II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 6 May 1998

rejecting the application submitted by Techno Cycles (France) for an exemption pursuant to Commission Regulation (EC) No 88/97 from the anti-dumping duty extended to certain bicycle parts originating in the People's Republic of China

(98/336/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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], as amended by Regulation (EC) No 2331/96 [2],

Having regard to Council Regulation (EC) No 71/97 of 10 January 1997 extending the definitive anti-dumping duty imposed by Regulation (EEC) No 2474/93 on bicycles originating in the People's Republic of China to imports of certain bicycle parts from the People's Republic of China, and levying the extended duty on such imports registered pursuant to Regulation (EC) No 703/96 [3],

Having regard to Commission Regulation (EC) No 88/97 of 20 January 1997 on the authorisation 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 [4], and in particular Article 7(3) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) By Regulation (EC) No 71/97, the definitive duty imposed on imports of bicycles originating in the People's Republic of China by Regulation (EC) No 2474/93 was extended to imports of certain bicycle parts from that country (hereinafter referred to as 'the extended anti-dumping duty').

(2) On 26 September 1996, during the investigation leading to the adoption of Regulation (EC) No 71/97, Tekno Cycles asked to be exempted from the extended anti-dumping duty pursuant to Article 13(4) of Regulation (EC) No 384/96 (hereinafter referred to as 'the basic Regulation').

(3) By Regulation (EC) No 88/97, the Commission declared Tekno Cycles' request for exemption admissible, initiated an investigation, and suspended payment of the customs debt incurred for the extended anti-dumping duty.

(4) In order to ascertain whether Tekno Cycles' operations fell within the scope of Article 13(2) of the basic Regulation, the Commission requested and received the necessary information from the company, which was verified at its premises on 24 and 25 February 1997.

(5) In view of the fact that Tekno Cycles had only started to assemble bicycles in March 1996, the

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 317, 6. 12. 1996, p. 1.
[3] OJ L 16, 18. 1. 1997, p. 55.
[4] OJ L 17, 21. 1. 1997, p. 17.

investigation period was taken to run from 1 March 1996 to 28 February 1997.

B. RESULTS OF THE INVESTIGATION

1. Nature of the circumvention practice

(6) The investigation has established that, on several occasions, the company concerned ordered almost complete bicycles in disassembled form from the People's Republic of China during the investigation period. For the shipments to Europe the suppliers ensured that the parts destined for Tekno Cycles were spread in different containers sent on different dates and invoiced by different companies in Hong Kong having the same address. By following this practice, the company concerned avoided having the imported parts classified in accordance with Rule 2(a) of the General Rules for the Interpretation of the Nomenclature of the Common Customs Tariff as finished bicycles which would have been subject to the anti-dumping duty.

2. Conditions of Article 13(2) af the basic Regulation

(a) *Start or substantial increase of operations*

(7) The assembly operations of Tekno Cycles started in March 1996, well after the original investigation into imports of bicycles originating in the People's Republic of China.

(b) *60 % of the total value of the parts constituting the assembled product*

(8) It was established that the proportion of Chinese parts used in the company's assembly operations varied from 64 to 96 % of the total value of the parts used in each model; this applied to all bicycle models assembled during the investigation period.

(c) *25 % rule on the added value to the parts brought in*

(9) The value added in the Community on a per-model basis to the parts brought in was found to vary between 12 and 16 % of the manufacturing cost of a complete bicycle, and was therefore clearly below the 25 % threshold set by point (b) of Article 13(2) of the basic Regulation.

(d) *Undermining of the remedial effects of the duty and evidence of dumping*

(i) Undermining

(10) The Commission applied the methodology described in recitals 19 and 20 of Regulation (EC) No 71/97. A comparison was established between the sales prices of all bicycles assembled by Tekno Cycles and sold in the Community during the investigation period, and the 'non-dumped' export prices of Chinese bicycles in the original investigation.

(11) The comparison was made between identical or comparable groups of bicycles; the prices of the assembled bicycles were adjusted in order to ensure that the comparison was made at the same level of trade. The undermining margins for those groups where undermining was found were expressed as a percentage of the total non-dumped import value (cif Community border) of Chinese bicycles, as established in the original investigation, for all groups included in the comparison.

(12) Overall, the comparison showed that the sales prices of assembled bicycles have undercut the non-dumped export prices of Chinese bicycles in the original investigation period by an average of 31 %.

(ii) Evidence of dumping

(13) Dumping was calculated on the basis of all models assembled and sold by Tekno Cycles in the investigation period which were compared to the normal values previously established for comparable bicycles, using the same criteria and the same reference country, namely Taiwan, as in the original investigation, in a manner as reasonable as possible.

(14) In view of the fact that normal values had been established at FOB Taiwan level for the exporters concerned, resale prices in the Community had to be made comparable with this level. The actual comparison was thus made between FOB China and FOB Taiwan.

(15) The dumping margin found was 12 %.

C. CONCLUSION

(16) For the reasons explained above, it was established that the assembly operations of Tekno Cycles fell within the scope of Article 13(2) of the basic Regulation during the investigation period. Accordingly, pursuant to Article 7(3) of Regulation (EC) No 88/97, the suspension of payment of the extended anti-dumping duty is lifted for Techno Cycles.

(17) The company was informed of the essential facts and considerations on the basis of which the Commission intended to propose the rejection of its request for exemption, and was given an opportunity to comment. The comments were considered and, where appropriate, the findings have been changed accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The application of Techno Cycles pursuant to Article 13(4) of Regulation (EC) No 384/96 to be exempted from the extended anti-dumping duty is hereby rejected.

Article 2

This Decision is addressed to the Member States and to: Techno Cycles, Cap St Antoine, 155, rue de Rosny, F-93102 Montreuil Cedex — France.

Done at Brussels, 6 May 1998.

For the Commission
Leon BRITTAN
Vice-President