

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1140**of 30 July 2020****on re-imposing a definitive anti-dumping duty on imports of bicycles whether declared as originating in Sri Lanka or not following the judgment of the Court of Justice in Case C-251/18 Trace Sport SAS**

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 ('the basic Regulation') ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

A. MEASURES IN FORCE AND JUDGMENTS OF THE GENERAL COURT AND THE COURT OF JUSTICE OF THE EUROPEAN UNION**1. Measures in force**

- (1) In 2011, by Implementing Regulation (EU) No 990/2011, the Council imposed a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China ('the original measures') ⁽²⁾ following an expiry review under Article 11(2) of the basic Regulation.
- (2) In 2013, by Implementing Regulation (EU) No 501/2013, the Council extended the original measures to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not (the 'contested Regulation') ⁽³⁾ following an anti-circumvention investigation under Article 13 of the basic Regulation (the 'anti-circumvention investigation').

2. Judgment of the General Court in T-413/13 and judgment of the Court of Justice of the European Union in in Joined Cases C-248/15P, C-254/15P and C-260/15P

- (3) City Cycle Industries ('City Cycle') challenged the contested Regulation in the General Court.
- (4) By its judgment of 19 March 2015, in Case T-413/13 City Cycle Industries v Council, the General Court of the European Union annulled Article 1(1) and (3) of Council Implementing Regulation (EU) No 501/2013, in so far as it concerned City Cycle Industries ('City Cycle').
- (5) On 26 January 2017, the appeals brought forward against the judgment of the General Court of 19 March 2015, were dismissed by judgment of the Court of Justice in Joined Cases C-248/15P, C-254/15P and C-260/15P ⁽⁴⁾, City Cycle Industries v Council.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Implementing Regulation (EU) No 990/2011 of 3 October 2011 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 261, 6.10.2011, p. 2).

⁽³⁾ Council Implementing Regulation (EU) No 501/2013 of 29 May 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not (OJ L 153, 5.6.2013, p. 1).

⁽⁴⁾ Joined Cases C-248/15P (appeal submitted by the Union industry), C-254/15P (appeal submitted by the European Commission) and C-260/15P (appeal submitted by the Council of the European Union).

- (6) Following the judgment of the Court of Justice, on 11 April 2017 by Notice ⁽⁵⁾, the Commission partially reopened the anti-circumvention investigation concerning imports of bicycles consigned from Sri Lanka, whether declared as originating in Sri Lanka or not that led to the adoption of the contested Regulation and resumed it at the point at which the irregularity occurred. The reopening was limited in scope to the implementation of the judgment of the Court of Justice with regard to City Cycle. As a result of this reopening, the Commission adopted Implementing Regulation (EU) 2018/28 of 9 January 2018 re-imposing a definitive anti-dumping duty on imports of bicycles, whether declared as originating in Sri Lanka or not, from City Cycle Industries ⁽⁶⁾ (the ‘City Cycle Regulation’).

3. Judgment of the Court of Justice of the European Union in case C-251/18

- (7) On 19 September 2019, in the context of a preliminary reference request made by the Rechtbank Noord-Holland, the Court of Justice ruled in Case C-251/18 Trace Sport SAS that the contested Regulation ⁽⁷⁾ is invalid in so far as it concerns imports of bicycles shipped from Sri Lanka, whether declared as originating in Sri Lanka or not. The Court of Justice concluded that the contested Regulation did not contain any individual analysis of circumvention practices in which Kelani Cycles and Creative Cycles may have been engaged. The Court of Justice found that the conclusion as to the existence of transshipment operations in Sri Lanka could not legally be based only on the two findings expressly made by the Council, that is, first, that there had been a change in the pattern of trade between the Union and Sri Lanka and, second, that some of the exporting producers had failed to cooperate. On this basis, the Court of Justice declared the contested Regulation invalid in so far as it concerns imports of bicycles shipped from Sri Lanka, whether or not declared as originating in that country.

4. Consequences of the judgment in case C-251/18

- (8) In line with Article 266 of the Treaty of the Functioning of the European Union, the Union institutions need to take the necessary steps to comply with the judgment of 19 September 2019.
- (9) It follows from the case-law that where a judgment of the Court of Justice annuls a regulation imposing anti-dumping duties or declares such a regulation to be invalid, the institution called upon to take such measures for the purpose of implementing that judgment does have the option of resuming the proceeding at the origin of that regulation, even if that option is not expressly set out in the applicable legislation ⁽⁸⁾.
- (10) Furthermore, except where the irregularity found has vitiated the entire proceeding with illegality, the institution concerned has the option, in order to adopt an act intended to replace the act that has been annulled or declared invalid, to resume that proceeding only at the stage when the irregularity was committed ⁽⁹⁾. That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as, in this case, the initiation of the anti-circumvention procedure by Commission Regulation (EU) No 875/2012 ⁽¹⁰⁾.

⁽⁵⁾ Notice concerning the judgment of the General Court of 19 March 2015 in Case T-413/13 City Cycle Industries v Council of the European Union and the judgment of the Court of Justice of 26 January 2017 in Cases C-248/15 P, C-254/15 P and C-260/15 P in relation to Council Implementing Regulation (EU) No 501/2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People’s Republic of China to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not (2017/C 113/05) (OJ C 113, 11.4.2017, p. 4).

⁽⁶⁾ Commission Implementing Regulation (EU) 2018/28 of 9 January 2018 re-imposing a definitive anti-dumping duty on imports of bicycles whether declared as originating in Sri Lanka or not from City Cycle Industries (OJ L 5, 10.1.2018, p. 27).

⁽⁷⁾ Council Implementing Regulation (EU) No 501/2013 of 29 May 2013.

⁽⁸⁾ Judgment of the Court of 15 March 2018, Case C-256/16 Deichmann, ECLI:EU:C:2018:187, paragraph 73; see also judgment of the Court of 19 June 2019, Case C-612/16 P&J Clark International, ECLI:EU:C:2019:508, paragraph 43

⁽⁹⁾ Ibid, paragraph 74; see also judgment of the Court of 19 June 2019, Case C-612/16 P&J Clark International, ECLI:EU:C:2019:508, paragraph 43.

⁽¹⁰⁾ Commission Regulation (EU) No 875/2012 of 25 September 2012 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People’s Republic of China by imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not, and making such imports subject to registration (OJ L 258, 26.9.2012, p. 21).

- (11) Thus, the Commission has the possibility to remedy the aspects of the contested Regulation which led to its declaration of invalidity, leaving those parts which were not affected by the judgment of the Court valid ⁽¹¹⁾.

B. PROCEDURE

1. Procedure until the judgment

- (12) The Commission confirms recitals 1 to 23 included of the contested Regulation. They are not affected by the judgment.

2. Reopening

- (13) Following the judgment in Case C-251/18 Trace Sport SAS, on 2 December 2019, the Commission published an Implementing Regulation ⁽¹²⁾ reopening the anti-circumvention investigation concerning imports of bicycles consigned from Sri Lanka, whether declared as originating in Sri Lanka or not, that led to the adoption of the contested Regulation and resumed it at the point at which the irregularity occurred ('reopening Regulation').
- (14) The reopening is limited in scope to the implementation of the judgment of the Court of Justice in Case C-251/18 Trace Sport SAS. In that judgment, the illegality identified by the Court of Justice pertains to the obligation for the institutions of the Union to bear the burden of proof arising from Article 13(3) of Regulation (EU) 2016/1036 as it stood at that time.
- (15) Given that the City Cycle Regulation is not affected by the irregularity identified by the Court of Justice in Case C-251/18, the definitive anti-dumping duties on imports of bicycles consigned from Sri Lanka, whether declared as originating in Sri Lanka or not, from City Cycle Industries are not covered by this proceeding.
- (16) The Commission informed the Sri Lankan exporting producers, the representatives of the Government of Sri Lanka, the Union industry and other interested parties known to be concerned from the anti-circumvention investigation of the reopening of the investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing with the Commission and/or the Hearing officer in trade proceedings within the time-limit set out in the reopening Regulation. None of the interested parties requested a hearing either with the Commission or the Hearing officer in trade proceedings.

3. Registration of imports

- (17) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation shall be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied from the date on which registration of such imports was imposed.
- (18) On 2 December 2019, by the reopening Regulation, the Commission made imports of bicycles consigned from Sri Lanka, whether declared as originating in Sri Lanka or not, subject to registration.

4. Product under investigation

- (19) The product under investigation is the same as in the contested Regulation, i.e. bicycles and other cycles (including delivery tricycles, but excluding unicycles), not motorised, originating in the People's Republic of China ('China'), currently falling under CN codes ex 8712 00 30 and ex 8712 00 70 (TARIC codes 8712 00 30 10 and 8712 00 70 91), consigned from, Sri Lanka, whether declared as originating in, Sri Lanka or not.

⁽¹¹⁾ Judgment of 3 October 2000, Case C-458/98 P *Industrie des Poudres Sphériques v Council*, ECLI:EU:C:2000:531, paragraph 80 to 85.

⁽¹²⁾ Commission Implementing Regulation (EU) 2019/1997 of 29 November 2019 reopening the investigation following the judgment of 19 September 2019, in Case C-251/18 Trace Sport SAS, with regard to Council Implementing Regulation (EU) No 501/2013 of 29 May 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not (OJ L 310, 2.12.2019, p. 29).

C. ASSESSMENT FOLLOWING THE JUDGMENT

1. Preliminary remarks

- (20) First, the Court of Justice held that the contested Regulation did not contain an individual analysis of circumvention practices in which Kelani Cycles and Creative Cycles may have been engaged. The Court of Justice found that the conclusion as to the existence of transshipment operations in Sri Lanka could not legally be based only on the two findings expressly made by the Council, that is, first, that there had been a change in the pattern of trade between the Union and Sri Lanka and, second, that some of the exporting producers had failed to cooperate.
- (21) Second, the judgment does not question that the Council was entitled to consider Kelani Cycles as a non-cooperating party in the investigation and there was significant non-cooperation at national level in Sri Lanka (companies that did not cooperate or withdrew cooperation constituted 75 % of the total exports from Sri Lanka during the reporting period). Creative Cycles did not cooperate in the investigation. Recitals 35 to 42 of the contested Regulation are therefore confirmed.

2. Undermining of the remedial effect of the anti-dumping duty

- (22) The Council had found, in recitals 93 to 96 of the contested Regulation, that there was evidence undermining of the remedial effect of the anti-dumping duty within the meaning of Article 13(1) of the basic Regulation. Those findings are confirmed.

3. Evidence of dumping

- (23) The Council had found, in recitals 97 and 98 as well as 107 to 110 of the contested Regulation, evidence of dumping in relation to the normal values previously established for the like product in accordance with Article 13(1) of the basic Regulation. Those findings are confirmed.

4. Existence of circumvention practices

- (24) The contested Regulation was declared invalid because the Council failed to provide sufficient substantiation as to the existence of circumvention practices for individual companies. It is recalled that the existence of circumvention practices can be established, *inter alia*, on the basis of transshipment or on the basis of assembly operations.
- (25) During the anti-circumvention investigation, six Sri Lankan companies submitted a request for exemption in accordance with Article 13(4) of the basic Regulation. These six companies represented 69 % of the total imports from Sri Lanka to the Union during the reporting period defined in that investigation (1 September 2011 to 31 August 2012). Out of these six, three companies were exempted from the extended duties and one stopped cooperating. The exemption requests of the two remaining companies (Kelani Cycles and City Cycle Industries) were rejected as those companies could not show that they were not involved in circumvention practices. As mentioned in recitals 37 to 42 and 144, 146 to 149 of the contested Regulation, these findings were based on the facts available in accordance to Article 18 of the basic Regulation.
- (26) The reopened investigation revealed that there was no available evidence at companies' level that could support the finding of transshipment. Therefore, it was concluded that no transshipment could be established.
- (27) However, the available evidence showed that circumvention practices via assembly operations took place. The evidence was based on the existing data submitted by City Cycle and Kelani Cycles during the anti-circumvention investigation. The Council had not previously assessed that data in detail, because it considered that that was not necessary in order to demonstrate, to the required legal standard, existence of circumvention practices. However, as the Court has clarified the applicable legal standard, the Commission considered it appropriate to reassess all the evidence available in the administrative file in the light of the conclusions of the judgment of the Court of Justice in Case C-251/18 Trace Sport SAS.

- (28) As stated in recitals 3 to 5, in 2017 the Commission re-opened the investigation regarding City Cycle. Recitals 22 to 25 of the City Cycle Regulation detailed the evidence regarding City Cycle, showing that circumvention practices via assembly operations were taking place in Sri Lanka. Furthermore, due to the company's insufficient cooperation and inability to demonstrate that it did not circumvent the measures on the basis of its own data, the exemption request of City Cycle under Article 13(4) of the basic Regulation could not be considered warranted. As mentioned in recital 15 the City Cycle Regulation remains unaffected by the judgment of the Court in case C-251/18.
- (29) During the anti-circumvention investigation, Kelani Cycles was unable to prove that it merited an exemption, as explained in recitals 39, 40 and 146 to 149 of the contested Regulation. The company's cooperation was considered insufficient and Article 18(1) of the basic Regulation was applied.
- (30) Furthermore, during the anti-circumvention investigation, it was established that Great Cycles, a related company of Creative Cycles, was the supplier of bicycle parts to Kelani Cycles. Both Great Cycles and Creative Cycles were established in Sri Lanka and the links between Kelani Cycles and those companies were going beyond a normal buyer and seller relationship. The relationship between the three companies could not be ultimately clarified during the anti-circumvention investigation due to the lack of cooperation of Kelani Cycles. In addition, Kelani Cycles was established in December 2011, after Creative Cycles and its related company Great Cycles were investigated by the Commission services on fraud on origin and, as a result, Creative Cycles stopped its bicycles assembly operations. Creative Cycles did not cooperate in the anti-circumvention investigation. Moreover, during the anti-circumvention investigation, Kelani Cycles was found to be export-oriented, targeting the Union market. Kelani Cycles started to export bicycles to the Union market in August 2012. Also, the parts used in production were found to be sourced primarily from China. Therefore, it was concluded that the conditions set out in Article 13(2)(a) of the basic Regulation were met.
- (31) Subsequently, the Commission examined the conditions set out in Article 13(2)(b) of the basic Regulation in order to establish whether the operations carried out by Kelani Cycles could be considered as assembly operations circumventing the definitive anti-dumping duties in force, thus whether:
- (a) the raw materials (bicycle parts) from China constituted more than 60 % of the total value of the parts of the assembled product (60/40 test), while
 - (b) the value added to the parts brought in during the assembly operation, was lower than 25 % of the manufacturing cost (25 % value added test).
- (32) Kelani Cycles reported purchases of bicycle parts from China, but also from Great Cycles, which is a Sri Lankan company. While Kelani Cycles claimed that the parts bought from the latter were of Sri Lankan origin, the investigation revealed that Great Cycles manufactured these bicycle parts with parts (raw frames and forks) purchased from China (more than 60 % of the total value of the parts of the assembled product), while the value added by Great Cycles in the manufacturing process was less than 25 % consisting mainly in welding and painting. Therefore, in application by analogy ⁽¹³⁾ of Article 13(2)(b) of the basic Regulation, it was considered that the parts purchased from Great Cycles were from China.
- (33) Regarding all parts used in the assembly of bicycles by Kelani Cycles, the Commission considered that the most reliable source were the cost statements of different bicycle types provided on spot. On this basis, the Commission concluded that the parts purchased from China (including those supplied by Great Cycle) and used by Kelani Cycles in assembling the bicycles exported to the Union constituted between 80 and 100 % of all parts of the assembled bicycle, depending on the bicycle type.
- (34) The 25 % value added test was based on the cost of assembling provided by Kelani Cycles during the anti-circumvention investigation. The value added was calculated on the parts brought in from China, as established in recitals 32 and 33. The value of parts purchased from Sri Lanka (tyres) was estimated based on the cost statements per product type provided during the on-spot verification carried out during the anti-circumvention investigation. As a result, the value added to the parts brought in from China during the assembly operations was below 25 % of the manufacturing cost.

⁽¹³⁾ Court judgment in case C-709/17 P Kolachi of 12 September 2019.

- (35) Regarding the criteria set out in Article 13(2)(c) of the basic Regulation, as stated in recitals 24 and 25, the relevant findings during the anti-circumvention investigation were not affected and therefore were confirmed.
- (36) Consequently, the existence of circumvention practices via assembly operations was established at country level in Sri Lanka, on the basis of the above evidence, available at the companies' level, showing the existence of circumvention practices. Given the high level of non-cooperation in Sri Lanka as stated in recital 21, no arguments against this conclusion could be found.
- (37) Consequently, the existence of assembly operations within the meaning of Article 13(2) of the basic Regulation was established in Sri Lanka.

5. Exemption requests

- (38) With regard to Kelani Cycles' exemption request, due to the company's insufficient cooperation and inability to demonstrate that it did not circumvent the measures on the basis of its own data, it could not be considered to be warranted under Article 13(4) of the basic Regulation.
- (39) With regard to the situation of the company, which withdrew its exemption request during the anti-circumvention investigation, as stated in recital 21 above, recital 36 of the contested Regulation is not affected by the Court judgement and as such is confirmed. Therefore, this company could not benefit from an exemption.

D. DISCLOSURE

- (40) The parties were informed of the essential facts and considerations on the basis of which it was intended to re-impose a definitive anti-dumping duty on imports of bicycles whether declared as originating in Sri Lanka or not. They were also granted a period within which they could make representations subsequent to this disclosure. No comment were received.

E. IMPOSITION OF MEASURES

- (41) On the basis of the above, it is considered appropriate to extend the original measures to imports of bicycles and other cycles (including delivery tricycles, but excluding unicycles), not motorised, consigned from Sri Lanka, whether declared as originating in Sri Lanka or not, currently falling under CN codes ex 8712 00 30 and ex 8712 00 70 (TARIC codes 8712 00 30 10 and 8712 00 70 91).
- (42) As mentioned in recitals 9 to 11, the anti-circumvention investigation was resumed at the point where the illegality occurred. The Commission remedied, with the current re-opening, the aspects of the contested Regulation which led to its declaration of invalidity. The parts of the contested Regulation which were not affected by the judgment of the Court remained valid. According to the jurisprudence of the Court of Justice, the resumption of the administrative procedure with the re-imposition of anti-dumping duties on imports that were made during the period of application of the invalid regulation cannot be considered as contrary to the rule of non-retroactivity⁽¹⁴⁾.
- (43) Thus, in light of the specific nature of the anti-circumvention instrument, which is designed to protect the effectiveness of the anti-dumping instrument, and in view of the fact that the investigation has revealed evidence that points to the existence of the circumventing practices based on the companies' own reported data, the Commission considers it appropriate to re-impose measures as from the date of the initiation of the anti-circumvention investigation (namely as of 25 September 2012 onwards).
- (44) This regulation is in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

⁽¹⁴⁾ Case C-256/16 *Deichmann SE v Hauptzollamt Duisburg* [2018], ECLI:EU:C:2018:187, paragraph 79; and C-612/16 *C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs*, judgment of 19 June 2019, paragraph 58.

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed on imports of bicycles and other cycles (including delivery tricycles, but excluding unicycles), not motorised, originating in the People's Republic of China, is hereby extended to imports of bicycles and other cycles (including delivery tricycles, but excluding unicycles), not motorised, consigned from Sri Lanka, whether declared as originating in Sri Lanka or not, currently falling within CN codes ex 8712 00 30 and ex 8712 00 70 (TARIC codes 8712 00 30 10 and 8712 00 70 91) as of 6 June 2013 with the exception of those produced by the companies listed below:

Country	Company	TARIC additional code
Sri Lanka	Asiabike Industrial Limited, No 114, Galle Road, Henamulla, Panadura, Sri Lanka	B768
Sri Lanka	BSH Ventures (Private) Limited, No 84, Campbell Place, Colombo-10, Sri Lanka	B769
Sri Lanka	Samson Bikes (Pvt) Ltd, No 110, Kumaran Rathnam Road, Colombo 02, Sri Lanka	B770

The imports from City Cycle Industries (TARIC additional code B131) are covered by Commission Implementing Regulation (EU) 2018/28 of 9 January 2018 re-imposing a definitive anti-dumping duty on imports of bicycles whether declared as originating in Sri Lanka or not.

2. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Sri Lanka whether declared as originating in Sri Lanka or not, registered in accordance with Article 2 of Regulation (EU) No 875/2012 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009 or registered in accordance with Article 2 of Commission Implementing Regulation (EU) 2019/1997 of 29 November 2019 with the exception of those produced by the companies listed in paragraph 1.

Article 2

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Commission Implementing Regulation (EU) 2019/1997 of 29 November 2019.

Article 3

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

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

Done at Brussels, 30 July 2020.

For the Commission
The President
 Ursula VON DER LEYEN