Commission Implementing Decision (EU) 2020/1409 of 29 September 2020 concerning exemptions from the extended anti-dumping duty on certain bicycle parts originating in the People's Republic of China pursuant to Regulation (EC) No 88/97 (notified under document C(2020) 6574)

COMMISSION IMPLEMENTING DECISION (EU) 2020/1409

of 29 September 2020

concerning exemptions from the extended anti-dumping duty on certain bicycle parts originating in the People's Republic of China pursuant to Regulation (EC) No 88/97

(notified under document C(2020) 6574)

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

Having regard to Commission Implementing Regulation (EU) 2019/1379 of 28 August 2019 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China as extended to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka, Tunisia, Cambodia, Pakistan and the Philippines, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036[(2)],

After informing the Member States,

Whereas:

(1) An anti-dumping duty applies on imports into the Union of certain essential bicycle parts originating in the People's Republic of China ('the PRC') as a result of the extension of the anti-dumping duty imposed on imports of bicycles originating in the PRC by Council Regulation (EC) No 71/97[(3)].

(2) Under Article 3 of Regulation (EC) No 71/97 the Commission is empowered to adopt the necessary measures to authorise the exemption of imports of essential bicycle parts which do not circumvent the anti-dumping duty.

(3) Those implementing measures are set out in Commission Regulation (EC) No 88/97[(4)] establishing the specific exemption system.

(4) On that basis, the Commission has exempted a number of bicycle assemblers from the extended duty.

(5) As provided for in Article 16(2) of Regulation (EC) No 88/97, the Commission has published in the *Official Journal of the European Union* subsequent lists of the exempted parties[(5)].

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2020/1409. (See end of Document for details)*

(6) The most recent Commission Implementing Decision (EU) 2020/676[6] concerning exemptions under Regulation (EC) No 88/97 was adopted on 18 May 2020.

(7) For the purposes of this Decision, the definitions set out in Article 1 of Regulation (EC) No 88/97 apply.

(8) On 20 March 2017, the Commission received from the German company Kenstone Metal Company GmbH ('Kenstone') a request for exemption with the information required to determine whether this request was admissible in accordance with Article 4 of Regulation (EC) No 88/97 ('the exemption Regulation').

(9) In accordance with Article 5(1) of Regulation (EC) No 88/97, pending a decision on the merits of the request, the payment of the extended duty in respect of any imports of essential bicycle parts declared for free circulation by Kenstone was suspended as from the day on which the Commission received its request for exemption.

(10) The TARIC additional code C207 was assigned to the party listed in the table, in order to identify the imports of essential bicycle parts declared for free circulation and subject to the suspension of the payment of the extended duty.

TABLE

TARIC additional code	**Name**	**Address**	**Date of effect**
C207	Kenstone Metal Company GmbH	Am Maikamp 8-12, 32 107 Bad Salzuflen, Germany	20.3.2017

(11) In August 2018, Kenstone informed the Commission that during the period of the suspension of the payment of the extended duty, namely 1 April 2017-31 March 2018 ('investigation period') the company could not comply with one of the conditions set out in Article 4 of the exemption Regulation. In particular, Kenstone did not use essential bicycle parts for the assembly of bicycles in quantities above the threshold of 299 units per type of essential bicycle parts on a monthly basis ('*de minimis* rule').

(12) Kenstone justified the non-compliance with the *de minimis* rule with the fact that the company's premises including the bicycles assembly line moved from Flensburg to Bad Salzuflen. In addition, due to a change of the supply chain, the delivery of the bicycle parts purchased was delayed.

(13) Kenstone stated that with the new assets the assembly of bicycles became fully operational and thus the threshold mentioned above would have been reached in 2018. Therefore, Kenstone asked for an extension of the investigation period to include the whole calendar year 2018 ('extended investigation period'). That extension was granted and therefore the extended investigation period covered the period 1 April 2017-31 December 2018.

(14) In March 2019, Kenstone informed the Commission that also during the extended investigation period the company purchased on a monthly basis less than 300 units per

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2020/1409. (See end of Document for details)*

type of essential bicycle parts subject to the suspension of the payment of the extended duty.

(15) In July 2019, the Commission carried out a visit at the company's premises in order to examine the merits of the request for exemption. The outcome of the examination can be summarised as follows:

(a) almost half of the bicycles declared as assembled during the extended investigation period were actually bicycles fitted with an auxiliary motor ('e-bikes') and therefore out of the scope of the exemption Regulation;

(b) the main activity of the company was to provide customers with pure assembly services, i.e. Kenstone assembled bicycles parts owned by other parties and charged a service fee to the customers;

(c) the accounting system of Kenstone did not allow keeping records of more than one origin for each bicycle part, even in case that part came from different suppliers with different origins (Chinese or non-Chinese). Kenstone was therefore not able to demonstrate compliance with anti-circumvention rules, as it could not demonstrate the percentage of Chinese parts used.

(16) The examination of the request for exemption showed that during the extended investigation period Kenstone did not comply with the conditions set out in Regulation (EC) No 88/97. Although no violations of the anti-circumvention rules were identified, the size of the assembly activity of Kenstone for the purpose of Regulation (EC) No 88/97 was manifestly insufficient. In addition, Kenstone maintained an inadequate record-keeping system.

(17) In May 2020, the Commission received comments from Kenstone concerning the examination of the request for exemption. Kenstone submitted that:

(a) during the extended investigation period, Kenstone assembled more than 300 units of essential bicycle parts on a monthly weighted average;

(b) since January 2020, the assembly activities of Kenstone have significantly increased, so that more than 300 units of bicycle parts have been assembled each individual month;

(c) while admittedly the record-keeping system allowed keeping records of only one origin for each bicycle part regardless of whether it might have been obtained from several suppliers and of different origins, Regulation (EC) No 88/97 does not specify that a record-keeping system able to record such information is a prerequisite;

(d) the examination of the merits of the request for exemption carried out by the Commission was inadequate.

(18) With regard to the comment summarised in recital 17 under (a), the Commission wishes to point out that pursuant to Article 2 of Regulation (EC) No 88/97, imports of essential

bicycle parts shall be exempt from the extended duty where they are declared for free circulation by, or on behalf of, an exempted party.

(19) Moreover, pursuant to Article 4 of that Regulation, a request shall be admissible where 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) of Regulation (EC) No 88/97.

(20) Furthermore, as stated by Commission Regulation (EU) No 512/2013[7], bicycle parts used for the assembly of e-bikes are not subject to anti-dumping measures and therefore they are out of the scope of the exemption Regulation.

(21) The Commission observes that Kenstone was aware of its non-compliance with the *de minimis* rule and in March 2019 informed the Commission accordingly, as mentioned in recital 14 above.

(22) The bicycles parts assembled but neither purchased nor owned by Kenstone, as well as the bicycles parts that Kenstone used for the assembly of e-bikes cannot be considered to determine compliance with the *de minimis* rule.

(23) Kenstone furthermore argued that more than 300 essential bicycle parts were used on a monthly basis in 2018. However, the number exceeding 300 essential bicycle parts was achieved by adding up the use of all nine essential bicycle parts. In this respect, it should be pointed out that according to Article 14(c) of Regulation (EC) No 88/97 the threshold of 300 units is clearly defined 'per type of essential bicycle parts', not in total for all nine essential bicycle parts.

(24) Kenstone also argued that, when examining imports of essential bicycle parts per type, the threshold of 300 parts was exceeded for certain parts in January 2018 and for other parts in February 2018, but never more than once per year for a given essential part. Kenstone argued that since the assembly of bicycles is a seasonal activity, it would be disproportionate if an assembler has to exceed the threshold every month.

(25) In this respect, Regulation (EC) No 88/97 indeed provides an element of flexibility, as the threshold, which an exempted party needs to exceed, is defined 'on a monthly basis'. However, exceeding the threshold only once in a given year of 12 months for a given part is insufficient to meet the criterion of being considered above the threshold on a monthly basis.

(26) Consequently, during the extended investigation period, within the scope of the exemption Regulation, Kenstone purchased on a monthly basis less than 300 units per type of essential bicycle parts subject to the suspension of the payment of the extended duty. Also, Kenstone used essential bicycle parts subject to the suspension for the production or assembly of bicycles in quantities below the threshold set out in Article 14(c) of the exemption Regulation.

(27) With regard to the comment summarised in recital 17 under (b), the Commission wishes to point out that pursuant to Article 6 of the exemption Regulation, the period 1 April 2017-31 December 2018 was identified as the period to be investigated in order to decide whether to grant an exemption. Therefore, the examination of the assembly