COMMISSION REGULATION (EC) No 2414/95

of 13 October 1995

imposing a provisional anti-dumping duty on imports of bicycles originating in Indonesia, Malaysia and Thailand

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 1251/95 [2], and in particular Article 23 thereof,

Having regard to council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [3], as last amended by Regulation (EC) No 522/94 [4], and in particular Article 11 thereof,

After consulting the Advisory Committee,

Whereas,

A. PROCEDURE

(1) In February 1994, the Commission announced by notice published in the *Official Journal of the European Communities* [5] the initiation of an anti-dumping proceeding concerning imports of bicycles originating in Indonesia, Malaysia and Thailand, and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged by the European Bicycle Manufacturers Association (EBMA) on behalf of producers allegedly representing a major proportion of the total production of bicycles in the European Community. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom which was considered sufficient to justify the initiation of a proceeding.

(3) The present proceeding follows an anti-dumping proceeding concerning imports of bicycles originating in Taiwan and the People's Republic of China, which resulted in an anti-dumping duty of 30,6 % being imposed on imports of bicycles originating in the People's Republic of China by Council Regulation (EEC) No 2474/93 [6]. The dumping margin for imports of bicycles originating in Taiwan was considered negligible. Accordingly, the anti-dumping proceeding concerning those imports was terminated by Commission Decision 93/485/EEC [7].

(4) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting country and the complainants. Parties directly concerned were given the opportunity to make their views known in writing and to request a hearing.

(5) Representatives of the exporters, the complainants, some importers and associations of exporters made their views known in writing. The Indonesian, Malaysian and Thai exporters requested and were granted a hearing.

(6) In view of the large number of Community producers expressly supporting the complaint, the Commission sent questionnaires to and received detailed information from a representative selection of Community producers as set out in recital (73).

(7) In addition, the Commission sent questionnaires to parties known to be concerned and received responses to those questionnaires from five Indonesian producers and one exporter in Japan related to an Indonesian producer, and also from five Malaysian and four Thai producers.

(8) The Commission sought and verified all information it deemed necessary for the purpose of a preliminary determination and carried out investigations at the premises of the following companies :

1. *Community producers :*

— Cycleurope International, Neuilly sur Seine, France,

— Derby Cycle Werke GmbH, Cloppenburg, Germany,

— Kynast AG, Quakenbrück, Germany,

— Aurelia Dino SpA, Cuneo, Italy,

— F.I.V. Bianchi SpA, Treviglio, Italy,

— Vivi Bikes Srl, Pontevico, Italy,

[1] OJ No L 349, 31. 12. 1994, p. 1.
[2] OJ No L 122, 2. 6. 1995, p. 1.
[3] OJ No L 209, 2. 8. 1988, p. 2.
[4] OJ No L 66, 10. 3. 1994, p. 10.
[5] OJ No C 35, 3. 2. 1994, p. 3.
[6] OJ No L 228, 9. 9. 1993, p. 1.
[7] OJ No L 227, 8. 9. 1993, p. 21.

— Koninklijke Gazelle BV, Dieren, Netherlands,

— Bicicletas de Alava SA, Vitoria, Spain,

— Falcon Cycles Ltd, Brigg, United Kingdom,

— Raleigh Industries Ltd, Nottingham, United Kingdom,

— Townsend Cycles Ltd, Leigh, United Kingdom.

2. *Importers in the Community:*

— Quantum International SA, Paris, France,

— Carrefour France SNC, Evry, France,

— Veleclair SA, Dreux, France,

— E. Reece, London, United Kingdom,

— Universal Cycles plc, Rayleigh, United Kingdom;

These importers were not related to exporters in Indonesia, Malaysia or Thailand.

3. *Producers in Indonesia:*

— PT Insera Sena, Sidoarjo,

— PT Jawa Perdana Bicycle Industry, Tangerang,

— PT Wijaya Indonesia Makmur Bicycle Industries, Surabaya.

4. *Related exporter in Japan:*

— JBI Japan Inc., Kobe.

5. *Producers in Malaysia:*

— Akoko Sdn Bhd, Klang,

— Berjaya Cycles Sdn Bhd, Kulim,

— Greenworld Systems Sdn Bhd, Kuala Lumpur

(previously Fairly Toraya Sdn Bhd),

— Lerun Group Industries Berhad, Petaling Jaya,

— Rolls Rally Sdn Bhd, Pelabuhan Kelang.

6. *Producers in Thailand:*

— Bangkok Cycle Industrial Co. Ltd, Bangkok,

— Siam Cycle MFG, Co. Ltd, Samuthprakarn,

— Thai Bicycle Industry Co. Ltd, Samuthprakarn,

— Victory Cycle Co. Ltd, Samuthprakarn.

(9) The investigation of dumping covered the period from 1 January 1993 to 31 December 1993 ('the investigation period')

(10) Owing to the volume of information gathered and the complexity of the investigation and, in particular, in the light of the numerous models of bicycles and the variety of technical specifications, the proceeding exceeded the normal duration of one year as provided for in Article 7 (9) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the Basic Regulation').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(11) The product covered by the complaint, and for which the proceeding was opened is all types of bicycles, with or without ball bearings, falling within CN code 8712 00.

(12) The product is extremely heterogeneous. Indeed, several thousand models of bicycles exist, the varieties being distinguished by the great number of specific features. Despite such differences, it has to be noted that all different types curently on the market had the same basic physical characteristics. Within this overall product range, bicycles can be classified in five basic categories (mountain bicycles, sport/racing bicycles, touring bicycles, junior bicycles, and other bicycles). However, there are no clear dividing lines between adjoining categories and the different product segments overlap. In a number of cases, one bicycle type can be classified in two or more categories. In addition, consumers and end users will regularly put a bicycle in a particular category to a variety of uses and applications.

(13) It was concluded on the basis of the investigation that all types of bicycles originating in Indonesia, Malaysia and Thailand and sold on the Community market fall within the product range described above. They were, therefore, regarded as forming one single product for the purpose of this proceeding.

(14) It was found that bicycles produced by the Community industry and sold on the Community market, as well as bicycles produced in Indonesia, Malaysia and Thailand and sold on the domestic market, cover a similar model range, their basic technical and physical characteristics being identical to those of bicycles exported from Indonesia, Malaysia and Thailand to the Community. Therefore, the Commission considered those bicycles as a like product within the meaning of Article 2 (12) of the Basic Regulation.

C. DUMPING

1. Normal value

(a) *Indonesia*

(15) As far as the determination of normal value for the Indonesian producers is concerned, the Commission first established, for each producer, whether its total domestic bicycle sales were representative in comparison with its total bicycle export sales to the Community.

(16) The three fully cooperating Indonesian producers subject to this proceeding sold bicycles on the domestic market during the investigation period. The total domestic sales volume of each company was higher than 5 % of its total export sales volume. Accordingly, those sales were considered representative.

(17) The Commission subsequently examined whether bicycle models sold by the three companies on the domestic market could be considered identical or directly comparable to bicycle models sold for export to the Community.

(18) As in the previous anti-dumping proceeding concerning bicycles originating in the People's Republic of China and Taiwan, however, this assessment was made extremely difficult by the considerable variety of physical characteristics and combinations of features shown by the products in question. Given the diversity of models sold domestically and for export to the Community, the establishment of normal values on the basis of prices permitting a proper comparison with export prices would, in most cases, have required exceptionally complex calculations and adjustment. For these reasons, models were regarded as comparable for the purpose of the establishment of a normal value if such comparability had been clearly proposed and substantiated by the producers concerned and if only minor adjustments were required to account for differences in characteristics or features.

(19) For each of the models sold by the three Indonesian companies on the domestic market and found to be comparable to models sold for export to the Community, the Commission established whether domestic sales were sufficiently representative.

(20) Domestic sales of a particular model were considered sufficiently representative within the meaning of Article 2 (3) of the Basic Regulation when the number of bicycles of this model sold in Indonesia during the investigation period represented 5 % or more of the number of bicycles of the comparable model sold for export to the Community.

(21) The Commission finally examined whether the domestic sales of each model could be considered to be effected in the ordinary course of trade, by looking at the proportion of profitable sales of the model in question.

(22) In cases where the number of bicycles sold at a net sales price equal to or above the calculated cost of production represented more than 80 % of the total sales volume, the domestic price of this model was based on a weighted average of all domestic sales transacted during the investigation period, whether profitable or not. In cases where the number of bicycles sold at a net sales price equal to or above the calculated cost of production represented less than 80 % but more than 10 % of the total sales volume, the domestic price of this model was based on a weighted average of profitable domestic sales only. In cases where the number of bicycles sold at a net sales price equal to or above the calculated cost of production represented less than 10 % of the total sales volume, it was considered that the model was not sold in the ordinary course of trade and that the domestic price did not provide an appropriate basis for the normal value.

(23) In applying the tests set out in recitals (17) to (22), it was found that it was only for some of the bicycle models sold by the three Indonesian companies domestically that normal value could be based on the actual domestic price of comparable models in accordance with Article 2 (3) (a) of the Basic Regulation, because models sold domestically were technically too different, not sold in sufficient quantities, or sold at a loss.

(24) Therefore, for most of the bicycle models sold for export to the Community by the cooperating Indonesian companies the normal value had to be calculated, in accordance with Article 2 (3) (b) (ii) of the Basic Regulation, on the basis of a constructed value for the products exported to the Community.

(25) The constructed value was determined by adding to the manufacturing costs of the exported models, a reasonable percentage for selling, general and administrative expenses (SG&A) and a reasonable margin of profit.

(26) To this end, the Commission examined whether the SG&A incurred and the profit realized by each of the producers concerned on the domestic market constituted reliable data, for the purposes of Article 2 (3) (b) (ii) of the Basic Regulation. Actual domestic SG&A expenses were considered reliable when the domestic sales volume of the company concerned could be regarded as representative (see recital (16)). This was the case for all three companies. The actual domestic profit margin was considered reliable when a sufficient number of bicycles was sold at a net sales price above the calculated cost of production. This was also the case for all three companies.

(27) Consequently, the constructed value of all Indonesian bicycle models for which such a calculation was necesary was established on the basis of actual SG&A and profit figures for the companies concerned.

(28) Due to insufficient cooperation from two Indonesian companies, it was not possible to obtain or verify the necessary information requested in the questionnaire. In the case of one company, the Commission was not in a position to carry out a verification, owing to the fact that none of the relevant accounting records were made available for inspection on the day of the verification visit. In the case of the other company, the deficiency consisted in a failure to meet several deadlines to provide crucial information concerning domestic sales transactions and cost of production, which eventually resulted in the Commission's being unable to carry out a meaningful verification. The preliminary dumping findings concerning those two companies were therefore based on the facts available in accordance with Article 7 (7) (b) of the Basic Regulation.

(b) *Malaysia*

(29) It appeared in the course of the investigation that two of the five Malaysian producers belonged to the same group of companies. One of them exported bicycles to the Community during the investigation period but did not sell any on the domestic market. The other, on the contrary sold substantial quantities on the domestic market but had no export sales to the Community. Although these two companies maintained separate production activities, it was considered appropriate to treat them as one producing exporter for the purpose of provisional dumping determinations.

(30) Only one Malaysian exporter had representative domestic sales during the investigation period, since its total domestic sales volume was higher than 5 % of its total export sales volume.

(31) In applying the tests set out in recitals (17) to (22), it was found that for none of the bicycle models sold by this company domestically could normal value be based on the actual domestic price of comparable models in accordance with Article 2 (3) (a) of the Basic Regulation, because models sold domestically were technically too different, not sold in sufficient quantities, or sold at a loss.

(32) Consequently, for all models sold by the Malaysian exporters the normal value had to be calculated, in accordance with Article 2 (3) (b) (ii) of the Basic Regulation, on the basis of a constructed value for the products exported to the Community.

(33) Since only one producing exporter had representative domestic sales of bicycles during the investigation period (see recital 30), the SG&A incurred and profit realised by this company on the domestic market were the only data available in Malaysia for this purpose.

(34) The Commission examined whether the domestic profit margin of this company could be considered reliable by verifying that the number of bicycles sold at a price above the calculated cost of production was sufficiently representative. This was the case.

(35) The constructed value of all models sold for export to the Community by the Malaysian companies was therefore established by adding to the manufacturing costs of the exported models the SG&A and profit figures of the only producing exporter with domestic sales.

(c) *Thailand*

(36) Three of the four Thai exporters subject to this proceeding sold bicycles on the domestic market during the investigation period. The total domestic sales volume of each company was higher than 5 % of the total export sales volume. Therefore, these sales were considered representative within the meaning of Article 2 (3) of the Basic Regulation.

(37) For only one Thai company with domestic sales, however, could normal value be based on the actual domestic price of comparable models for all models sold for export to the Community.

(38) In applying the tests set out in recitals (17) to (22), it was found that only for some of the bicycle models sold by the other two companies domestically could normal value be based on the actual domestic price of comparable models in accordance with Article 2 (3) (a) of the Basic Regulation, because models sold domestically were technically too different, not sold in sufficient quantities, or sold at a loss.

(39) For the majority of bicycle models sold for export to the Community by the other three Thai companies, normal value had to be calculated, in accordance with Article 2 (3) (b) (ii) of the Basic Regulation, on the basis of a constructed value for the products exported to the Community.

(40) The constructed value was determined by adding to the manufacturing costs of the exported models, a reasonable percentage for selling, general and administrative expenses (SG&A) and a reasonable margin of profit.

(41) For this purpose, the Commission examined whether the SG&A incurred and the profit realized by each of the producers concerned on the domestic market constituted reliable data, within the meaning of the Basic Regulation. Actual domestic SG&A expenses were considered reliable when the domestic sales volume of the company concerned could be regarded as representative (see recital (36)). This was the case for all three compa-

nies with domestic sales. The actual domestic profit margin was considered reliable when the number of bicycles sold at price above the calculated cost of production was sufficiently representative. This was also the case for two of the three companies with domestic sales.

(42) Consequently, for one company which had domestic sales and reliable SG&A and profit figures, its actual figures were used. For another company which had domestic sales but only a reliable SG&A figure, the profit figure applied was a weighted average of the profit margins of the two other companies with domestic sales. For a third company, for which normal value had to be constructed and which had no domestic sales, the SG&A figure applied was a weighted average of the SG&A figures of the other three companies, and the profit figure a weighted average of the profit margins of the two companies with reliable profit figures.

2. Export price

(a) *Indonesia*

(43) All the bicycle sales of two Indonesian companies for export to the Community were made direct to independent importers in the Community. Consequently, the export price of these companies was established by reference to the prices actually paid or payable to them for the bicycles sold (Article 2 (8) of the Basic Regulation).

(44) One Indonesian company made its sales for export to the Community indirectly, through a related trading company located in Japan. The sales transactions between the two companies were based on transfer prices. Provisionally, it was considered that the export price of this company should be established by reference to the prices actually paid or payable to the related trading company in Japan for the bicycles sold. The appropriateness of this approach will be reviewed for the purpose of definitive determinations.

(b) *Malaysia*

(45) All export sales to the Community of three Malaysian companies were made direct by these producing exporters to independent importers in the Community. Part of the export sales of a fourth Malaysian company were made to an unrelated trading company located in Japan. In both cases, the export price of the companies concerned was established by reference to the prices actually paid or payable to the Malaysian exporters (Article 2 (8) of the Basic Regulation).

(46) It was found during the verification visit to one Malaysian company that part of the export sales which had been reported by this company as direct sales to independent importers in the Community were in fact sales to a related company in Taiwan which subsequently re-sold the products to the importers concerned. Since the prices reported for such transactions were transfer prices, the Commission decided to disregard them. Since, in addition, this company had clearly supplied the Commission with misleading information in respect of those transactions, it was considered that the dumping margin for those sales should be based on the facts available, in accordance with Article 7 (7) (b) of the Basic Regulation.

(47) For this purpose, the highest margin found for a model sold by this company to unrelated customers was attributed to the sales in question.

(c) *Thailand*

(48) All the bicycle sales of Thai producers for export to the Community were made direct to independent importers in the Community. Consequently, the export price of those companies was established by reference to the prices actually paid or payable to them for the bicycles sold (Article 2 (8) of the Basic Regulation).

3. Comparison

(49) Normal value by model was compared with the export price at an ex-factory level on a transaction-by-transaction basis.

(50) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2 (9) and (10) of the Basic Regulation.

(a) *Indonesia*

(51) One company requested an allowance for differences in physical characteristics between certain export and comparable domestic models and submitted appropriate evidence to support this claim. Adjustments were, therefore, made to take account of such differences.

(52) Where appropriate, an adjustment was made to normal value of an amount corresponding to import charges paid on materials physically incorporated in the finished bicycles, to the extent to which they were not collected or refunded in respect of the product exported to the Community.

(53) Adjustments were made, where necessary, for transport, insurance, handling, loading and ancillary costs. No adjustment was made for packing since no difference was found between domestic and export packing costs which could affect price comparability. All three cooperating Indonesian companies had requested an adjustment to normal value for credit costs. This request had to be

rejected, since none of them was able to provide evidence that the credit granted was part of the sales terms agreed with the buyers of the goods at the date of sale. It was considered that such credit could not have affected the price paid or payable on the domestic market.

(54) For two companies an adjustment was made to normal value in respect of salaries paid to salesmen.

(55) All three companies requested an adjustment to normal value for promotion and advertising costs. However, this request was rejected in view of the fact that such promotion and advertising costs belong to the category of overheads and general expenses for which allowances are generally not made.

(56) Finally it should be noted that a number of claims for adjustments of various types were disregarded in view of their insignificant character (i.e. adjustments with an *ad valorem* effect of less than 0,5 %).

(b) *Malaysia*

(57) Since the domestic SG&A figure used for the construction of normal value included direct selling expenses, adjustments to exclude those expenses had to be made. Although various claims were made to this effect, only a deduction for domestic transport costs was justified and sufficiently substantiated.

(58) Adjustments to the export price were made according to the Malaysian exporter concerned. Where necessary for one or more of the following selling expenses: transport, insurance, handling, loading and ancillary costs, credit costs and bank charges, guarantees, commissions paid to agents and salaries paid to salesmen.

(c) *Thailand*

(59) One company requested an allowance for differences in physical characteristics between export and certain comparable domestic models and submitted appropriate evidence to support this claim. Adjustments were, therefore, made to take account of such differences.

(60) Adjustments were made, where necessary, for transport, insurance, handling, loading and ancillary costs.

(61) An adjustment for packing costs was made in two cases where export packing costs were found to be significantly higher than domestic packing costs.

(62) Adjustments for credit costs were made to normal value and export price wherever it could be established that the credit granted was part of the sales terms agreed with the buyers of the goods at the date of sale. In a number of cases, however, claims for adjustments to normal value were not sufficiently supported by relevant evidence and had to be disregarded.

(63) In two cases, normal value was reduced by an amount corresponding to the costs of providing warranties and other similar services.

(64) Adjustments to normal value and export price were made to account for salaries paid to salesmen.

(65) Finally, it should be noted that a number of claims for adjustments of various types were disregarded in view of their insignificant character (namely adjustments with an *ad valorem* effect of less than 0,5 %).

4. Dumping margins

(66) The comparison of the normal value with the export price shows the existence of dumping in respect of all Indonesian, Malaysian and Thai producers which fully cooperated with the Commission. The weighted average dumping margins provisionally established for each such producer and expressed as a percentage of the free-at-Community-frontier price are the following:

(a) *Indonesia*

— PT Insera Sena:	0,40 %,
— PT Jawa Perdana Bicycle:	22,80 %,
— PT Wijaya:	22,01 %.

(b) *Malaysia*

— Akoko:	25,18 %,
— Fairly Toraya:	29,96 %,
— Lerun/Berjaya:	38,27 %,
— Rolls Rally:	28,25 %.

(c) *Thailand*

— Bangkok Cycle Industry:	18,29 %,
— Siam Cycle Manufacturing:	41,91 %,
— Thai Bicycle Industry:	13,25 %,
— Victory Cycle Co.:	13,25 %.

(d) *Indonesian companies which did not cooperate adequately*

(67) For the two Indonesian producers which did not co-operate sufficiently in the investigation (recital (28)), provisional dumping margins had to be assessed on the basis of the facts available.

(68) In order that there should be no premium for inadequate cooperation, it was decided that the provisional dumping margin for these companies should be higher than the highest margin found for the other cooperating Indonesian producers (recital (66)). However, the two companies concerned had made the effort to collect information and to provide a response to the questionnaire which should be taken into account. Consequently the margin for those companies should be lower than the residual duty (recital (71)) for Indonesia which applies to exporters which did not cooperate at all. Reflecting these two considerations, the provisional dumping margin for the two companies concerned was based on the arithmetical average between the highest margin found for a cooperating Indonesian producer (recital (66)) and the higher residual duty (recital (71)). Expressed as a percentage of the cif import price at the Community border, this margin is the following:

— PT Federal Cycle Mustika: 25,9 %,

— PT Toyo Asahi: 25,9 %.

(e) *Residual duty*

(69) For those producers in the countries concerned which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was determined on the basis of the facts available in accordance with Article 7 (7) (b) of the Basic Regulation.

(70) The Commission has noted that the exports not reported by the cooperating producers accounted for approximately 10 % of total imports into the Community of the product concerned originating in the three countries concerned.

(71) In view of the not insignificant degree of non-cooperation from all three countries concerned, it is considered appropriate that for those companies which did not cooperate in this proceeding or which did not export to the Community during the investigation period, the residual duty cannot be based on the highest dumping margin found for a cooperating producer since this would provide an unacceptable bonus for non-cooperation or would discriminate against those producers which cooperated. For the purpose of the residual duty the Commission calculated, for each of the three countries, a weighted average of the highest dumping margins found for bicycle models exported to the Community. The Commission based its calculation on two bicycle models of each category which were regarded as sufficiently representantive from each producer in the respective country which fully cooperated. On this basis, the duty rates are 29,0 % for Indonesia, 41,5 % for Malaysia and 48,8 % for Thailand.

D. COMMUNITY INDUSTRY

(72) The Community producers who expressly supported the complaint account for 55,3 % of the Community production of bicycles, and, therefore, are a major proportion of the Community industry within the meaning of Article 4 (5) of the Basic Regulation.

(73) In view of the large number of Community producers expressly supporting the complaint, the Commission would have been unable to verify the information received from all of them, as this would have resulted in an extremely long delay in completing the investigation which would have been incompatible with the very purpose of anti-dumping proceedings. For this reason the Commission decided to make a representative selection of Community producers on the basis of their size and geographic location. Twenty companies located in six Member States were chosen for the reception of questionnaires, thereby reflecting the size of production in the Member States. In order to enhance representativeness and not to put an undue burden on small firms, the companies were selected from the top of a listing by size and location. Consequently, mainly big producers were included. The EBMA was informed about the selection and did not object.

(74) In terms of production volume, the companies which fully cooperated account for 80,1 % of the output of the companies selected for the sample, and therefore, were considered representative.

E. INJURY

1. Cumulation

(75) The Commission examined whether imports of bicycles originating in Indonesia, Malaysia and Thailand should be assessed cumulatively. It is the practice of the Community institutions to cumulate imports from several countries, if certain criteria are met — in particular, if products from the countries in question are interchangeable, are sold through similar sales channels with similar pricing behaviour and are in competition with each other and with the Community industry product, and if imports from the single countries are not negligible.

(76) The Commission considered that the effects of Indonesian, Malaysian and Thai imports had to be analysed on aggregate: the exported products of each of the countries concerned were alike, interchangeable, and were marketed in the Community through comparable sales channels, within a comparable period, to compete with each other and with bicycles produced in the Community. Import volumes from the three countries show comparable

overall trends in absolute and relative terms. In 1993, imports from each of the three countries accounted for a market share of about 2 to 3 % ; they were thus not negligible.

(77) Exporters from Indonesia and Thailand requested that exports from their countries should not be cumulated with those from other countries, because exports from their countries had decreased from 1992 to 1993.

(78) In fact, imports from Indonesia increased from 150 138 units in 1990 to 359 621 units in 1992 and subsequently decreased in 1993 by 48 540 units (− 13,4 % compared to 1992) to reach a level of 311 081 units. From 1990 to 1993, however, imports from Indonesia increased by 107,2 %. Imports from Thailand showed a similar development. They increased from 194 474 units in 1990 to 521 851 units in 1992, then decreased by 103 514 units from 1992 to 1993 (− 19,8 %), giving a volume of 418 337 units in 1993. From 1990 to 1993, imports from Thailand still showed an increase of 115,1 %.

(79) The Commission concluded that, despite the decrease of imports from Indonesia and Thailand from 1992 to 1993, the overall development still showed a substantial increase of import volumes. By comparison, the decrease from 1992 to 1993 is minor and therefore cannot be regarded as a sign of changed trade patterns or trends sufficient to justify a claim for non-cumulation of injury caused by exports from those countries.

2. Community consumption, volume and market share of dumped imports

(80) Apparent consumption of bicycles on the Community market increased by 4,0 %, from 17,3 million units in 1990 to 18 million units in 1993.

(81) From 1990 to 1993, total imports originating in Indonesia, Malaysia and Thailand increased by 190,6 % from 418 946 to 1 217 631 units. Market share held by these countries increased by 4,4 percentage points, reaching a market share of 6,8 % in 1993. The share of total bicycle imports into the Community represented by imports originating in Indonesia, Malaysia and Thailand rose from 8,2 % in 1990 to 21,7 % in 1993.

3. Prices of dumped imports

(82) For the model comparison the Commission applied the same methodology as was used in the anti-dumping proceeding concerning imports of bicycles originating in Taiwan and the People's Republic of China. Bicycles exported from Indonesia, Malaysia and Thailand to the Community and bicycles produced by the Community industry were classified into more than 200 different groups. The groups were defined by :

— the category of bicycle,

— the frame material used, and

— the quality of the gear system (which includes the number of gears).

(83) The cif Community frontier value, customs cleared, of imported bicycles was compared to the ex-factory price of bicycles produced by the Community industry and classified in the corresponding group. Prices of imported bicycles and bicycles of the Community industry were, where necessary, adjusted to a comparable level of trade. Adjustments were made for export sales to the Community and for Community industry sales other than to distributors. Fob export sales to the Community were adjusted to cif level. Weighted average prices were calculated for each producer/exporter and bicycle group and were compared to weighted average prices of Community industry bicycles in the corresponding group.

(84) Some of the Indonesian, Malaysian and Thai bicycles exported to the Community were classified in bicycle groups for which no corresponding group of bicycles produced by the Community industry existed, thereby precluding any direct comparison. In the majority of such cases, the number of bicycles of the respective Indonesian, Malaysian and Thai producers for which no direct comparison could be made was sufficiently representative. However, for two exporters this was not the case. For these companies, in order to increase the representativeness of the undercutting calculation, bicycles classified in groups where no direct comparison was possible were compared to Community industry bicycles in the most closely similar groups which had lower specifications than the respective bicycle groups of the exporter in question.

(85) On this basis substantial price undercutting was found. Individual undercutting margins for the fully cooperating producers, expressed as a percentage of the Community producers' prices, undelivered to distributors, vary from 18,2 % to 41,4 % in Indonesia, from 29,7 % to 38,3 % in Malaysia, and from 15,3 % to 30,6 % in Thailand.

(86) During the investigation period, imports of bicycles originating from Indonesia, Malaysia and Thailand benefited from preferential customs duties under the Generalized System of Preferences. However, normal customs duties were re-introduced for :

— Indonesia and Thailand, by Commission Regulation (EC) No 3303/93 with effect from 5 December 1993 [1],

— Malaysia, by Commission Regulation (EC) No 3251/93 with effect from 30 November 1993 [2].

[1] OJ No L 297, 2. 12. 1993, p. 3.
[2] OJ No L 293, 27. 11. 1993, p. 26.

The effect of this change in the customs duty on the calculation of the undercutting margins can be considered insignificant, since only 10,437 units were imported from these countries in December 1993 which is 0,8 % of total imports of bicycles originating in Indonesia, Malaysia and Thailand in 1993, and therefore was not taken into account.

4. Situation of the Community industry

(a) *Vulnerability of the Community industry*

(87) As is documented by the anti-dumping proceeding concerning imports of bicycles originating in Taiwan and the People's Republic of China, from 1988 to 1991, the Community industry was already exposed to unfairly low-priced imports of bicycles originating in the People's Republic of China and suffered material injury. In a expanding market the Community industry faced stagnating sales and consequently, a loss of market share and an unsatisfactory profit situation (Regulation (EEC) No 2474/93, recital (71)). Therefore the Community industry was already vulnerable.

(b) *Performance of the Community industry*

Sales, market share held by the Community industry, turnover

(88) From 1990 to 1993 sales of the Community industry dropped by 16,9 % from 7 228 231 to 6 004 839 units. This resulted in a loss of market share of 8,5 percentage points, which is a drop from 42,0 % in 1990 to 33,5 % in 1993.

(89) The sales losses of the Community industry are reflected in the turnover figures which, during the same period, decreased by 6,2 % from ECU 971 061 million to ECU 910 433 million.

Production, capacity utilization, stocks

(90) From 1990 to 1993, Community industry production fell by 20,2 % from 7 492 140 to 5 981 772 units. At the same time, total capacity of the Community industry decreased by 2,9 % from 8 131 446 to 7 895 689 units.

(91) The utilization rate fell by 12,6 % and stocks decreased by 5,7 % (1990-1993).

Employment, profitability, investments

(92) Employment figures of the Community Industry fell by 9,6 %, which meant a reduction of the employment level from 7 922 to 7 159 by some 800 jobs (1990-1993).

(93) During the same time, profitability of the Community producers dropped by 65,7 %, with the average profit margin in 1993 being 1,77 % of turnover. The precarious state of the Community industry is underlined by the fact that during the investigation, three complainant companies, accounting for about 6 % of the Community industry output, either sought winding-up or went into receivership.

(94) From 1990 to 1993, investments increased by 125 %.

5. Conclusion on injury

(95) Contrary to the positive expectations for recovery of the Community industry, based upon the decline of imports of bicycles originating in the People's Republic of China, an overall assessment shows that sales, turnover and production decreased substantially, resulting in a significant loss of market share, a lower capacity utilization, smaller employment figures and a deteriorated profit situation.

(96) Consequently, it is provisionally concluded that the Community industry experienced 'material injury' within the meaning of Article 4 (1) of the Basic Regulation.

F. CAUSE OF INJURY

1. Effect of dumped imports

(97) While bicycle imports from China lost 5,3 percentage points of market share between 1990 and 1993, the market share held by imports from Indonesia, Malaysia and Thailand increased from 1990 to 1993 by 4,4 percentage points. Thus, the Community industry was unable to take advantage of the decline in Chinese imports. On the contrary, the Community industry lost 8,5 percentage points of market share.

(98) The imports from Indonesia, Malaysia and Thailand significantly undercut prices of the Community industry. Being exposed to this price pressure, as the bicycle market is a price-sensitive market, it is evident that the considerable degree of price undercutting of the dumped imports had a great and direct negative impact on the price level in the Community. The Community industry lost sales, had to reduce production and employment levels, and saw its profit situation deteriorating to an extent insufficient to ensure a healthy and continuous business operation.

2. Other factors

(99) The Commission considered whether factors other than dumped imports from the countries concerned might have caused, or contributed to the injury. Exporters from the three countries alleged that imports from India, Vietnam or South Korea were also causing injury.

(100) Imports of bicycles from India increased from 9 601 units in 1990 to 373 901 units in 1993, imports from South Korea increased from 78 369 units in 1990 to 189 514 units in 1993, and imports from Vietnam increased from a zero level in 1990 to 295 366 units in 1993. In 1993, the total volume of imports from these countries into the Community was 858 781 units, compared with 1 217 631 units imported from Indonesia, Malaysia and Thailand. From 1990 to 1993, total market share held by imports from these three countries increased by 4,2 percentage points, reaching a total market share of 4,7 % in 1993.

(101) As regards Vietnam, a customs investigation coordinated by the Commission revealed that bicycle imports reported in Eurostat as coming from that country actually originate in the People's Republic of China.

(102) The imports from India and South Korea had a smaller total volume in 1993 and a smaller increase in market share than the imports under consideration. Furthermore, the exporters did not submit any evidence that Indian or South Korean bicycles were sold at prices as low as those from the countries under investigation. Price information available in Eurostat cannot be referred to, since Eurostat only distinguishes two subheadings which do not reflect the variety and heterogeneity of bicycle specifications, and hence prices.

(103) Under these conditions, no clear assessment of a possible injurious impact of the imports from India, Vietnam and South Korea can be made. It follows that the possibility cannot be ruled out that these imports have contributed to the difficult state of the Community industry.

(104) In addition, exporters/producers in Indonesia, Malaysia and Thailand claimed that competition within the Community, in particular sales of high volumes of bicycles produced in Italy at prices below those of the imports, were causing injury.

(105) From 1990 to 1993, in the Community estimated sales of bicycles produced by non-cooperating Italian companies increased from 1,62 million units in 1990 to 3,28 million units in 1993 (+ 102,6 %), thus increasing their market share by 8,9 percentage points, from 9,4 % in 1990 to 18,3 % in 1993. In 1993 the non-cooperating Italian bicycle producers accounted for 72 % of Italian bicycle sales in the Community.

(106) As to prices, however, exporters did not submit any evidence that Italian bicycles were generally sold at prices as low as those of imported bicycles. For the reasons set out in recital (102), unit prices contained in Eurostat cannot serve to establish the price relationship between Italian and imported bicycles. The information available to the Commission concerning some identifiable models of Italian producers who are not complainants show, however, a clearly higher level than average prices for comparable import bicycles.

(107) In addition, the Commission calculated price undercutting on the basis of price information relating to sales by three complainant Italian companies which account for 24 % of Italian bicycle production. This calculation was carried out according to the methodology set out in recitals (82) and (83), and shows substantial undercutting by bicycles imported from Indonesia, Malaysia and Thailand.

(108) In these circumstances, no positive evidence exists which would confirm that sales of bicycles produced in Italy have caused injury to the rest of the Community industry. On the other hand, it cannot be excluded that sales by non cooperating Italian companies may have contributed to the difficult state of the Community industry.

3. Conclusion

(109) In the light of the above analysis, it is concluded that the aggregate dumped imports from the three countries in question, given the substantial increase in import volumes and considerable degree of price undercutting, taken in isolation, have caused material injury to this industry. This conclusion is not affected by the consideration that factors other than dumped imports from Indonesia, Malaysia and Thailand may have contributed to the difficult state of the Community industry.

G. COMMUNITY INTEREST

(110) When examining whether the Community interest calls for intervention, the need to eliminate the trade-distorting effects of injurious dumping and to restore effective competition deserves special consideration.

(111) The Commission found that, since 1990 the Community industry had increased its yearly investments to improve its efficiency in order to maintain its competitiveness. Considerable efforts have been made in order to rationalize production. This shows the determination of the bicycle industry to keep a hold in this business.

(112) The market entry of dumped imports from Indonesia, Malaysia and Thailand prolonged and aggravated the injury experienced by the Community producers since 1988. A continuation of low prices of imports from Indonesia, Malaysia and Thailand on the Community market would jeopardize the efforts of the Community industry and, in particular, the investments made. If the effect of dumped imports is not eliminated, the Community bicycles industry will be further weakened and even more producers will face the prospect of closure.

(113) If dumped imports from Indonesia, Malaysia and Thailand were allowed to continue, this would also have a negative effect on the level of employment in the Community industry, which provides some 8 000 jobs. These consequences would not be limited to bicycle producers but would be amplified by its repercussions in the European bicycle parts industry.

(114) As far as the interests of consumers are concerned, the Commission is aware that the prices for imported bicycles originating in Indonesia, Malaysia and Thailand may increase as a result of the imposition of anti-dumping measures. The effect for the consumer, however, will be limited, since, in a view of the high number of competitors on the Community market, consumer choice will be preserved and competitive structures will be maintained in the Community. This will continue to have a beneficial effect on the consumer.

(115) Having examined the various interests involved, it is considered that the imposition of provisional measures in the present case will re-establish fair competition by eliminating the injurious effects of dumping practices from Indonesia, Malaysia and Thailand, and will afford to the Community industry the opportunity of maintaining competitive production.

(116) Furthermore, it should be recalled that, in the anti-dumping proceeding concerning imports of bicycles originating in the People's Republic of China, the Community recently adopted measures to remedy the injurious effect of these dumped imports. It is considered necessary to assure a non-discriminatory treatment of dumped imports of bicycles originating in Indonesia, Malaysia and Thailand.

(117) Therefore it is in the Community interest to adopt anti-dumping measures in the form of provisional duties, in order to prevent further injury from being caused by the dumped imports concerned during the remainder of the investigation.

H. PROVISIONAL DUTY

(118) According to Article 13 (3) of the Basic Regulation, the level of the provisional duty should be equal either to the margin of dumping or the amount necessary to remove injury, whichever is lower.

(119) Individual undercutting margins for the fully co-operating producers expressed as a percentage of the free-at-Community-frontier value vary from 22,1 % to 70,3 % in Indonesia, from 42,0 % to 61,9 % in Malaysia, and from 18,0 % to 43,4 % in Thailand. Thus it was found that for all companies the undercutting margin was higher than the dumping margin found provisionally, both being expressed as a percentage of the cif Community frontier price. Therefore, it was not necessary to establish the injury elimination level which, given the precarious financial situation of the Community industry, would have required even higher rates of duty. Consequently, the duties should be based on the dumping margins.

(120) For one Indonesian company a provisional duty at a zero rate was established because the dumping margin provisionally calculated was *de minimis*.

(121) For producers in the three countries concerned who neither replied to the Commission's questionnaire nor otherwise made themselves known, the Commission considers it appropriate, for the reasons outlined in recitals (69) to (71), to establish the level of provisional duty at the weighted average of the highest dumping margins found for bicycle models exported to the Community in representative quantities.

I. DEVELOPMENTS AFTER THE INVESTIGATION PERIOD

(122) Referring to Eurostat, producers in Indonesia and Thailand, and representatives of those two countries claimed that they could not have injured the Community industry, since imports continued to decrease in 1994 compared to 1993. The producers from Thailand and the representative of Thailand further contended, that unit prices for bicycles imported from Thailand and reported in Eurostat were increasing.

(123) In respect of the these claims the Commission notes that it is the consistent practice of the Community institutions, confirmed by the Court of Justice of the European Communities, not to take into account developments which have occurred after the investigation period. Indeed, in accordance wth the provisions of the Community anti-dumping legislation (Article 7 (1) (c) of the Basic Regulation) the conclusions reached in anti-dumping proceedings are based on the situation prevailing in the investigation period, generally a one year period prior to the official initiation of the proceeding.

(124) This evaluation of a situation by reference to a defined period ensures that the detailed investigation, verification and analysis of the allegations put forward in an anti-dumping complaint can be carried out on the basis of ascertainable facts, in order to reach a reliable conclusion. As already stated in recital (102), Eurostat price figures alone cannot in this case constitute a sufficient basis for conclusions on injury. Not to limit the investigation to a particular refrence period would result in a perpetuation of investigations, thereby preventing conclusions being based on verified information. This aspect is of particular importance in the present situation.

(125) Decreases of imports from countries subject to anti-dumping proceedings may be caused by a variety of reasons, which cannot be determined without detailed analysis of the underlying strategies of the operators in the exporting countries and in the Community. The outcome of an anti-dumping proceeding could be influenced at will be such strategic behaviour if information related to periods after the initiation of the proceeding had to be taken into account.

J. RIGHTS OF INTERESTED PARTIES

(126) In the interest of sound administration, a period should be fixed within which the parties concerned may make their views known and request a hearing. Furthermore, it should be noted that all findings made for the purpose of this Regulation are provisional and may be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of bicycles and other cycles (including delivery tricycles), not motorized, falling within CN code 8712 00, originating in Indonesia, Malaysia and Thailand.

2. The rate of the provisional anti-dumping duty on the basis of the net, free-at-Community-frontier price, before duty, shall be :

Country	Products manufactured by	Rate of duty (%)	Taric additional code
Indonesia	PT Federal Cycle, Mustika	25,9	8859
	PT Insera Sena, Sidoarjo	0,0	8860
	PT Jawa Perdana Bicycle Industry, Tangerang	22,8	8861
	PT Toyo Asahi Bicycle Industries, Jakarta	25,9	8859
	PT Wijaya Indonesia Makmur Bicycle Industries, Surabaya :	22,0	8862
	other companies	29,0	8863
Malaysia	Akoko Sdn Bhd, Klang	25,2	8864
	Berjaya Cycles Sdn Bhd, Kulim	38,3	8865
	Greenworld Systems Sdn Bhd, Kuala Lumpur (previously Fairly Toraya Sdn Bhd) :	30,0	8866
	Lerun Group Industries Berhad, Petaling Jaya	38,3	8865
	Rolls Rally Sdn Bhd, Pelabuhan Kelang	28,2	8867
	other companies	41,5	8868
Thailand	Bangkok Cycle Industrial Co. Ltd, Bangkok	18,3	8869
	Siam Cycle MFG. Co. Ltd, Samuthprakarn	41,9	8870
	Thai Bicycle Industry Co. Ltd, Samuthprakarn	13,2	8871
	Victory Cycle Co. Ltd, Samuthprakarn	13,2	8871
	other companies	48,8	8872

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

4. The release of the products referred to in paragraph 1 for free circulation in the Community shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 October 1995.

For the Commission

Leon BRITTAN

Vice-President