigation of essential parts of saddles (bases, cushions and covers) on the grounds that the inclusion of the latter was not justified by any evidence of dumping from either the complaint or the investigation. This importer claimed also that it is not sufficient to consider saddles and saddle parts as one single product on the basis that both were used for the same end product (i.e. bicycles and similar). The same importer further alleged that certain saddle parts were included in the product definition to prevent circumvention in case anti-dumping duties were imposed. On this basis, it was argued that importers in the Community should be allowed to request exemptions from the anti-dumping duty within the meaning of Article 13(4) of the basic Regulation.

(5) It should be noted, first of all, that the complaint mentions saddles and essential parts thereof. It is considered, however, that the prima facie evidence of dumping necessary for initiating an investigation does not need to cover all product types included in the scope of the investigation. As long as the parts of a saddle have the same basic technical, physical and chemical characteristics and cannot have another end-use than being incorporated in the whole (i.e. into saddles) and, as such, they are not a distinct product, they are defined as part of the product concerned and should form part of the investigation. Furthermore, the fact that essential parts were not exported as such to the Community by the cooperating exporting producers during the IP does not preclude that this could have happened for the exporters which have not cooperated. It is recalled that the latter exporters represent over 75 % of the exports of the product concerned to the Community.

(6) As outlined in recital 16 of the provisional Regulation, the investigation has shown that, despite differences in shapes, materials and production processes, the different types of the product concerned all share the same basic physical and technical characteristics and are basically used for the same purposes. This finding was not contested by the importer in question (or by any other interested party of this proceeding) who did also not provide any evidence or information which would have contradicted the provisional findings. It results that the determination whether or not certain saddle parts should be considered as one single product was not made on the sole basis of the end-use criterion. The importer's claim that certain essential parts of saddles should not be considered as the product concerned was therefore rejected.

(7) Likewise, it results from the above that circumvention considerations were not decisive when determining the product concerned in the present investigation.

(8) In the absence of any other comments concerning the product concerned and the like product, recitals 14 to 18 of the provisional Regulation are hereby confirmed.

D. DUMPING

1. Market economy treatment (MET) and individual treatment (IT)

(9) Following the provisional disclosure, one group of exporting producers whose request for MET or IT was rejected on the grounds that it had provided misleading information within the meaning of Article 18 of the basic Regulation, argued that it should not be treated as non-cooperating and that the omission of certain information which was considered by the Commission in its provisional findings as misleading should not lead to the rejection of IT, since the information concerned only the domestic market, and would thus affect the calculation of the normal value.

(10) However, the company failed to give any satisfactory explanation as to the information which had been omitted, and it is therefore considered appropriate to maintain the provisional findings concerning their level of cooperation. The consequent doubts on the reliability of the whole information submitted by this exporting producer still exist, and in the absence of full cooperation of all related companies within one group of exporting producers, it cannot be determined whether the criteria set out in Article 9(5) of the basic Regulation concerning IT are met in relation to this group.

(11) The Community industry claimed that the fact that some of the exporting producers benefited from tax exemptions aimed at encouraging foreign direct investment is incompatible with the granting of MET to these exporting producers. However, the actual benefits from these tax exemptions to the companies were found to be negligible, and it is therefore considered that they were not incompatible with MET.

(12) The Community industry also argued that MET should have been denied to one of the groups of exporters, due to the fact that during the IP there were provisions in the Articles of Association of those exporters, specifying a certain percentage of export sales. However, it is considered that these provisions, which were not in practice followed by the exporters and have been removed after the IP, did not constitute either de jure or de facto restrictions on these companies' activities.

(13) In the absence of any new arguments regarding the granting of MET and IT, the findings as set out in recitals 19 to 27 of the provisional Regulation are hereby confirmed.

2. Normal value

(a) Determination of normal value for the exporting producers in the PRC granted MET

(14) Following the provisional disclosure, one exporting producer submitted comments concerning the detailed calculations made for establishing the normal value. These comments were found to be justified, and the calculations of the normal value were corrected accordingly. In the absence of any other comments regarding the calculation of normal value, the general methodology as set out in recitals 28 to 40 of the provisional Regulation is hereby confirmed.

(b) Determination of normal value for the exporting producers in the PRC not granted MET

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(i) Analogue country

(15) Following the provisional disclosure, one importer reiterated a statement already made earlier in the procedure by another party, claiming that the only cooperating producer in Brazil enjoyed a dominant position in the Brazilian market and was furthermore related to the complainant, and contested the Commission's choice of Brazil as analogue country. These arguments were already analysed by the Commission and refuted in recital 47 of the provisional Regulation. As no new information was provided in the comments received after the provisional disclosure and there was no indication in the further investigation that the position of the cooperating Brazilian producer on the Brazilian market or its relationship to the complainant may have affected the reliability of the data submitted or the appropriateness of Brazil as analogue country, the conclusion made at provisional stage is confirmed. In the absence of any other comments regarding the use of Brazil as an analogue country, recitals 41 to 49 of the provisional Regulation are confirmed.

(ii) Normal value

(16) The verification of the data submitted by the cooperating producer in Brazil took place before the imposition of provisional measures, but too late in the proceedings for its results to be reflected in those measures. In view of the results of that verification, the calculation of the normal value for the exporting producers in the PRC not granted MET was refined. In the absence of any comments with regard to the determination of the normal value for the exporting producers not granted MET, the general methodology as set out in recitals 41 to 51 of the provisional Regulation is definitively confirmed.

3. Export prices

(17) In the absence of any comments with regard to export prices, the general methodology as set out in recitals 52 to 54 of the provisional Regulation, is hereby confirmed.

4. Comparison

(18) Following the provisional disclosure, one exporting producer claimed that an adjustment for differences in commissions, according to Article 2(10)(i) of the basic Regulation, made on the export price for sales made through a related company in Taiwan, was not warranted. The exporter claimed that the Taiwanese company does not perform any of the functions referred to in Article 2(10)(i). However, this claim is in contradiction with the description of the sales process given in the company's reply to the anti-dumping questionnaire and as verified during the on-the-spot investigation, and therefore this claim cannot be accepted. In the absence of any other comments in this respect, recitals 55 and 56 of the provisional Regulation are hereby confirmed.

5. Dumping margin

(a) For the cooperating exporting producer granted MET

(19) One cooperating exporting producer claimed that an individual dumping margin should also be attributed to one company in the group who had not exported to the EC during the IP. Given that the group has fully cooperated in the investigation, their claim was accepted and the group's average dumping margin should also be attributed to this company, Cionlli Bicycle Components (Tianjin) Co., Ltd. In the light of the above mentioned revisions relating to normal value, the definitive dumping margins, expressed as a percentage of the cif Community frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Cionlli Bicycle (Taicang) Co., Ltd, Shunde Hongli Bicycle Parts Co., Ltd, Safe Strong Bicycle Parts Shenzhen Co., Ltd and Cionlli Bicycle Components (Tianjin) Co., Ltd	5,8 %
Giching Bicycle Parts (Shenzhen) Co., Ltd and Velo Cycle Kunshan Co., Ltd	0 %

(b) For all other exporting producers

(20) Following the provisional disclosure, one importer claimed that the countrywide dumping margin should not have been based on the single cooperating exporting producer to which neither MET nor IT was granted. According to this importer, the countrywide dumping margin should also have been based on the export price of the group of exporting producers mentioned in recital 9. However, as stated in recital 23 of the provisional Regulation, there are serious doubts on the integrity of the whole data provided by that exporter which had deliberately omitted to declare its relationship with one of its main domestic customers and was thus considered as non-cooperating in this investigation.

(21) In light of the comments received it was considered nevertheless, that given the very small volume of exports represented by the single cooperating exporting producer to which neither MET nor IT was granted, it would be more appropriate to base the calculation of the countrywide duty also on import data from Eurostat, based on an average weight of 500 grams per saddle. Accordingly, the countrywide dumping margin was determined as the weighted average of:

— the dumping margin found for the cooperating exporter to which neither MET nor IT was granted and

— a dumping margin calculated from Eurostat import data, by excluding the value and quantity of exports from the cooperating exporting producers. Some minor corrections were also made to the normal value based on the analogue country data.