

# DECISIONS

## COMMISSION IMPLEMENTING DECISION (EU) 2020/1409

of 29 September 2020

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

(notified under document C(2020) 6574)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(1)</sup> ('the basic Regulation'), and in particular Article 13 thereof,

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

After informing the Member States,

Whereas:

- (1) An anti-dumping duty applies on imports into the Union of certain essential bicycle parts originating in the People's Republic of China ('the PRC') as a result of the extension of the anti-dumping duty imposed on imports of bicycles originating in the PRC by Council Regulation (EC) No 71/97 <sup>(3)</sup>.
- (2) Under Article 3 of Regulation (EC) No 71/97 the Commission is empowered to adopt the necessary measures to authorise the exemption of imports of essential bicycle parts which do not circumvent the anti-dumping duty.
- (3) Those implementing measures are set out in Commission Regulation (EC) No 88/97 <sup>(4)</sup> establishing the specific exemption system.
- (4) On that basis, the Commission has exempted a number of bicycle assemblers from the extended duty.
- (5) As provided for in Article 16(2) of Regulation (EC) No 88/97, the Commission has published in the *Official Journal of the European Union* subsequent lists of the exempted parties <sup>(5)</sup>.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> OJ L 225, 29.8.2019, p. 1.

<sup>(3)</sup> Council Regulation (EC) No 71/97 of 10 January 1997 extending the definitive anti-dumping duty imposed by Regulation (EEC) No 2474/93 on bicycles originating in the People's Republic of China to imports of certain bicycle parts from the People's Republic of China, and levying the extended duty on such imports registered under Regulation (EC) No 703/96 (OJ L 16, 18.1.1997, p. 55).

<sup>(4)</sup> Commission Regulation (EC) No 88/97 of 20 January 1997 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93 (OJ L 17, 21.1.1997, p. 17).

<sup>(5)</sup> OJ C 45, 13.2.1997, p. 3; OJ C 112, 10.4.1997, p. 9; OJ C 220, 19.7.1997, p. 6; OJ L 193, 22.7.1997, p. 32; OJ L 334, 5.12.1997, p. 37; OJ C 378, 13.12.1997, p. 2; OJ C 217, 11.7.1998, p. 9; OJ C 37, 11.2.1999, p. 3; OJ C 186, 2.7.1999, p. 6; OJ C 216, 28.7.2000, p. 8; OJ C 170, 14.6.2001, p. 5; OJ C 103, 30.4.2002, p. 2; OJ C 35, 14.2.2003, p. 3; OJ C 43, 22.2.2003, p. 5; OJ C 54, 2.3.2004, p. 2; OJ L 343, 19.11.2004, p. 23; OJ C 299, 4.12.2004, p. 4; OJ L 17, 21.1.2006, p. 16; OJ L 313, 14.11.2006, p. 5; OJ L 81, 20.3.2008, p. 73; OJ C 310, 5.12.2008, p. 19; OJ L 19, 23.1.2009, p. 62; OJ L 314, 1.12.2009, p. 106; OJ L 136, 24.5.2011, p. 99; OJ L 343, 23.12.2011, p. 86; OJ L 119, 23.4.2014, p. 67; OJ L 132, 29.5.2015, p. 32; OJ L 331, 17.12.2015, p. 30; OJ L 47, 24.2.2017, p. 13; OJ L 79, 22.3.2018, p. 31; OJ L 171, 26.6.2019, p. 117; OJ L 138, 30.4.2020, p. 8; OJ L 158, 20.5.2020, p. 7.

- (6) The most recent Commission Implementing Decision (EU) 2020/676 <sup>(6)</sup> concerning exemptions under Regulation (EC) No 88/97 was adopted on 18 May 2020.
- (7) For the purposes of this Decision, the definitions set out in Article 1 of Regulation (EC) No 88/97 apply.
- (8) On 20 March 2017, the Commission received from the German company Kenstone Metal Company GmbH ('Kenstone') a request for exemption with the information required to determine whether this request was admissible in accordance with Article 4 of Regulation (EC) No 88/97 ('the exemption Regulation').
- (9) In accordance with Article 5(1) of Regulation (EC) No 88/97, pending a decision on the merits of the request, the payment of the extended duty in respect of any imports of essential bicycle parts declared for free circulation by Kenstone was suspended as from the day on which the Commission received its request for exemption.
- (10) The TARIC additional code C207 was assigned to the party listed in the table, in order to identify the imports of essential bicycle parts declared for free circulation and subject to the suspension of the payment of the extended duty.

Table

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

- (11) In August 2018, Kenstone informed the Commission that during the period of the suspension of the payment of the extended duty, namely 1 April 2017-31 March 2018 ('investigation period') the company could not comply with one of the conditions set out in Article 4 of the exemption Regulation. In particular, Kenstone did not use essential bicycle parts for the assembly of bicycles in quantities above the threshold of 299 units per type of essential bicycle parts on a monthly basis (*de minimis* rule).
- (12) Kenstone justified the non-compliance with the *de minimis* rule with the fact that the company's premises including the bicycles assembly line moved from Flensburg to Bad Salzufen. In addition, due to a change of the supply chain, the delivery of the bicycle parts purchased was delayed.
- (13) Kenstone stated that with the new assets the assembly of bicycles became fully operational and thus the threshold mentioned above would have been reached in 2018. Therefore, Kenstone asked for an extension of the investigation period to include the whole calendar year 2018 ('extended investigation period'). That extension was granted and therefore the extended investigation period covered the period 1 April 2017-31 December 2018.
- (14) In March 2019, Kenstone informed the Commission that also during the extended investigation period the company purchased on a monthly basis less than 300 units per type of essential bicycle parts subject to the suspension of the payment of the extended duty.
- (15) In July 2019, the Commission carried out a visit at the company's premises in order to examine the merits of the request for exemption. The outcome of the examination can be summarised as follows:
- almost half of the bicycles declared as assembled during the extended investigation period were actually bicycles fitted with an auxiliary motor ('e-bikes') and therefore out of the scope of the exemption Regulation;
  - the main activity of the company was to provide customers with pure assembly services, i.e. Kenstone assembled bicycle parts owned by other parties and charged a service fee to the customers;

<sup>(6)</sup> Commission Implementing Decision (EU) 2020/676 of 18 May 2020 concerning exemptions from the extended anti-dumping duty on certain bicycle parts originating in the People's Republic of China pursuant to Regulation (EC) No 88/97 (OJ L 158, 20.5.2020, p. 7).

- (c) the accounting system of Kenstone did not allow keeping records of more than one origin for each bicycle part, even in case that part came from different suppliers with different origins (Chinese or non-Chinese). Kenstone was therefore not able to demonstrate compliance with anti-circumvention rules, as it could not demonstrate the percentage of Chinese parts used.
- (16) The examination of the request for exemption showed that during the extended investigation period Kenstone did not comply with the conditions set out in Regulation (EC) No 88/97. Although no violations of the anti-circumvention rules were identified, the size of the assembly activity of Kenstone for the purpose of Regulation (EC) No 88/97 was manifestly insufficient. In addition, Kenstone maintained an inadequate record-keeping system.
- (17) In May 2020, the Commission received comments from Kenstone concerning the examination of the request for exemption. Kenstone submitted that:
- (a) during the extended investigation period, Kenstone assembled more than 300 units of essential bicycle parts on a monthly weighted average;
  - (b) since January 2020, the assembly activities of Kenstone have significantly increased, so that more than 300 units of bicycle parts have been assembled each individual month;
  - (c) while admittedly the record-keeping system allowed keeping records of only one origin for each bicycle part regardless of whether it might have been obtained from several suppliers and of different origins, Regulation (EC) No 88/97 does not specify that a record-keeping system able to record such information is a prerequisite;
  - (d) the examination of the merits of the request for exemption carried out by the Commission was inadequate.
- (18) With regard to the comment summarised in recital 17 under (a), the Commission wishes to point out that pursuant to Article 2 of Regulation (EC) No 88/97, imports of essential bicycle parts shall be exempt from the extended duty where they are declared for free circulation by, or on behalf of, an exempted party.
- (19) Moreover, pursuant to Article 4 of that Regulation, a request shall be admissible where it contains evidence that the applicant is using essential bicycle parts for the production or assembly of bicycles in quantities above the threshold set out in Article 14(c) of Regulation (EC) No 88/97.
- (20) Furthermore, as stated by Commission Regulation (EU) No 512/2013 <sup>(7)</sup>, bicycle parts used for the assembly of e-bikes are not subject to anti-dumping measures and therefore they are out of the scope of the exemption Regulation.
- (21) The Commission observes that Kenstone was aware of its non-compliance with the *de minimis* rule and in March 2019 informed the Commission accordingly, as mentioned in recital 14 above.
- (22) The bicycles parts assembled but neither purchased nor owned by Kenstone, as well as the bicycles parts that Kenstone used for the assembly of e-bikes cannot be considered to determine compliance with the *de minimis* rule.
- (23) Kenstone furthermore argued that more than 300 essential bicycle parts were used on a monthly basis in 2018. However, the number exceeding 300 essential bicycle parts was achieved by adding up the use of all nine essential bicycle parts. In this respect, it should be pointed out that according to Article 14(c) of Regulation (EC) No 88/97 the threshold of 300 units is clearly defined 'per type of essential bicycle parts', not in total for all nine essential bicycle parts.
- (24) Kenstone also argued that, when examining imports of essential bicycle parts per type, the threshold of 300 parts was exceeded for certain parts in January 2018 and for other parts in February 2018, but never more than once per year for a given essential part. Kenstone argued that since the assembly of bicycles is a seasonal activity, it would be disproportionate if an assembler has to exceed the threshold every month.

<sup>(7)</sup> Commission Regulation (EU) No 512/2013 of 4 June 2013 amending Regulation (EC) No 88/97 on the authorization of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93 (OJ L 152, 5.6.2013, p. 1).

- (25) In this respect, Regulation (EC) No 88/97 indeed provides an element of flexibility, as the threshold, which an exempted party needs to exceed, is defined 'on a monthly basis'. However, exceeding the threshold only once in a given year of 12 months for a given part is insufficient to meet the criterion of being considered above the threshold on a monthly basis.
- (26) Consequently, during the extended investigation period, within the scope of the exemption Regulation, Kenstone purchased on a monthly basis less than 300 units per type of essential bicycle parts subject to the suspension of the payment of the extended duty. Also, Kenstone used essential bicycle parts subject to the suspension for the production or assembly of bicycles in quantities below the threshold set out in Article 14(c) of the exemption Regulation.
- (27) With regard to the comment summarised in recital 17 under (b), the Commission wishes to point out that pursuant to Article 6 of the exemption Regulation, the period 1 April 2017-31 December 2018 was identified as the period to be investigated in order to decide whether to grant an exemption. Therefore, the examination of the assembly activity of Kenstone during other periods is outside the scope of this decision, which concerns the extended investigation period.
- (28) With regard to the comment summarised in recital 17 under (c), the Commission wishes to point out that in April 2017 Kenstone was notified that its exemption request was held admissible. Kenstone was also informed on its status of suspended company as well as on its obligations as a party under examination, including specific instructions on how to keep records order to prove compliance with anti-circumvention rules. These instructions were reiterated in January 2019 at the end of the extended investigation period and in July 2019, before carrying out the verification visit at the company's premises.
- (29) Furthermore, Article 6(2) of Regulation (EC) No 88/97 lists the obligations of suspended parties, notably that such a party 'shall keep records of the essential bicycle parts delivered to it – and of the use made of them'. Such parties also have to demonstrate that their assembly operations do not fall within the scope of Article 13(2) of the basic Regulation. In order to demonstrate that the assembly operation falls outside the scope of Article 13(2)(b) of that Regulation<sup>(8)</sup>, Kenstone should have demonstrated that Chinese parts account for 60 % or less of the total value of the parts of the assembled product. Indeed, the origin of the parts has to be part of the records kept by the company, otherwise it is not possible to demonstrate compliance.
- (30) With regard to the comment summarised in recital 17 under (d), the Commission wishes to point out that for the examination of the merits of the request for exemption the standard practice was fully respected. The Commission duly assessed all the documents, data and information acquired before, during and after the verification carried out at the company's premises, that are necessary to determine the admissibility of the exemption request. Therefore, the Commission is in possession of all the elements necessary to adopt a decision.
- (31) Kenstone further argued that while the verification was scheduled for one and a half days, it was completed after a few hours on the first day. This allegation is incorrect. The verification at the company's premises was carried out for a full day. During that day, no verifiable information concerning the origin of the assembled parts or the compliance with the conditions of Article 13(2) of the basic Regulation was provided by Kenstone. Due to the lack of progress during that day, the verification was discontinued for the last half day foreseen for the verification.
- (32) The Commission services concluded their examination of the request for exemption of the party listed in the table above and established that during its examination the party did not fulfil the criteria for exemption.
- (33) On these grounds, and pursuant to Article 7(3) of Regulation (EC) No 88/97, it is appropriate to reject the exemption request and lift the suspension of the payment of the extended duty referred to in Article 5 same Regulation.
- (34) Consequently, the extended duty should be collected as from the date of receipt of the request for exemption submitted by this party, namely the date on which the suspension took effect that is 20 March 2017.
- (35) The Commission informed Kenstone on its conclusions on the merits of its exemption request and gave Kenstone an opportunity to comment.

<sup>(8)</sup> There is also an ancillary rule that there is no circumvention taking place where the value added to the parts brought in is greater than 25 % of the manufacturing cost. Kenstone did not argue that they meet this threshold.

- (36) Following disclosure, on 1 September 2020 Kenstone argued that neither the bill of material nor any other proof of origin was requested by the Commission during the on-spot verification. The allegation is however incorrect. The Commission specifically requested this information on 2 July 2019, before the on-spot verification, with the letter Ares(2019)4173972 informing Kenstone on the purpose of the verification visit. To that letter, the Commission attached a list of documents to be made available at the company's premises, including bills of material and certificates of origin. However, these were not provided by Kenstone, neither during the on-spot verification nor in the comments to disclosure.
- (37) Kenstone reiterated the comment made in May 2020 as reported in recital 17 under (c). In particular, Kenstone submitted that the exemption Regulation does not specify how the record-keeping system has to be structured in order to keep records of the origin of the bicycle parts purchased.
- (38) The Commission addressed already the issue in recitals 28 and 29. In addition, the Commission observes that Kenstone had been informed on how to keep records to prove compliance with anti-circumvention rule and never objected thereto, nor did the company avail itself of the possibility to substantively prove compliance in other ways during verification or as a response to the disclosure of findings. Thus Kenstone did not submit any valid evidence in order to demonstrate that its assembly operations fall outside the scope of Article 13(2)(b) of the basic Regulation. In this respect, it is recalled that the burden of proof of compliance with the rules lies with the parties requesting an exemption.
- (39) Kenstone further argued that it had not received full access to the administrative file. While this was already in the company's possession, an additional copy was provided by the Commission services. Kenstone then argued that the administrative file was incomplete, since Document Ares(2020)4002648 dated 29 July 2020 mentions that a letter with the reference Ares(2017)SN2161027 was sent to Kenstone on 12 April 2017. This letter is allegedly not included in the disclosure of files. In this respect, it is noted that the reference number contained in Document Ares(2020)4002648 contains a clerical error. The correct reference number is SN2160934 (instead of Ares(2017)SN2161027) and the document is indeed contained in the administrative file.
- (40) Kenstone further requested access to the register of documents, in accordance with Article 11 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>(9)</sup>. The request and the reply thereto follow the provisions of that Regulation. In any event, the Commission confirmed that the index of the investigation file was provided to Kenstone,

HAS ADOPTED THIS DECISION:

#### Article 1

The request for exemption from the extended anti-dumping duty submitted by the party listed in the table of this Article is hereby rejected pursuant to Article 7 of Regulation (EC) No 88/97.

Table

#### Party for which the suspension shall be lifted

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

<sup>(9)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

*Article 2*

The suspension of the payment of the extended anti-dumping duty pursuant to Article 5 of Regulation (EC) No 88/97 is hereby lifted for the party listed in the table of Article 1.

The extended duty should be collected as from the date provided for in the column headed 'Date of effect'.

*Article 3*

This Decision is addressed to the Member States and to the party listed in Article 1 and published in the *Official Journal of the European Union*.

Done at Brussels, 29 September 2020.

*For the Commission*  
Valdis DOMBROVSKIS  
*Member of the Commission*

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