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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 648/96

of 28 March 1996

imposing a definitive anti-dumping duty on imports of bicycles originating in Indonesia, Malaysia and Thailand and collecting definitively the provisional duties imposed

THE COUNCIL OF THE EUROPEAN UNION,

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], 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 [2], and in particular Article 12 thereof,

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

Whereas:

A. PROVISIONAL MEASURE

(1) The Commission, by Regulation (EC) No 2414/95 [3], hereinafter referred to as 'the provisional duty Regulation', imposed a provisional anti-dumping duty on imports into the Community of bicycles originating in Indonesia, Malaysia and Thailand.

By Council Regulation (EC) No 245/96 [4], the validity of these duties were extended by a period not exceeding two months expiring not later than 14 April 1996.

B. SUBSEQUENT PROCEDURE

(2) Immediately after the imposition of provisional measures, the interested parties were informed of the essential facts and considerations on the basis of which provisional measures had been adopted.

(3) Most of the Malaysian and Thai exporters had requested that they be informed of the essential facts and considerations resulting from the investigation before the imposition of provisional measures. The Malaysian exporters claimed that such prior disclosure was necessary in order to allow them to exercise their fundamental right to be heard. However, Regulation (EEC) No 2423/88, the applicable Regulation in this proceding, (hereinafter referred to as 'the basic Regulation') already reflects and transposes into the field of anti-dumping the general principle of law of a right to a fair hearing as defined by the case law of the Court of Justice of the European Communities, and does not require that disclosure take place before the imposition of provisional measures but before definitive measures. Accordingly, the Commission did not disclose the essential facts and considerations before the imposition of provisional measures.

(4) Comments in writing were received from the following interested parties within the time limit set:

1. *Producers and producer's association in Indonesia*

— PT Jawa Perdana Bicycle Industry, Tangerang,

— PT Wijaya Indonesia Makmur Bicycle Industries, Subaraya,

— The Association of Indonesian Bicycle Industry;

(1) OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).
(2) OJ No L 209, 2. 8. 1988, p. 2. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10)
(3) OJ No L 248, 14. 10. 1995, p. 12.
(4) OJ No L 32, 10. 2. 1996, p. 1.

2. *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 Kelong;

3. *Producers in Thailand*

— Bangkok Cycle Industrial Co. Ltd, Bangkok,

— Siam Cycles Mfg. Co. Ltd, Samuthprakarn,

— Thai Bicycle Industriy Co. Ltd, Samuthprakarn,

— Victory Cycle Co. Ltd, Samuthprakarn;

4. *Importers*

— Universal Cycles plc, Rayleigh, United Kingdom.

(5) Parties who so requested were granted an opportunity to be heard by the Commission.

(6) 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 and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.

(7) The parties' oral and written comments were considered, and where appropriate the conclusions were modified to take account of them.

(8) Owing to the complexity of the case, in particular the number of exporting countries and parties involved, and the variety of technical specifications, the proceeding overran the normal duration of one year as provided for in Article 7 (9) of the basic Regulation.

(9) After imposition of provisional duties, the Association of Indonesian Bicycle Industry (hereinafter 'the AIPI') claimed that the proceeding was discriminatory in so far as other exporting countries, such as India and Vietnam, were not included.

At the time of initiation of the current proceeding in early 1994, there were no allegations or indications that imports from India or Vietnam were also dumped. The proceeding was initiated on the basis of a complaint concerning imports of bicycles originating in Indonesia, Malaysia and Thailand, which contained sufficient evidence of dumping and of material injury resulting therefrom (recitals 1 and 2 of the provisional duty Regulation). At later stages of the investigation, when the actual development of imports from these countries starting in 1993 became apparent, no additional complaint was received from the Community industry. In the absence of such a complaint and of any *prima facie* evidence of injurious dumping from the countries concerned, the Commission had no reason to extend the proceeding to these other countries.

C. LIKE PRODUCT

(10) It was concluded at the provisional stage (recitals 13 and 14 of the provisional duty Regulation) that all types of bicycles originating in Indonesia, Malaysia and Thailand and sold in the Community from one single product and 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 those markets, are a like product within the meaning of Article 2 (12) of the basic Regulation.

(11) After imposition of the provisional duty, two Malaysian companies argued that bicycles produced and sold on the Malaysian domestic market are not a like product to the bicycles produced and sold for export to the Community. They did not provide substantiating evidence, however, why those bicycles were not alike in all respects to bicycles exported to the Community.

(12) The investigation has established that bicycles produced and sold in Malaysia cover a similar model range and that their basic technical and physical characteristics are identical to those of bicycles exported to the Community. No valid comments which would affect these conclusions have been raised. The mere fact that the only cooperating Malaysian company selling bicycles on the domestic market manufactures them in a factory which is separate from that in which export models are produced does not in itself support the claim that products are different within the meaning of Article 2 (12) of the basic Regulation. Therefore, the findings and conclusions set out in recital 14 of the provisional duty Regulation are confirmed.

D. DUMPING

1. Normal value

(a) *Indonesia*

(13) For two Indonesian companies the provisional dumping findings were based on the facts available in accordance with Article 7 (7) (b) of the basic Regulation because it was not possible to obtain or verify the necessary information requested in the questionnaire (recital 28 of the provisional duty Regulation). For the other three Indonesian companies, in those cases where normal value had to be constructed, it was determined by adding to the manufacturing costs of the exported models reasonable selling, general and administrative expenses (SG&A) and profit margins which were based on actual figures for the companies concerned (recitals 25 and 27 of the provisional duty Regulation).

(14) One Indonesian company purchased some bicycle parts for its production through a related trading company which charged a commission on such purchases. The company requested that such commission should not be included in the cost of manufacturing, as was done for the provisional determinations. However, it appeared that the commission was actually incurred by the Indonesian company for the purchase of parts and that it would bear similar costs if it directly purchased those parts from unrelated suppliers. Therefore, the commission charged had to be considered as an integral part of the cost of the materials in question.

(15) One company argued that interest expenses, which in the provisional determinations were included in the SG&A, should be deducted as public accounting principles in Indonesia exclude interest from operating expenses which are not directly related to the production and sales of the goods concerned. The investigation showed that the only activity of the company concerned was production and sale of bicycles and bicycle parts. Therefore, these interest expenses have to be included in the SG&A because they were incurred by this company as a result of the actual finance structure necessary for running its bicycle and bicycle parts operations.

(16) Two Indonesian exporters and the AIPI claimed that the allocation of SG&A should have been made on the basis of quantities sold. One Indonesian producer raised the same argument with regard to the allocation of SG&A between export and domestic sales, and, in particular, the allocation of financing costs. However, neither of these companies normally allocated SG&A to single bicycle models for their internal reporting purposes. It cannot be claimed, therefore, that an allocation key based on quantities sold, as was proposed by these companies, was historically utilized. Consequently, there is no reason to deviate from the principle in Article 2 (11) of the basic Regulation that the allocation of such costs is normally made in proportion to the turnover.

(17) The profit ratio applied in constructing normal value was based on the domestic sales of each company where these sales were made in the ordinary course of trade (recital 26 of the provisional duty Regulation). Two companies argued that the resulting profit margins were too high. However, since these companies did not provide substantiating evidence for their claims, the methodology which was applied in the provisional determinations for the purpose of calculating a reliable profit margin in accordance with Article 2 (3) (b) (ii) of the basic Regulation is confirmed.

(18) The Indonesian exporters made additional claims (concerning namely the determination of the domestic sales turnover, the allocation of manufacturing costs, details of individual sales transactions, the application of the SG&A ratio to the manufacturing costs, and the exchange rates applied) which could not be taken into account, because they could not be verified at the late stage of the procedure when they were made, are not supported by direct evidence or, after double checking, turned out to be factually unfounded.

(19) Consequently, the determination of normal value for Indonesian producers as set out in recitals 15 to 27 of the provisional duty Regulation is confirmed.

(20) In the case of one Indonesian company, the AIPI argued that this company faced more rigid deadlines for submitting the response to the questionnaire than those given to Community producers.

In fact, the same deadline of 37 days was set for all interested parties for responding to the questionnaires. Extensions to this deadline were granted to Community and non-Community companies based on the merits of each application. No extension was ever requested by the company concerned. The AIPI's claim that Community producers received a more favourable treatment appears to be based on a

misunderstanding. The questionnaires to Community producers could only be sent after the sample had been selected (recital 73 of the provisional duty Regulation and recital 56 of this Regulation). This explains why in spite of the fact that the deadlines were the same as for Indonesian producers, the responses of the Community industry arrived later.

The findings set out in recital 28 of the provisional duty Regulation are therefore confirmed.

(b) *Malaysia*

(21) In the provisional duty Regulation, two Malaysian companies belonging to the same group of companies were considered as one single company. 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. These two companies requested not to be treated as a single producing exporter and to be assigned individual dumping margins.

However, it has been the consistent practice of the Community Institutions to establish one single dumping margin for related companies. The different approach followed exceptionally in the photocopiers case (Regulation (EC) No 2380/95 [1] (recitals 53 and 54)) which was invoked by the Malaysian companies to support their request was due to the very specific circumstances found in that investigation which are not present in this case.

Consequently, the approach followed in recital 29 of the provisional duty Regulation is confirmed.

(22) In the provisional determinations, it was found that only one cooperating Malaysian exporter had representative domestic sales of the like product during the investigation period, i.e. the domestic sales volume was higher than 5 % of total export sales volume (recitals 19 and 30 of the provisional duty Regulation). Since bicycle models sold by this company domestically did not permit a proper comparison or were not made in the ordinary course of trade (they were technically too different, not sold in sufficient quantities, or sold at a loss), for models sold by this company 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 which was established by adding to the manufacturing costs the company's domestic SG&A and profit margins. The other Malaysian exporters had no domestic sales and therefore a constructed normal value also had to be established in accordance with Article 2 (3) (b) (ii) of the basic Regulation. The SG&A incurred and profit realized by the only producer with representative domestic sales were the only data available in Malaysia for this purpose. These figures were considered reliable, and therefore the constructed value of all models sold for export to the Community by Malaysian companies was 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 (recitals 30 to 35 of the provisional duty Regulation).

(23) At the provisional stage, the Commission found that the primary material costs of one Malaysian exporter were substantially understated and accordingly adjusted these costs upwards. The company concerned later argued that the Commission's findings and conclusions were based on inaccurate assumptions and consequently objected to the adjustment.

It was found that while the cost to turnover ratios for all other cost items (such as direct labour, factory overhead and SG&A) were stable, the ratio for primary material costs differed significantly in the investigation period (the calendar year 1993) as compared to the financial years 1993 and 1992. A similar disproportion was found in the profitability for the investigation period as compared to the financial year 1993, even though the investigation period and the financial year 1993 overlapped by eight months.

The determination of the cost of manufacturing for this company is therefore confirmed, including the adjustment above.

(24) Some Malaysian companies questioned whether packing costs (inclusive of packaging labour expenses) have not been double counted by treating them as an element of cost of manufacturing for each individual exporter while at the same time considering them as part of the SG&A of the domestic producer used for the construction of normal values.

[1] OJ No L 244, 12. 10. 1995, p. 1.

For all Malaysian producers, packing costs have been considered solely as part of the manufacturing costs, and have not been included in the SG&A incurred for the domestic sales made by the domestic producer. Packing costs were therefore not double counted.

(25) For the determination of the SG&A and profit ratio for the only cooperating producing exporter with representative domestic sales, the Commission excluded inter-company sales. The company concerned argued that such an approach is inconsistent with the fact that the Commission included inter-company costs such as financing costs. It argued, therefore, that inter-company sales should also have been included in the company's domestic sales turnover for the determination of the SG&A and profit ratios. In addition, it alleged that the financing costs concerned had no link with the production or sale of bicycles and therefore should have been excluded from the SG&A.

As far as the determination of the SG&A and profit margins are concerned it should be noted that the company in question did not report that some sales were inter-company sales, a fact which only came to light during the verification. As the prices reported are transfer prices, these sales could not be considered as made in the ordinary course of trade (Article 2 (7) of the basic Regulation) and the transactions concerned had to be disregarded for the purpose of calculating the domestic profit margin.

Concerning the calculation of the SG&A ratio, it was considered in the provisional findings that for sales to related companies, none or only marginal SG&A are incurred and, consequently, SG&A need not be allocated to turnover to related companies. After the provisional determination, the situation was re-examined and it was found that the allocation of SG&A to turnover to unrelated companies should be limited only in respect of selling costs which are not incurred for sales to related companies. By contrast, the ratios for financing and administration costs which can also be incurred for inter-company sales are now based on the total turnover including sales to related parties. The calculations have been revised accordingly.

As regards interest paid to a related company, excluding these costs would ignore the fact that they were incurred by the company concerned as a result of its actual finance structure required for running its operations. It is irrelevant who actually provides the necessary resources as long as the terms of the loan are in the ordinary course of trade (Article 2 (3) (b) (ii) of the basic Regulation). Claims that the loan was intended for purposes other than the company's activities were not substantiated. Therefore, in accordance with Article 2 (3) (b) (ii) of the basic Regulation, these interest expenses have to be included in the SG&A.

(26) The SG&A margin of the only cooperating producing exporter with domestic sales was considered reliable because these sales were sufficiently representative, i.e. the domestic sales volume represented more than 5 % of the export sales volume. The profit margin was considered reliable because this company had a sufficient number of profitable domestic sales (recitals 33 and 34 of the provisional duty Regulation). The Malaysian exporters argued that the SG&A and profit margins of that company are too high and cannot be considered reliable because it had no export sales and should have been treated distinctly from its related company specializing in export and because it had a monopoly position on the domestic market which renders its data unreliable.

It is the opinion of the Council, that there are no reasons for treating the only cooperating company with domestic sales separately from its related exporter (recital 21 of this Regulation). Even if such request for separate treatment were to be followed, the information obtained from the only cooperating company selling on the domestic market would still constitute the basis for the SG&A and profit margins to be applied for the other Malaysian exporters in accordance with Article 2 (3) (b) (ii) of the basic Regulation With regard to the alleged monopolistic position of the only cooperating producer/exporter, it was found that there was at least one more Malaysian company which had substantial domestic sales. No evidence was provided showing that sales in Malaysia did not permit a proper comparison. Data on domestic sales in Malaysia were therefore considered to be reliable and the selling prices and cost data were based on the actual conditions prevailing on the market of the country concerned, i.e. conditions which are generally available to all actual and potential customers or suppliers.

Consequently the Council confirms the calculation of normal values as based on the SG&A and profit ratios found for the only Malaysian cooperating company with domestic sales.

(27) The Malaysian exporters made additional claims (concerning namely the calculation of the cost of manufacturing, the classification of SG&A, the treatment of discounts, the comparability of bicycle models, the calculation of manufacturing overheads) which could not be taken into account, because they could not be verified, were not supported by direct evidence, were contradicted by the companies own information, or, after double checking, turned out to be factually unfounded.

(c) *Thailand*

(28) Four Thai companies cooperated in the proceeding. For the majority of bicycle models exported by three of these Thai companies, normal value was constructed (recitals 36, 38 and 39 of the provisional duty Regulation). For the fourth company, normal value could be based on actual domestic prices (recital 37 of the provisions duty Regulation). In those cases where normal value had to be constructed, it was determined by adding to the manufacturing costs of the exported models reasonable SG&A and profit margins (recitals 40 to 42 of the provisional duty Regulation).

For the company which had no domestic sales, normal value was constructed by adding to the cost of manufacture the weighted average SG&A figure of the three other companies and the weighted average profit margin of the two companies with reliable profit figures. For another company, its own SG&A margin and the weighted average profit margins of the two companies with reliable profit margins were added to the manufacturing costs. For the third company, its actual figures were used.

(29) For one Thai company, the verification of the manufacturing costs allocated to similar bicycle models revealed substantial discrepancies in the value of certain materials used which the company was unable to explain. Since the company's accounting system did not provide a breakdown of material costs for specific bicycle models, it was decided at the stage of provisional findings to allocate manufacturing costs in proportion to the turnover in accordance with Article 2 (11) of the basic Regulation. The company claimed that applying a turnover allocation key is unfair because exports of comparable models to third countries were made at half of the average unit price charged for exports to the Community.

The accounting system of the company concerned does not distinguish between manufacturing costs incurred for export to the Community and for export to other third countries, thus, not permitting a global adjustment for the alleged differences. Thus the provisional findings and the use of the turnover as a basis for the allocation of the manufacturing costs is confirmed.

(30) Another Thai company had fully allocated a major SG&A item to export sales. The company failed to explain satisfactorily the nature of the expenses in question, despite the fact that detailed explanations had been requested both prior to and during the verification. Consequently, for the purpose of provisional determinations, the expenses in question were allocated to export and domestic sales on a turnover basis in accordance with Article 2 (11) of the basic Regulation. The company claimed that explanations were provided and that the appropriateness of the allocation could have been verified.

In the view of the Council, the company did not provide a proper explanation. On the basis of available verified information, it is impossible to clarify the correctness or otherwise of the explanations given. Consequently, the allocation of the expenses in question on the basis of the turnover to export and domestic sales is confirmed.

(31) For the provisional determination, domestic profits were considered reliable when the number of bicycles sold at a price above the calculated cost of production constituted more than 10 % of total domestic sales. This was not the case for one of the Thai companies with representative domestic sales, i.e. with a domestic sales volume which was higher than 5 % of total export sales. Whenever normal values had to be constructed for this company, the weighted average profit margin of the two other Thai companies with domestic sales was consequently applied. This company claimed that the methodology applied here is not in line with the basic Regulation.

Pursuant to Article 2 (3) (b) (ii) of the basic Regulation, the profit margin used for constructing normal value should be based on the profit realized on the profitable domestic sales, if such data is, *inter alia*, reliable. After having excluded domestic sales which did not permit a proper comparison or

which were not made in the ordinary course of trade (recitals 38 and 22 of the provisional duty Regulation), the remaining profitable sales might be so few that the profits realized on these sales might not constitute a reliable basis to calculate a profit margin for use in the constructed normal value. This is why the Commission also verified that the remaining profitable sales were sufficient to constitute a reliable basis for the determination of the profit margin.

This was considered to be the case if the remaining profitable domestic sales represented not less than 10 % of the domestic sales volume which could be used as a basis for the profitability test, whereby the proportion of profitable sales was determined by comparing net sales prices to the calculated cost of production (recitals 21, 22 and 31 of the provisional duty Regulation). The ratio is the same as was applied to determine whether sales of particular bicycle models were made in the ordinary course of trade (recital 22 of the provisional duty Regulation). Since the profits realized on the domestic market depend on the prices charged for domestic sales, it is appropriate and consistent to apply the same threshold used to determine whether such prices constitute an appropriate basis for the normal value. A similar approach was adopted by the Community institutions in earlier cases.

Consequently, the Council confirms that the profit margin of the company concerned was not reliable and that constructed normal value had to be calculated by applying the weighted average profit margin of the two other Thai producers for which a reliable profit realized on profitable domestic sales was found.

(32) Finally, one Thai exporter made an additional claim (concerning namely the calculation of manufacturing overheads) which could not be taken into account, because it could not be verified, and was not supported by direct evidence.

2. Export price

(a) *Indonesia*

(33) One Indonesian exporter made comments concerning adjustments to the export price which cannot be taken into account, because they are not supported by direct evidence.

The determination of export price for Indonesia (recital 43 of the provisional duty Regulation) is therefore confirmed.

(b) *Malaysia*

(34) 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 this company had clearly supplied misleading information in respect of these transactions — which, in addition, happened to reflect a transfer between related companies — the prices reported for such transactions were disregarded and the highest dumping margin found for a model sold by this company to unrelated customers was attributed to those sales in accordance with Article 7 (7) (b) of the basic Regulation (recitals 46 and 47 of the provisional duty Regulation).

This company argued that the actual link with the Taiwanese company had no impact on prices, and that it was treated in a discriminatory manner *vis-à-vis* the two Indonesian exporters to which Article 7 (7) (b) of the basic Regulation was alos applied. In addition, it claimed that the sales in question were made directly to the customers in the Community and provided copies of invoices as new evidence.

It was only after publication of the provisional duty Regulation that the company concerned claimed that the sales in question were actually made directly to customers in the Community. This claim contradicts the findings of the verification which were not disputed by the company at the time. Any differing presentation cannot be verified at this stage of the proceeding and therefore cannot be taken into account.

The relationship with the Taiwanese company was first denied by the Malaysian company and was only established during the verification on the basis of direct and conclusive evidence. This clearly impeded the factual investigation by the Commission. In view of this dissimulation of information by the Malaysian company, it is unlikely that the relationship had no impact on prices; anyway, at this stage of the procedure, the question could not be further investigated and applying Article 7 (7) (b) in the manner described above is fully justified.

As regards the comparison with the two Indonesian companies to which Article 7 (7) (b) of the basic Regulation was also applied (recitals 28 and 68 of the provisional duty Regulation), there is no serious ground to complain of discriminatory treatment. The application of Article 7 (7) (b) of the basic Regulation was based on the merits of each case, thereby reflecting the degree of cooperation and the degree to which necessary information was not provided or could not be verified or the extent to which misleading information was submitted.

(35) One Malaysian company argued that for establishing the free-at-Community-frontier price for its export sales to the Community, the Commission should have included a mark-up added by its sales agent. That company never substantiated its claim. However, the agent for the company concerned had already received a commission fee which was taken into consideration and it remained unclear which transactions were made via the agent, since sales were also directly invoiced to customers in the Community. Therefore, the calculation of the free-at-Community-frontier price for the exports of the company concerned is confirmed.

(36) The Malaysian exporters made additional claims (concerning namely the nature of certain deductions, the treatment of certain bank charges and letters of credit charges) which could not be taken into account, because they could not be verified and were not supported by direct evidence.

(c) *Thailand*

(37) In its questionnaire response one Thai company stated that it was not providing any guarantee/warranty to its customers in the Community. It was discovered during the verification that it agreed with one of its customers that spare parts equivalent to 1 % of the invoice value were shipped with each order free of charge. It was also found that a significant number of major customers also received spare parts free of charge. Such discounts were given in lieu of a guarantee.

Since such sales conditions are a determining factor for the export prices, the actual value of the spare parts shipped is irrelevant. Having received misleading information, the Commission had to determine the deduction for agreed discounts on the basis of the facts available. The most tangible and reasonable basis being the agreed terms identified above, a 1 % adjustment for agreed discounts was deducted from the export price.

The company argued that this adjustment was made without any apparent justification, since the Commission received a summary listing of all cases where spare parts were given free of charge to customers in the Community, on the basis of which a negligible adjustment would have been required.

Although a listing of customers and corresponding 'warranty' amounts was provided by the company, this was done only towards the end of the verification when a satisfactory clarification of the complete situation was no longer possible. Since no other direct evidence supports the company's claim, it is confirmed that, having received misleading information, the deduction for agreed discounts was correctly determined on the basis of the facts available (Article 7 (7) (b) of the basic Regulation). Any lower deduction would constitute a premium for non-cooperation.

The adjustment made for agreed discounts is therefore confirmed.

(38) Some Thai exporters made claims (concerning namely the allocation of transportation costs, the calculation of packing costs) which either could not be taken into account, because they could not be verified and were not supported by direct evidence, or which are contradicted by direct evidence provided by the company concerned.

3. **Comparison**

(a) *Indonesia*

(39) One Indonesian company sold bicycles for export to the Community through a related trading company located in Japan. In the provisional determinations, export prices for that exporter were established by reference to the prices actually paid or payable to the related trading company in Japan, while the Community investigating authorities indicated their intention to review the appropriateness of that approach (recital 44 of the provisional duty Regulation).

(40) It has been determined that because of the relationship between the two companies, the prices charged by the producing company to the trading company are not reliable. To establish a reliable export price to the Community from Indonesia, the price charged from Japan to the Community was adjusted to an ex-Indonesia level. As the related trader's functions can be considered similar to those of a trader acting on a commission basis, an adjustment of 6 %, based on the companies own SG&A rate and a reasonable amount for profits, was deducted from the prices charged by the related company to independent customers in the Community. This figure was considered reasonable given the degree of the related trader's involvement in the selling activities of the exporter. No information was provided which would indicate that this figure is inappropriate. Thus, for the purpose of definitive determination, the export prices were adjusted accordingly.

(41) In the provisional determination (recital 56 of the provisional duty Regulation), some adjustments were disregarded in view of their insignificant character. Upon request of the companies concerned, the Commission reconsidered its appreciation. It appeared that in some cases, the insignificant character of the respective adjustments had been determined in relation to the export price or the normal value separately. However, in accordance with previous practice, it appears to be more appropriate to consider adjustments to be *de minimis* only if the difference between the percentages to be deducted from the export price and the normal value respectively is less than 0,5 %. On this basis, certain adjustments which were considered as insignificant at the provisional stage were now taken into account. The calculations were revised accordingly.

(42) In its provisional determination (recital 53 of the provisional duty Regulation), the Commission rejected requests for adjustments for credit costs on the grounds that no evidence was provided that the credit granted was part of the sales terms agreed with the buyers of the goods at the date of sale and therefore could have affected the price paid or payable on the domestic market.

Two Indonesian companies and the AIPI reiterated their request for such an adjustment and stated that credit terms of 90 to 120 days are commonly accepted business conditions in Indonesia which therefore do not need to be explicitly included in the terms of sale. However, the only evidence presented to support this claim was a reference to the accounts receivable of the companies concerned which did not show such a clear pattern. Thus, it is not proven that prices were set on the basis of such alleged commonly accepted business conditions.

Consequently, it is confirmed by the Council that an adjustment for credit costs is not warranted.

(43) In the provisional duty Regulation (recital 55) requests for adjustments for adverstising and promotion expenses were rejected because such promotion and advertising costs belong to the category of overheads and general expenses, for which allowances are not generally made. Two companies reiterated their request for an adjustment for advertising and promotion expenses. They claimed that these cost differences between export and domestic sales are effectively allowable as original equipment manufacturer (OEM) or level of trade adjustments.

As regards an adjustment for sales made on an OEM basis, such claim was not explicitly made in the responses to the questionnaire submitted by the companies concerned, nor was it substantiated despite specific intructions in the questionnaire to claim and substantiate any request for deductions if applicable. Furthermore, the substantive requirements for such an adjustment are not met: none of the export sales of the Indonesian exporters concerned were made at a level which would constitute an OEM sale, i.e. normally a level between manufacture and distribution. These sales were made at a level on the Community market the function of which is, in substance, only that of distribution. Thus, no appropriate (OEM) adjustment is required in this respect.

In examining this OEM claim it was found that the substantive requirements for a level of trade adjustment were not met, as sales appeared to be made to a similar mix of customers on both the export and the domestic market. In any event, the Indonesian exporters concerned did not make any distinction between sales at different levels of trade. In fact, no significant differences appeared during the investigation in the levels of trade at which export and domestic sales were made. Therefore, no level of trade adjustment is necessary on the basis of the information available.

(44) The Indonesian exporters made some additional claims (concerning mainly allowances made to account for differences in physical characteristics, the rate applied for an allowance for duty draw back and the deduction of an amount for duty draw back in the case of constructed normal value) which could not be taken into account, because they could not be verified, were not supported by direct evidence, or, after double checking, turned out to be unsubstantiated.

(b) *Malaysia*

(45) In the provisional determination it was found that the domestic SG&A figure used for construction of normal value included direct selling expenses for which adjustments had to be made. However, no such deduction was sufficiently substantiated (recital 57 of the provisional duty Regulation) and, therefore, claims for adjustment to the normal value for direct selling expenses were rejected. However, adjustments to the export price were made, where necessary, for one or several 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.

(46) The other Malaysian exporters considered that the comparison was unfair since they were deprived of otherwise justifiable adjustments (such as for direct selling expenses) because the only cooperating Malaysian producer with domestic sales was not sufficiently motivated to provide a proper reply to the questionnaire and to ensure the necessary cooperation during the verification.

The Malaysian producer in question actually replied to the questionnaire, agreed to and was subjectd to a verification. Being directly related to an exporter of bicycles to the Community, it had a clear incentive to cooperate properly with the verification. However, this company failed to provide supporting evidence for its claims or gave contradictory explanations. In addition, some information which was not reported in the response to the questionnaire was discovered only during the verification.

The Council nevertheless recognizes that given the very special circumstances of this case, it is appropriate to deduct a reasonable amount from the constructed normal values of those three Malaysian exporters who are not related to the domestic producer/seller in question. The calculations have been revised accordingly. As regards the related export and domestic producers, it was the responsibility of these two companies to provide the necessary and verifiable information and supporting evidence which they failed to do. Therefore, no such additional adjustment can be made to the constructed normal value of the related exporter.

(47) In the provisional determination, no adjustment was made to normal value to account for credit costs (recital 57 of the provisional duty Regulation). Malaysian exporters requested such adjustment on similar grounds as those invoked in relation to the adjustment for direct selling expenses. However, there is no evidence that, apart from a discount scheme which was taken into account, additional credit was granted as part of the sales terms agreed with the buyers of the goods at the date of sale. Therefore there is no valid ground for an adjustment to normal value for credit costs.

(48) In the provisional determination, no adjustment was made to the normal value to account for differences in the level of trade. In their comments at disclosure after the provisional duty Regulation was published, the Malaysian exporters requested to be granted an 'OEM adjustment' in the form of a reduced profit margin for the calculation of the constructed normal value.

Such claim was not made in the response to the questionnaire nor was it substantiated despite specific instructions in the questionnaire to claim and substantiate any request for deductions if applicable. Furthermore, the substantive requirements for such an adjustment are not met: the majority of the export sales of the Malaysian exporters were not made at a level which would constitute an OEM sale, i.e. normally a level between manufacture and distribution. These sales were made to a level on the Community market the function of which is, in substance, only that of distribution. From the information available, no clear and distinct pricing pattern existed for export transactions to the manufacturer concerned as compared with sales to distributors in the Community . Thus, no appropriate (OEM) adjustment is required in this respect.

In examining this OEM claim, it was found that the substantive requirements for a level of trade adjustment were not met as sales appeared to be made to a similar mix of customers in both the export and the domestic market. In any event, the Malaysian domestic seller did not make any distinction between sales to wholesalers and retailers. Furthermore, no significant differences appeared during the investigation in the levels of trade to which export and domestic sales were made. Therefore no level of trade adjustment is necessary on the basis of the information available.

(49) The Malaysian exporters made additional claims (concerning namely the nature of 'technical assistance' fees, the treatment of certain commission interests, double counting of certain commissions, adjustment for forwarding costs, a rounding difference, the allocation of packaging costs) which either could not be taken into account, because they could not be verified and were not supported by direct evidence, or, after double checking, were taken into account. The calculations were revised accordingly.

c) *Thailand*

(50) In the provisional determination, no adjustment was made to the normal value to account for differences in the level of trade. In their comments at disclosure after the provisional duty Regulation was published, Thai exporters requested to be granted an 'OEM adjustment' and claimed that they had requested such adjustment from the beginning of the proceeding.

In a covering letter which accompanied the questionnaire responses of three Thai companies, these producers requested in imprecise terms an OEM adjustment. Such claim was not explicitly made in the response to the questionnaire nor was it substantiated despite specific instructions in the questionnaire to claim and substantiate any request for deductions if applicable. Furthermore, the substantive requirements for such an adjustment are not met: the majority of the export sales of the Thai exporters were not made at a level which would constitute an OEM sale, i. e. normally a level between manufacture and distribution. These sales were made to a level on the Community market the function of which is, in substance, only that of distribution. From the information available to the Commission, it appears that no clear and distinct pricing pattern existed between exporter to the manufacturer concerned as compared with sales to distributors in the Community. Thus, no appropriate (OEM) adjustment is required in this respect.

In examining the OEM claim, it was found that the substantive requirements for a level of trade adjustment were not met as sales appeared to be made to a similar mix of customers on both the export and the domestic market. In any event, the Thai exporters concerned did not make any distinction between sales to different levels of trade. Furthermore, no significant differences appeared during the investigation in the levels of trade, namely distributors and retailers, to which export and domestic sales were made. Where domestic sales were made directly to end-users this had no apparent effect on prices. Therefore, no level of trade adjustments is necessary on the basis of the information available to the Commission.

(51) For the provisional determination, the Commission partially rejected a request by one Thai company for an adjustment to the normal value for the salaries paid to its salesmen because of misleading information and lack of supporting evidence. The company reiterated its request for the full adjustment and gave new explanations.

However, the company did not submit supporting evidence for its new explanations. Since there was no direct evidence available to support the company's claim either, the partial rejection of its request is confirmed by the Council.

(52) In the provisional duty Regulation (recital 65) it was stated 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 %). Some Thai companies claimed that, in fact, not all insignificant adjustments were to be disregarded. The Commission re-examined the situation and found that, in this particular case, export prices are compared with constructed normal values which include weighted average SG & A and profit margins. When calculating these SG & A and profit ratios the fact had to be taken into account that adjustments for the same cost items were sometimes either insignificant or significant depending on the respective company. In this particular case,

it was found administratively more practicable to deduct all justified adjustments whether significant or not. The calculations were accordingly re-examined and where necessary revised. The global value of these adjustments was between 0,37 and 4,45 % according to the company concerned.

(53) The Thai exporters made additional claims (concerning, for example, adjustments for credit costs, deduction of certain export expenses, calculation of an adjustment for salesmen's salaries) which either could not be taken into account, because they could not be verified and were not supported by direct evidence, or, after double checking, were taken into account. In so far as these claims could be taken into account, the calculations were accordingly revised.

4. Dumping margins

(54) Like the weighted average dumping margins which were provisionally established (recital 66), definitive dumping margins for each producer were expressed as a percentage of the free-at-Community-frontier price.

(55) Applying the same methodology as explained in the provisional duty Regulation (recital 66 of the said Regulation) and after having made the necessary revisions to the dumping calculations, the weighted average dumping margins for the fully cooperating producers are:

(a) *Indonesia*

— PT Insera Sena	0,4 %
— PT Jawa Perdana Bicycle Industry	27,7 %
— PT Wijaya Indonesia Makmur Bicycle Industries	21,9 %

(b) *Malaysia*

— Akoko Sdn Bhd	23,1 %
— Berjaya Cycles Sdn Bhd	37,3 %
— Greenworld Systems Sdn Bhd	27,7 %
— Lerun Group Industries Berhad	37,3 %
— Rolls Rally Sdn Bhd	25,3 %

(c) *Thailand*

— Bangkok Cycle Industrial Co. Ltd	17,7 %
— Siam Cycles Mfg. Co. Ltd	38,9 %
— Thai Cycles Industry Co. Ltd	13,0 %
— Victory Cycle Co. Ltd	13,3 %

(56) For the two Indonesian companies which did not sufficiently cooperate with the investigation, the methodology applied in the provisional duty Regulation (recital 68) is confirmed: the dumping margin for the two companies concerned is based on the arithmetical average between the highest margin found for a fully cooperating Indonesian producer and the residual duty. The resulting dumping margins are:

— PT Federal Cycle Mustika	28,4 %
— PT Toyo Asahi Bicycle Industries	28,4 %

E. COMMUNITY INDUSTRY

(57) The AIPI and Thai producers questioned the correctness of the level of support calculated by the Commission.

The Council notes that those Community producers which expressly supported the complaint account for 55,3 % of the Community production of bicycles, and therefore represent a major proportion of the Community industry within the meaning of Article 4 (5) of the basic Regulation (recital 72 of the provisional duty Regulation). Those producers which were selected for a sample, which was necessary in view of the large number of producers and which fully cooperated, represented 36,5 % of the Community's bicycle production.

The AIPI also argued that companies which, in their opinion, did not suffer injury should not be considered as complainants. In response to this argument, it has been noted that the question of whether individual Community producers have been injured is irrelevant when examining whether such producers qualify as a part of the Community industry within the meaning of Article 4 (5) of the basis Regulation. Furthermore, it should be recalled that injury has to be determined on a global basis, i. e. for the Community industry as a whole or a major proportion thereof and not for individual Community producers.

(58) The AIPI questioned both the legality of the use of a sampling technique and the actual selection of the sample. In particular, it has been claimed that the use of production and sales data led to a flawed sample because sales and production trends are also the basis for the injury determination (recitals 88 to 90 of the provisional duty Regulation).

The Council notes that the basic Regulation does not explicitly provide for the use of sampling techniques for the purpose of injury determinations. However, it does not require the Commission to investigate each complaining Community producer either (Article 4 of the basic Regulation). In accordance with the previous practice and for the reasons already indicated, it was decided to select a sample of Community producers on which injury determinations were based. The Council notes that the sample was selected exclusively according to the size and geographic location of the companies concerned. The number of companies selected from each of the Member States thus reflects the size of bicycle production in that Member State. No trends or financial data were taken into consideration in the selection which was exclusively based on the volume of production of the companies concerned during the investigation period.

Therefore, it is concluded that the Commission was entitled to use a sampling technique, which yielded a representative selection of Community producers. The findings and conclusions set out in recitals 72 to 74 of the provisional duty Regulation are therefore confirmed.

F. INJURY

1. Cumulation

(59) As no comments were received concerning cumulation, the findings and conclusions set out in recitals 75 to 79 of the provisional duty Regulation are confirmed.

2. Prices of dumped imports

(60) The AIPI claimed that Indonesian bicycles were not undercutting prices of Community industry bicycles.

These claims are contradicted by the detailed price comparisons made by the Commission (recitals 82 to 86 of the provisional duty Regulation) in respect of which the following comments were made after the imposition of provisional measures.

(61) One Indonesian producer argued that model comparisons should have been based on the full set of specifications. However, it did not indicate in which respect the methodology applied by the Commission yielded unreliable results nor why a different approach would have been more reliable.

(62) One Malaysian company argued that the methodology applied was unreliable because the value of the parts used for comparing different bicycle models account for only 10 to 20 % of the total value of the bicycle and it leads to significant fluctuations in the undercutting margins found for two comparable bicycle groups. However, it has not been demonstrated that bicycle models classified in the respective groups were actually not comparable and that a different methodology would yield significantly different results. Fluctuations in undercutting margins as such may simply indicate variable pricing patterns and therefore do not prove that the comparison and grouping of certain bicycles was not justified.

(63) As a result of the foregoing, the methodology set out in the provisional duty Regulation (recitals 82 to 86) is confirmed.

(64) Some technical adjustments were made to the undercutting calculation upon the request of another Malaysian company and *proprio motu* by the Commission.

(65) The resulting individual undercutting margins for the fully cooperating producing exporters expressed as a percentage of the Community producers prices, undelivered to distributors, vary from 18,2 to 41,4 % for producing exporters in Indonesia, from 29,7 to 38,4 % for those in Malaysia, and from 15,3 to 30,7 % for those in Thailand.

G. SITUATION OF THE COMMUNITY INDUSTRY

(66) No further comments were received concerning the injury sustained by the Community industry. The findings and conclusions set out in the provisional duty Regulation (recitals 87 to 96) that the Community industry has been suffering material injury within the meaning of Article 4 of the basic Regulation, are therefore confirmed.

H. CAUSATION

(67) Thai exporters claimed that the precarious profitability situation of the Community industry cannot be related to dumped imports but was caused by high investments by the Community industry made during the investigation period (recital 94 of the provisional duty Regulation).

The increase of investments by 125 % in the investigation period as compared to 1992 can, to a large extent, be attributed to two Community producers which either built new production facilities or improved existing ones. Even if these two producers were excluded from the profitability determination, the average profitability figure for the investigation period would only change marginally.

(68) As indicated in the provisional duty Regulation (recital 101), it was found that bicycle imports reported in Eurostat as coming from Vietnam are actually other imports originating in the People's Republic of China. Indonesian exporters claimed that this fact did not preclude such imports from having had an injurious effect. Imports of bicycles declared as originating in Vietnam had a smaller total volume in 1993 than the imports under consideration. Furthermore, no indication was found that these bicycles were sold at prices as low as those for bicycles from the countries under investigation. Price information available in Eurostat cannot be referred to since the statistics only distinguish two subheadings which do not reflect the variety and heterogeneity of bicycle specifications and accordingly prices. In these circumstances, no clear assessment of a possible injurious impact of the imports allegedly coming from Vietnam can be made. Although these imports could have contributed to the difficult state of the Community industry, this does not affect the conclusion made in the provisional duty Regulation that imports of bicycles originating in Indonesia, Malaysia and Thailand caused material injury to the Community industry.

(69) Since no other new arguments were submitted in this respect, on the basis of the findings made and conclusions reached in recitals 97 to 109 of the provisional duty Regulation it is definitively 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 the Community industry.

I. COMMUNITY INTEREST

(70) Neither new evidence nor new arguments were submitted as to whether the Community interest calls for intervention.

In this respect the Council notes that without measures against the dumped imports and the resulting unfair competition on the Community market, there is an imminent danger that even more Community producers will face the prospect of closure. Consumers will therefore, without measures, have, at least in the medium term, fewer sources of supply. Although consumer prices of the imported products will increase, the global effects on the consumer will be limited since there is still a variety of suppliers who are not subject to any anti-dumping measures. In this respect it should be noted that no comments or submissions were received from consumer organizations.

In view of these considerations and for the reasons mentioned in recitals 110 to 117 of the provisional duty Regulation, no compelling aspects concerning the Community interest were found on the basis of which the Council could clearly conclude that it is not in the Community interest to apply anti-dumping measures.

J. DUTY CALCULATION

(71) The AIPI claimed that individual duty rates should have been established for different types of bicycles. It argued that the application of weighted average rates as established in the provisional duty Regulation (recitals 66 and 119) has the effect of setting the duty rates at a level above the dumping or injury margins for some bicycle models in breach of Article 13 (3) of the basic Regulation.

It is the normal practice of the Community institutions, in accordance with the basic Regulation, to establish a single duty rate for the like product concerned. It has not been disputed in the present case that all types of bicycles originating in Indonesia, Malaysia and Thailand and sold in the Community do form one single like product (recital 12). There if therefore no reason to deviate from the approach followed at the provisional stage. The *ad valorem* duty rates are thus based on a weighted average of the dumping margins established for the bicycle models sold for export to the Community and expressed as a percentage of the free-at-Community-frontier price. The duty

amount collected for a particular bicycle model may be higher or lower than the dumping margin, but on an overall basis, the duty rates reflect exactly the dumping margins found for the like product in strict accordance with Article 13 (3) of the basic Regulation. In addition, given the uncertainties for clearly defining types or categories of bicycles (recital 12 of the provisional duty Regulation), setting separate duty rates for types or categories would render the enforcement of the measures administratively impossible.

(72) For the purpose of establishing the level of definitive duty, and in applying the same methodology already applied at the provisional stage, account was taken of the dumping margins found and the level of duty necessary to eliminate the injury sustained by the Community industry.

73) It was confirmed at the definitive stage that for all companies the undercutting margin was higher than the dumping margin found, both being expressed as a percentage of the cif Community frontier price, and that given the precarious financial situation of the Community industry, even higher rates of duty would be required to fully eliminate injury (recital 119 of the provisional duty Regulation). Consequently, in accordance with Article 13 (3) of the basic Regulation, the level of the duty rates should be based on the level of the dumping margins.

(74) With regard to one Indonesian company, it is confirmed that the dumping margin established is *de minimis* and this company should consequently be excluded from the scope of the duty imposed on imports originating in Indonesia.

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

K. DEVELOPMENTS AFTER THE INVESTIGATION PERIOD

(76) In the provisional duty Regulation (recitals 122 to 125), the Commission rejected requests from Indonesian, Malaysian and Thai companies and from representatives of these countries, that import developments after the investigation period should be taken into account.

All Malaysian and Thai producers reiterated their claim that up-to-date trends of import volumes after the investigation period should have been taken into account. They contend that the basic Regulation does not prevent the Community institutions from doing so, and that such extended assessment is necessary to show the actual and persisting causation of injury through dumped imports. In addition, Thai exporters claimed that in past investigations the Community institutions have accepted to take into consideration developments after the investigation period.

It is the Community institutions' constant practice, as now laid down in Article 6 (1) of Regulation (EC) No 3283/94, to limit findings to the investigation period unless the effects of new circumstances are manifest, undisputed, lasting, and not open to manipulation or do not stem from deliberate action of interested parties.

Concerning the alleged decrease of import volumes after the investigation period, this may stem from deliberate strategies of the economic operators in the exporting countries and in the Community. In addition, there is no assurance that import volumes will remain at such levels. Reference was also made to a change in the 'Generalized System of Preferences' (GSP) preferential duty rate applying to the imports in question which occurred in 1995. However, the possible effects which the changes in the GSP system may have on prices in the Community is completely unknown.

For these reasons it is confirmed that in the present case the definitive determination should be based on the findings relating to the investigation period.

L. GATT REQUIREMENTS CONCERNING DEVELOPING COUNTRIES AND UNDERTAKINGS

(77) Malaysian exporters claim that a more lenient treatment in the application of anti-dumping rules should have been granted to them because they are located in a developing country. In this connection, the Malaysian and Thai companies refer to Article 15 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ('1994 AD Agreement': 'It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before

applying anti-dumping duties where they would affect the essential interests of developing country Members.') and complain that this Article was not respected. The Malaysian exporters referred in this respect to a Report of the GATT Working Party on 'Acceptance of the Anti-dumping Code' (Report adopted on 31 November 1975, 22S/27, 28, para. 4) and to a decision adopted by the GATT Committee on Anti-dumping Practices (ADP/2, Decision of 5 May 1980, 27S/16, 17).

It follows from Article 18.3 of the 1994 AD Agreement that Article 15 of the 1994 AD Agreement is not applicable to the present proceeding. In any event, Article 15 by no means entails an obligation for the Community to change calculation methods as was confirmed in the recent Cotton Yarn Panel for the former Article 13 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1979 (1979 AD Code) which is similarly worded to Article 15 of the 1994 AD Agreement.

As also confirmed in the Cotton Yarn Panel, the said Decision of the GATT Committee on Anti-dumping Practices cannot change the content of Article 13 of the 1979 AD Code. The report mentioned by the Malaysian exporters is a preparatory document which has no instrinsic legal value and thus does no provide any guidance in the present case.

According to Article 15 of the 1994 AD Agreement, constructive remedies are those provided for 'by this Agreement' which, in practice, are undertakings. Actually no undertakings were offered by Indonesian or Thai companies. Malaysian companies indicated their readiness to discuss the terms of undertakings, but made a specific offer only for a quantitative undertaking.

As regards price undertakings, it would be impractical and unrealistic to accept these undertakings in the present case because of the enormous number of different bicycle models and the frequent changes of specifications which would render monitoring undertakings impossible.

As to quantitative undertakings, it was examined in the present case whether the quantitative undertaking offered could remedy the injurious effect of dumping and could be satisfactorily monitored. The cooperating Malaysian exporters argued that a non-injurious volume could be determined by reference to the criteria contained in Article 5.8 of the 1994 AD Agreement, namely the 3 % threshold in relation to the total imports into the Community of the like product, an offer which, it is claimed, would reduce imports from Malaysia to a negligible volume. However, this approach ignores the fact that the injurious effect of dumped bicycle imports from Indonesia, Malaysia and Thailand was assessed cumulatively. Furthermore, the undertaking was offered on behalf of Malaysian exporters which do not account for the totality of Malaysian bicycle exports to the Community. In these circumstances, it is impossible to determine which import volume to be allocated to the exporters in question could effectively remedy the injurious effects of dumping and it is doubtful whether such undertaking could be satisfactorily monitored.

Therefore, the Commission considers neither price nor quantitative undertakings acceptable in this case. Finally, it should be recalled that the Community would not be obliged under Article 15 to pursue this option in the circumstances of the present case, since it was not demonstrated that applying anti-dumping duties would affect the essential interests of the exporting countries.

M. COLLECTION OF THE PROVISIONAL DUTY

(78) In the light of the seriousness of the injury, and in view of the high level of dumping, the Council considers that the provisional duty should be definitively collected at the level of the definitive duties,

HAS ADOPTED THIS REGULATION:

Article 1

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

2. The rates of anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows:

Country	Products manufactured by	Rate of duty	Taric additional code
Indonesia	— PT Federal Cycle, Mustika	28,4 %	8859
	— PT Jawa Perdana Bicycle Industry, Tangerang	27,7 %	8861
	— PT Toyo Asahi Bicycle Industries, Jakarta	28,4 %	8859
	— PT Wijaya Indonesia Makmur Bicycle Industries, Surabaya	21,9 %	8862
	— Other companies	29,1 %	8863
Malaysia	— Akoko Sdn Bhd, Klang	23,1 %	8864
	— Berjaya Cycles Sdn Bhd, Kulim	37,3 %	8865
	— Greenworld Systems Sdn Bhd, Kuala Lumpur (previously Fairly Toraya Sdn Bhd)	27,7 %	8866
	— Lerun Group Industries Berhad, Petaling Jaya	37,3 %	8865
	— Rolls Rally Sdn Bhs, Pelabuhan Kelang	25,3 %	8867
	— Other companies	39,4 %	8868
Thailand	— Bangkok Cycle Industrial Co. Ltd, Bangkok	17,7 %	8869
	— Siam Cycles MFG Co. Ltd, Samuthprakarn	38,9 %	8870
	— Thai Bicycle Industry Co. Ltd, Samuthprakarn	13,0 %	8871
	— Victory Cycle Co. Ltd, Samuthprakarn	13,2 %	8883
	— Other companies	39,2 %	8872

3. The duties shall not apply to imports of the product specified in paragraph 1, manufactured by PT Insera Sena, Sidoarjo (Taric additional code 8860).

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

Article 2

The amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 2414/95 shall be definitively collected at the duty rate definitively imposed. Amounts secured in excess of the definitive rate of anti-dumping duty shall be released.

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, 28 March 1996.

For the Council

The President

A. CLO