

# Harley Davidson Inc

## Teaching Note

### Background

The Harley Davidson case addresses the relationship between a trade management challenge they encountered as a company and a supply chain redesign program that was conducted to counter the adverse effects of the trade management challenge.

The challenge Harley Davidson encountered was the tariff hikes as part of the US-EU-China trade war that was initiated by then President Donald Trump. These higher import duties for Europe resulted in cost increases for motorcycles originating from the US. To manage this problem, Harley Davidson attempted to redesign their supply chain in order to deliver motorcycles to the European market with an alternative origin. That origin became Vietnam, due to an existing manufacturing footprint, as well as advantageous discriminatory trade measures between Vietnam and the EU.

The purpose of the case is to gain some insight in the reasoning behind a supply chain redesign project, and the specific reasoning that Harley Davidson had to engaged in it.

### Learning goal

The learning goal of this case is to let the students gain knowledge and insight in the relationship between trade management and supply chain design. Students will be asked to analyse the problem situation, evaluate the solution Harley Davidson came up with, and perform some analysis of their own to review possible alternatives.

### Classification of goods

For the international movement of goods, rules are in place to allow countries to exercise their sovereign rights to allow or block certain goods into their territories, as well as charge taxes on the flows of these incoming goods. Over time, differentiation of policy measures developed that required a detailed and precise way of distinguishing goods of various types.

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The current system for the classification of goods in international trade is the so-called harmonized system for the classification of goods (HS system). It is maintained by the World Customs Organization, and reviewed periodically.

The HS system has a particular numerical structure that is divided into

- Chapters (first two digits)
- Headings (first four digits)
- Subheadings (first 6 digits)

In the European union, an additional two digits are added to provide further sub-divisions to refer to specific regulations and measures.

There is an addition to the basic HS coding system. The European Commission uses 2 more digits for the Tariq<sup>1</sup> nomenclature. Two of these refer to specific policy areas, such as agriculture or defense where additional goods classifications are required, and additional mechanisms of charging may be applicable. In addition, additional Tariq codes can be added to the classification requirement for certain goods. In each case, such an additional code can have four digits. This is often country-specific.

A further addition is also national, and adds further digits to the goods classification. In the Netherlands, for instance, so-called use tariffs (gebruikstarief) can be applicable, which requires two times a two-digit code on top of the Tariq codes.

The tariff classification system comes with a database that links every HS code with a customs duty tariff. This allows for the clear calculation of the customs duties to be paid when goods are imported into a customs territory.

There are specific rules in place for the process of classifying goods. These are laid down in the WCO General Rules for the Interpretation of the Harmonized System (GRI). These rules provide basic approaches for the classification of goods where debate might ensue: goods that are not completely finished, goods that may have different uses or purposes, goods made of mixed materials, goods that come with specific cases or holders.

Since there can be debate about classification, this may result in uncertainty whenever these goods are brought across a border. To avoid this discussion for every individual shipment, customs agencies offer a procedure to make a definite decision for a specific good: the Binding Tariff Information (BTI). With such a BTI companies can be certain that customs will accept their classification for every shipment of the same product.

There is an additional dimension that might influence the height of the duty tariff: the origin of the goods. All countries/customs territories in the world make distinctions between countries and areas they want to support, and areas they aim to sanction. Trading partners, where trade needs to be promoted, receive preferential treatment, by means of lower tariffs. Countries that need to be sanctioned (for instance, because they are warmongering), will receive higher than average tariffs.

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<sup>1</sup> TARIQ = Tarif Intégré Communautaire or integrated tariffs of the European Union.

To benchmark all these tariffs, the World Trade Organization maintains a database of the globally agreed minimum tariffs, against which other countries and regions can then set their own 'normal', preferential and non-preferential tariffs.

The way origin works in international trade is that there are, again, rules in place to determine what level of economic activity in a specific country merits the decision to allocate that country as the economic origin of the goods. This usually amounts to some calculation of costs for eligible countries based on a bill of materials. If a sufficient level of costs can be attributed to a specific country, that country qualifies as the 'origin'. This type of decision can also be codified with customs agencies in a Binding Origin Information (BOI). This is the decision that Harley Davidson had received from Belgium Customs for their motorcycles from Vietnam, and that the European Commission ordered Belgian Customs to rescind.

In the case, it is interesting to discuss the measures Harley Davidson must have taken to reroute their supply chain in such a way that they qualify for a Vietnam origin. With parts being shipped from the US to Vietnam, a significant part of the motorcycle is still linked to the US. Only a certain amount of local sourcing (in the ASEAN region, that Vietnam is part of) will make Harley Davidson reach the required threshold of, usually, 50-60% of the cost structure being allocated to Vietnam.

### **Motorcycles and motorcycle parts**

A final piece of background information concerns the position in the classification system for motorcycles and their parts.

Motorcycles are part of section XVII Vehicles, aircraft, vessels, and associated transport equipment. Within that section, chapter 87 deals with 'vehicles other than railway or tramway rolling-stock, and parts and accessories thereof'. Within this chapter, heading 87.11 deals with 'motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side card and side cars'. The subdivision is then made by engine size (in cc), or electric. The Harley Davidson motorcycles fall in the biggest category: a cylinder capacity exceeding 800cc: 87.11.50.

Motorcycle parts are under 87.14: parts and accessories of vehicles of headings 87.11 to 87.13. These include frames and forkes, wheel rims and spokes, hubs, brakes, saddles, pedals and crank-gear, and other. Separate engines need to be classified under chapter 84,07: sprak-ignition reciprocating or rotary internal combustion piston engines, depending on the internal size either 84.07.33 (below 1000cc) or 94.07.34 (above 1000 cc).

Harley Davidson attempted to reroute the flow of complete motorcycles from US to Vietnam, in order to fulfil demand in the EU common market. They could have chosen other ways of redesigning the supply chain, so that perhaps only specific parts of the motorcycle would come from Vietnam, and assembly would follow in Europe. Since they were sending Complete Knockdown Kits, some degree of assembly was necessary in Europe anyway. Part of the exercise in this case is to let the students do some investigation in a database such as [tariffnumber.com](http://tariffnumber.com), where the tariffs for all HS codes can be looked up.

The output of this information resource looks as follows:

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<b>Chapter 87</b>	51 Trade restrictions, TARIC
<b>Position 8711</b>	21 Trade restrictions, TARIC
<b>Subheading 871150</b>	6 Trade restrictions, TARIC

**Customs Tariff Number 87115000:**

1999-01-01	ERGA OMNES (1011)	Third country duty Regulation 2261/98 6.000 %
2016-01-01	Ukraine (UA)	Tariff preference Decision 0295/14 0.000 %
2019-11-21	Singapore (SG)	Tariff preference Decision 1875/19 0.000 %
2022-02-01	Japan (JP)	Tariff preference Decision 1907/18 0.000 %
2023-01-01	Viet Nam (VN)	Tariff preference Decision 0753/20 2.000 %
2023-01-01	GSP - General arrangements (2020)	Tariff preference Regulation 0978/12 2.500 %

This is tariff information for the HS code 87.11.50.00 (motorcycles with internal combustion engine of above 800cc). The general tariff (Erga Omnes) is 6%, for all countries not mentioned in the remainder. For specific countries, such as Ukraine, but also Japan and Vietnam, lower tariffs apply. Based on a comparison of the tariffs applicable for the motorcycles, as well as some of the major parts, as well as the engine, possibly some alternative supply chain design could be devised.

What needs to be considered, however, is that in Europe, for bicycles, the regular classification rules already equate a complete bicycle with a set of parts that constitutes a complete bicycle. In addition, attempts to ship parts constituting complete bicycles in a fragmented manner, via different routes was part of an investigation in the EU (see Council Regulation 71/97) and led to an extension of anti-dumping measures from full bicycles to parts as well. In any case, this precludes sending a full set of parts, in whichever way, from Vietnam to the EU and circumventing the tariff hikes due to the trade war.

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## Discussion points in the case

1. Was it a sensible strategy of Harley Davidson to move the production of motorcycles for the EU to Vietnam?

The straight answer is: no. The trade war was a short-term issue, for which it does not make sense to engage in a long-term supply chain re-engineering project. Granted, Harley Davidson did not know this at the time, but they also did not have their priorities straight: in their own SEC filing, they declared that they engaged in the redesign of their supply chain purely to circumvent higher tariffs. This is in direct conflict with European law.

At a second glance, the discussion usually carries on about the market entry strategies of Harley Davidson around the world, and the way in which tariffs play a role. This results in a potential discussion on the decision to just create manufacturing or assembly activities in Europe.

2. When the EU ordered Belgium Customs to withdraw the BOI, what alternatives would Harley Davidson have to avoid paying the higher tariffs on complete motorcycles?

Based on the assumption that manufacturing might be undesirable (it is not an American motorcycle anymore), but assembly is, we have looked into the ways in which this might relieve the tariff burden. We looked up tariffs for various motorcycle components in a European tariff database and compared this with the direct import of motorcycles from the US. It makes a difference where these components are coming from: the US has some low tariffs on all these components, but Vietnam does not. So manufacturing some components in the US, and some in Vietnam becomes an option.

3. In the context of this tariff war, would it have made sense for Harley Davidson to set up a factory in Europe?

There are various issues that play a role in this discussion: what is the importance of the brand Harley Davidson and how American should the motorcycle be? What is the experience of Harley Davidson with manufacturing in other parts of the world (India, Vietnam) and would this be applicable for Europe? Is the development of sales in the European market significant enough for a factory?

In the end this is a matter of debate. For the 'normal' situation, the tariffs are probably not high enough to create a full-blown factory in Europe. Assembly, especially by some contract manufacturer might be an option, but also here, there are costs (expensive European personnel) involved that might quickly break a business case. Also, for a gasoline-slurping motorcycle, the time is probably not right to increase sales in Europe. This might be different for the electric version of the Harley. So for this product, setting up a supply in Europe (for parts, assembly or full-blown manufacturing) might be an option.

As a final discussion, the Court of Justice verdict could be referred to. This verdict closes the lid on any discussion that the European Union might be at fault. There can still be a discussion if there is a way to clearly put the blame on Harley Davidson in this situation. Since the details of the case have already been discussed at length, this discussion could be lifted to a higher level: if there is blame to

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be attributed where should this be done. At the same time: if companies make apparent mistakes, is it then reasonable to talk about blame? And if so, what should be the consequences for this?

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## ANNEX

1. Council Regulation (EC) No. 71/97 of 10 January 1997, extending the definitive anti-dumping duty [...] on bicycles originating in the People's Republic of China [...] to certain bicycle parts [...].

## 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup>, and in particular Articles 13 and 14 thereof,

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

Whereas:

## A. PROCEDURE

(1) By Regulation (EC) No 703/96<sup>(2)</sup> the Commission initiated an investigation into the circumvention of the anti-dumping duties imposed by Council Regulation (EEC) No 2474/93<sup>(3)</sup> on imports of bicycles originating in the People's Republic of China by imports of parts originating in that country which are used in the assembly of bicycles in the Community, and directed customs authorities, pursuant to Article 14 (5) of Regulation (EC) No 384/96 (hereafter referred to as the 'Basic Regulation'), to register imports of bicycle frames, forks, rims and hubs, which constitute the principal components of a bicycle.

(2) The products concerned in this investigation are bicycle parts and accessories from the People's Republic of China which are used in the assembly of bicycles in the Community. These products are currently classifiable within the CN codes ranging from 8714 91 10 to 8714 99 90.

(3) The Commission officially advised the representatives of the People's Republic of China of the initiation of the investigation and sent questionnaires to the Community companies concerned mentioned in the complaint and to other Community companies which made themselves known to the

Commission or were named by the complainant at a later stage.

(4) The investigation covered the period 1 April 1995 to 31 March 1996.

(5) Of the companies mentioned in the complaint, or subsequently named by the complainant, and those which made themselves known within the 40 days set by Regulation (EC) No 703/96, the Commission received complete replies from the following:

- Helmig, Overath, Germany,
- Moore Large & Co., Derby, United Kingdom,
- One + One, Oostvoorne, The Netherlands,
- Promiles, Villeneuve d'Ascq, France,
- Reece, Birmingham, United Kingdom,
- Splendor, Naninne, Belgium,
- Starway, Luynes, France,
- Tandem, Brigg, United Kingdom.

The Commission sought and verified all information it deemed to be necessary and carried out investigations at the premises of the above companies. Of these companies, Tandem and Promiles were found to be genuine Community producers and Helmig was found to be an importer.

(6) Companies which requested to be heard within the time limit set by Regulation (EC) No 703/96 were granted a hearing.

(7) The following Community producers requested a certificate of non-circumvention pursuant to Article 13 (4) of the Basic Regulation:

- Batavus, The Netherlands,
- BH, Spain,
- Cycleurope, France,
- Dawes, United Kingdom,
- Hercules, Germany,
- Mercier, France,
- MICMO, France,
- Promiles, France,
- Raleigh, United Kingdom,
- Tandem, United Kingdom.

(8) The following companies came forward outside the 40 days set by Regulation (EC) No 703/96 and also requested a certificate of non-circumvention:

<sup>(1)</sup> OJ No L 56, 6. 3. 1996, p. 1.

<sup>(2)</sup> OJ No L 98, 19. 4. 1996, p. 3.

<sup>(3)</sup> OJ No L 228, 9. 9. 1993, p. 1.



- Büchel, Germany,
- Horlacher, Germany,
- Monark Crescent, Sweden,
- Pantherwerke, Germany,
- Quantum, France,
- PRO-FIT Sportartikel GmbH, Germany,
- Tekno Cycles, France,
- TNT, Spain.

## B. SCOPE OF THE INVESTIGATION

- (9) As regards parts used in circumvention operations, Article 13 (1) and (2) of the Basic Regulation provide for anti-dumping duties in force to be extended to imports of parts from the country subject to the measures, i.e. they can either originate in or be consigned from that country. Interested parties importing the concerned parts from China were therefore offered, for those parts consigned from China, the opportunity to prove an eventual non-Chinese origin.

The scope of the investigation covered bicycle parts imported into the European Community from China which are assembled into finished bicycles for sale in the European Community under conditions which, according to the complainant's allegations, fulfil the criteria set out in Article 13 (1) and (2) (a), (b) and (c) of the Basic Regulation.

## C. RESULTS OF THE INVESTIGATION

### 1. Nature of the circumvention practice

- (10) The investigation has established that of the eight companies identified in recital 5 above four assemblers ordered almost complete bicycles in a disassembled form from the producers in China during the investigation period. For the corresponding shipments to Europe the suppliers ensured that parts destined for the same assembler were spread across different containers, sent on different dates and sometimes unloaded at different ports. By this practice, which is rather costly and implies important additional logistical constraints, the assemblers avoided classification of the imported parts, in accordance with Rule 2 (a) of the general rules for the interpretation of the nomenclature of the common customs tariff (hereafter CCT), as finished bicycles which would have been subject to the anti-dumping duty.

One of the companies mentioned in recital 5 applied the above described *modus operandi* for about 75 % of its total assembly of bicycles during the investigation period. However, during that period it changed its sourcing pattern and towards the end of that period it started to assemble these bicycles by using more than 40 % of non-Chinese parts, which it purchased either directly from manufacturers located in the countries of origin or from subsidiaries of these manufacturers located in the Community (see recital 17).

In order to ensure that certain imported sub-assemblies of bicycle parts would not be classified in accordance with Rule 3 (b) of the general rules for the interpretation of the nomenclature of the CCT as finished bicycles, some assemblers have asked for and received from national customs authorities binding tariff information classifying these assemblies as parts and thus obtaining official assurance that the anti-dumping duty would not be applied to these sub-assemblies.

### 2. Conditions of Article 13

#### (i) *Change in the pattern of trade*

- (11) Between 1992 and the investigation period, imports of bicycles (in units) from China into the Community decreased by more than 98 %, which represents a decrease of 1,5 million units, whereas, for example, imports of finished bicycle frames, the main bicycle part imported by assembly operations, increased by more than 139 % (in units) in the same period, which represents an increase of about 450 000 units. This substitution effect is corroborated by the data gathered during the on-the-spot investigation: the output of bicycles assembled from sets from the People's Republic of China by the five investigated companies — based on the practice described above at recital 10 — increased by 80 %, which represents for these assemblers alone an increase of about 110 000 units between 1992 and the investigation period.

#### (ii) *Insufficient due cause or economic justification*

- (12) Two of the investigated companies argued that they started assembling bicycles in the Community due to the suspension of the preferential rates for import duties for bicycles originating in China under the General System of Preferences (GSP) for developing countries in 1991 and 1992 and not because of the imposition of anti-dumping duties. This argument is not convincing in view of the fact that the GSP for bicycles from China was only temporarily suspended in these two years and the shipping arrangements as described in recital 10

were costly and implied important additional logistical constraints. It is however reasonable to conclude that in view of the high dumping margins established in the original investigation, the timing of the set-up, the volume of output, the purchasing arrangements and the small degree of value added, the practices of these two companies as well as those of the three others, had, within the meaning of Article 13 of the Basic Regulation, insufficient due cause or economic justification other than the imposition of an anti-dumping duty.

(iii) *Start or substantial increase of operations*

- (13) For all 5 companies concerned, their assembly operations, or their imports of bicycle parts from China with a view to bicycle assembly, started in or substantially increased after 1992-1993, when the original investigation took place.

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

- (14) It has been established for the five assemblers which ordered almost complete bicycle sets in the People's Republic of China, that all the parts for these sets were consigned from China. Three of these companies admitted this as they had made customs declarations that all parts imported from China were of Chinese origin.

The two other assemblers alleged that more than 40 % of the parts used in the assembly of bicycles based on these sets originated in other countries. It has however been established that the sets of parts ordered by these two companies were consigned from China and that parts of Community origin were only used to a very limited extent in the assembly of bicycles out of these sets of parts.

- (15) For some of the parts consigned from China, these two assemblers presented Chinese certificates of origin (Form A) to the customs in order to benefit from preferential treatment for the Chinese goods falling under the GSP while the rest of the goods consigned from China were declared as being of non-Chinese origin and were thus subject to the normal third country duty. As regards the parts claimed to be of non-Chinese origin — but which were consigned from China — it should be noted that the assemblers were unable to prove to the Commission the non-Chinese origin of these parts. Although these two companies were given extended deadlines for retrieving appropriate docu-

mentation such as certificates of origin, invoices of producers and transport documents, they were unable to provide sufficient evidence during the on-the-spot verifications to prove the origin of the allegedly non-Chinese parts, as declared by the suppliers on their invoices and to customs on the importation of these parts. Verification on the premises of these two companies revealed that they had imported complete wheels which were assembled in the People's Republic of China. These wheels, however, appeared on the suppliers invoice as tyres, tubes, rims, hubs, freewheel, etc. with different origins and were accordingly declared to Customs at importation as individual parts with a specific origin for each part.

The Commission services could only conclude therefore that in the absence of evidence to the contrary, all parts which were consigned from China were of Chinese origin and that, under these circumstances, 60 % or more of the total value of the parts used in the assembly of bicycles out of these parts were of Chinese origin.

- (16) Furthermore, it was established during the on-the-spot verification that the value of identical parts of sets consigned from China to these two companies varied from one shipment to another for no apparent reason. This 'erratic pricing' has prevented the exact determination of the value of the parts concerned.
- (17) One assembler, which used sets ordered in China during the investigation period for about 75 % of its output of bicycles, could show that it used for the assembly of the remaining 25 % of its output more than 40 % of parts originating in countries other than China. By the end of the investigation period (March 1996) this company started to assemble bicycles, which were previously ordered as sets from China, using parts of non-Chinese origin which were directly purchased from the manufacturers or their Community subsidiaries (see recital 10). For these bicycles the assembler was finally able to demonstrate during the on-the-spot verification that the models assembled in this way between March and October 1996 contained more than 40 % of parts originating in countries other than the People's Republic of China. The Commission services, therefore, established that, even though 75 % of this assembler's output during the investigation period contained more than 60 % of parts originating in the People's Republic of China, it had since March 1996 reduced its share of Chinese parts below 60 % of the total value of parts of the assembled product.

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

non-dumped export prices in the original investigation period.

(18) For all 5 companies concerned, the value added in the European Community on a per mode basis to the parts brought in was found to vary between only 10 % and 16 % of the manufacturing cost of a complete bicycle, and was therefore clearly below the 25 % threshold set by Article 13 (2) (b) of the Basic Regulation.

(21) Overall, the comparison showed that the sales prices of assembled bicycles have undercut the non-dumped export prices of Chinese bicycles in the original investigation period by on average 14,5 %.

(22) The existence of undermining in terms of sales quantities flows from the finding that the import volume of Chinese bicycles in the original investigation period has to a substantial extent been replaced, in terms of quantities, by the imports of finished bicycle frames of Chinese origin, as determined in recital 11.

### 3. Undermining of the remedial effects of the duty and evidence of dumping

#### (i) Undermining

(19) In order to determine whether the remedial effects of the anti-dumping duty had been undermined in terms of sales prices, a comparison was made of the sales prices of bicycles assembled in the Community from Chinese parts, and sold in the Community in the investigation period by the cooperating assemblers ('assembled bicycles'), with the 'non-dumped' export prices of Chinese bicycles in the original investigation period (i.e. actual export prices, duty paid, plus anti-dumping duty).

(20) Following exactly the method applied in the original investigation, a comparison was made between identical or comparable groups of bicycles. Weighted average prices were determined for each group and adjustments to these prices were made in order to ensure that the comparison was made at the same level of trade, on the same net price basis, and with comparable delivery terms. Subsequently, whether the sales prices of assembled bicycles have undercut the non-dumped export prices of Chinese bicycles in the original investigation period was determined for each group. In order to determine an average margin, the sum of the undermining margins for those groups for which undermining was established was expressed as a percentage of the total non-dumped import value (cif Community border) of Chinese bicycles, as established in the original investigation, for all groups which were included in the comparison.

In this context, it should be noted that, due to the considerable level of non-cooperation from the assemblers (see recital 25), there was no direct information available concerning the total sales quantity of bicycles assembled in the Community. However, the Commission found that the volume of bicycles sold by the small number of cooperating assemblers alone in the investigation period actually amounted to 24 % of the sales of comparable Chinese bicycles in the original investigation period, whereas these cooperating assemblers accounted for 25 % of the total imports of finished frames of Chinese origin in the investigation period of the circumvention investigation. Thus the figures available from the cooperating assemblers fully support the conclusion that the sales of bicycles assembled in the Community from Chinese parts have to a substantial extent replaced imports of finished Chinese bicycles.

(23) In the light of the foregoing, it has been determined that the sales of bicycles assembled in the Community from parts originating in or consigned from China have undermined the remedial effects of the anti-dumping measures in question, both in terms of sales prices and quantities.

#### (ii) Evidence of Dumping

(24) Dumping was calculated on the basis of most popular modes of assembled bicycles for each company, which represented from 50 % to 100 % of their turnover<sup>(1)</sup>. These models were compared to the normal values previously established (Taiwan

With respect to the groups of bicycles used in the comparison, 77 % of the total sales volume of the assemblers concerned was found to consist of models equivalent to those of the original investigation period, and was consequently used for the comparison. More than 90 % of the sales used for the comparison were found to have undercut the

<sup>(1)</sup> For one of the companies, the comparison was based on the turnover of assembled models sold to unrelated companies only since this company did not succeed in giving the Commission sufficiently accurate information to link related transactions to final sales in a reliable manner.

being the reference country in the original investigation), using the same eight criteria (i.e. category of the bicycle, material of the frame, number of gears, derailleurs, crank-gear, gear levers, brake sets and hubs) in a manner as reasonable as possible.

In view of the fact that normal values had been established at fob Taiwan level for the exporters concerned, resale prices in the Community had to be made comparison to this level. The actual comparison was thus made fob China/fob Taiwan.

Dumping was found to range from 16 % to 53 % for the companies concerned.

#### 4. Non-cooperating assembly operations

- (25) In view of the significant change in the pattern of trade described in recital 11 above and in the absence of cooperation by many undertakings, there is no reason to believe that non-cooperating companies have been circumventing the anti-dumping duties in force to any lesser extent than the cooperating companies.

The anti-dumping duty should therefore not only be extended to cooperators but also to non-cooperators. Any other treatment would actually give a premium to non-cooperators, a paradox even more unacceptable in the field of circumvention than in a conventional dumping case. However, the measures taken will have to be designed in such a way as to affect only imports of parts used in assembly operations by circumventing assemblers.

#### D. PROPOSED MEASURES

##### 1. Nature of the measures: Extension of the duty

- (26) In view of the findings made, the anti-dumping duty in force on complete bicycles (30,6 %) should be extended to certain bicycle parts originating in or consigned from China with the exception of those parts of proven non-Chinese origin.

The investigation has shown that the imports of pre-assembled, pre-treated or pre-painted parts is typical of assembly operations. Community producers do, by and large, treat or paint the parts they import and do not import bicycle sub-assemblies. A case in point is the example of complete wheels, as opposed to the imports of rims and hubs: Community producers import the latter rather than the former.

- (27) Therefore, in order to minimize the risk of affecting imports which do not constitute circumvention, in particular imports of non-essential parts, the extension of the duty should be limited to essential parts (see column I of the table below), i.e.

- painted or anodized or polished and/or lacquered frames (including when brakes and gears are attached),
- painted or anodized or polished and/or lacquered front forks (including when brakes are attached),
- complete wheels (with or without tubes, tyres and sprocket),
- handlebars (when they are presented with a stem, brake and/or gear lever attached),
- gears (i.e. derailleur gears, crank-gear and free-wheel sprocket-wheels),
- brakes (i.e. other brakes and brake levers).

Product	CN Code	Extension of measures I	Initial Registration II	Subsequent Collection III
Frames	8714 91 10		×	
	— painted or anodized or polished and/or lacquered	×		×
	— other			
Front Forks	8714 91 30		×	
	— painted or anodized or polished and/or lacquered	×		×
	— other			

Product	CN Code	Extension of measures I	Initial Registration II	Subsequent Collection III
Rims	8714 92 10		×	
Hubs	8714 93 10		×	
Deraillleur Gears	8714 99 50	×		
Crank-gear	8714 96 30			
Free-wheel sprocket-wheels	8714 93 90			
Other brakes	8714 94 30	×		
Brake levers	ex 8714 94 90			
Complete wheels	ex 8714 99 90	×		
Handlebars	8714 99 10	×		

## 2. Collection of the duty on imports entered under registration

- (28) The duty on imports registered pursuant to Regulation (EC) No 703/96 should only be collected on those parts which are described in recital 27 above.
- (29) Companies which are exempted from the extended anti-dumping duty as indicated in recital 32 below should also be exempted from the collection of the duty on imports under registration.

## E. EXEMPTION FROM THE EXTENSION OF THE DUTY

- (30) Article 13 (4) of the Basic Regulation provides that products shall be exempted from the measure where they are accompanied by a certificate of non-circumvention. Where an authorization was granted during the circumvention investigation the duty on imports which have been registered in accordance with Article 2 of Regulation (EC) No 703/96 should not be collected.
- (31) The issue of certificates requires prior authorization by the Commission, or by the Council if granted when extending the measure. An authorization can only be granted following a thorough appraisal of the facts.
- (32) The Commission received applications for such certificates from the companies mentioned in recital 7 which contacted the Commission following the initiation of the investigation. These applications were received before the deadline set in Regulation 703/96 for parties to make themselves known. Most of these applicants are

Community producers which were part of the Community industry in the previous investigations. The others which had not participated in the original proceeding could be identified as Community producers on the basis of their replies to the questionnaire, which were verified on the spot. The anti-dumping duty on bicycles from China should, therefore, not be extended to imports of essential bicycle parts used in the operations of these companies.

In addition, it was also found appropriate not to extend the anti-dumping duty on bicycles from China to the parts used in the operations of the company which since March 1996 has reduced its share of Chinese parts below 60 % (see recitals 10, 17) since this company could not be considered to be circumventing the anti-dumping duty in force from this time on.

- (33) Further applications were made by the parties mentioned in recital 8, which approached the Commission after the deadline set in Regulation 703/96 for parties to make themselves known. It should be noted that no deadline is set by Article 13 (4) of the Basic Regulation for applications for certificates of non-circumvention.

The Commission sent questionnaires to these companies immediately upon receipt of their applications. The Commission has however not yet been able to verify whether these parties are assemblers or importers, and whether the operations in which the imported goods are used fall within Article 13 (2) of the Basic Regulation. Furthermore, it cannot be excluded that, in the present case, more companies may apply for a certificate of non-circumvention once the measure has been extended.

- (34) In order to ensure therefore that, notwithstanding late application by the companies concerned, parties not circumventing the duty exempted from the extension of the duty to imports of parts, the adoption of this Regulation should not prevent the Commission from investigating pending or future requests with a view to authorizing the exemption of imports from the extended duty. Where a company applied for a certificate of non-circumvention during the investigation, an eventual exemption should take effect as from the date of initiation of the present circumvention investigation. Where a company applies for a certificate after the extension of the duty an eventual exemption should only take effect from the date of the request. On the other hand, it must be ensured that where, after examination of an operation, circumvention is found to take place, the extended duties due can be effectively collected (see recital 43).
- (35) The operation of the system for granting an authorization and for the subsequent issue of certificates is not fully set out in Article 13 (4) of the Basic Regulation. In this respect the following should be noted:
- (36) The granting of an authorization depends on the goods not being used in an assembly operation which constitutes circumvention, as laid down in Article 13 (2) of the Basic Regulation. Therefore, where assemblers do not import directly, a procedure must be devised whereby it may be ascertained whether or not imports of essential bicycle parts are being used for circumvention purposes.
- (37) To this end, it is appropriate to use the existing mechanism of end-use control according to customs law, i.e. Article 82 of Council Regulation (EEC) No 2913/92<sup>(1)</sup> (Community Customs Code) and Articles 291 et seq. of Commission Regulation (EEC) No 2454/93<sup>(2)</sup> (Implementing provisions) and to apply it *mutatis mutandis* within the framework of the anti-circumvention legislation to the issue of authorizations for certificates of non-circumvention in accordance with Article 13 (4) of the Basic Regulation.
- (38) The end use by reason of which imports should benefit from an exemption from the anti-dumping duty shall be defined by reference, (i) to assembly operations found not to be circumventing, and (ii) to the use of essential bicycle parts in small quantities by small scale operators, notably for replacement purposes, which should be presumed not to constitute circumvention. In the latter case, imports of essential bicycle parts will be of limited economic significance, and will be unlikely to undermine the effect of the existing duty in terms of the quantities of bicycles that might be produced from such imported parts within the meaning of Article 13 (2) (c) of the Basic Regulation.
- In order to allow intermediaries, who do not import essential bicycle parts directly, to purchase these parts from importers and to resell them to non-circumventing assembly operations, such transactions should also be monitored under the end use control system.
- (39) Finally, the system should also allow the exemption of direct imports by non-circumventing assembly operations from the extended duty.
- (40) In order to achieve the flexibility necessary to adjust the exemption system where needed, it is appropriate that the detailed rules on the implementation of the exemption system should be adopted by a Commission regulation after consulting the Advisory Committee.
- (41) In this respect, and with a view to pending or future applications, the Commission should be charged with establishing within such a system lists of companies whose exemption from the extended duty is authorized.
- (42) In order to create an incentive to abstain from circumventing practices, the management of the exemption system has to provide for the possibility of reviewing the situation of those companies which have been found circumventing, but which have changed their operation to the extent that the conditions of circumvention are no longer fulfilled. Similarly, it must be possible to revoke exemptions which are no longer justified. Finally, any new operation should also be able to request an investigation by the Commission with a view to an exemption from the duty. For these reasons all authorizations for exemptions, including those for the companies identified at recital 32, should be granted under the Commission regulation.
- (43) Provision should be made for the possibility, where appropriate, for imports to be conditionally exempted from the extended duty while the operations in which they are to be used are under examination. However, in order to ensure that the extended duty can effectively be collected where an operation is found circumventing, Customs authorities shall be authorized to require the provision of a security if necessary.

<sup>(1)</sup> OJ No L 302, 19. 10. 1992, p. 1.

<sup>(2)</sup> OJ No L 253, 11. 10. 1993, p. 1.

- (44) Since this is the first case in which anti-dumping measures are being extended and where exemptions are being granted pursuant to Article 13 (4) of the Basic Regulation, the Commission will keep the exemption system constantly under review in order that it may be adapted where necessary to take account of experience gained with the operation of that system.

#### F. PROCEDURE

- (45) Interested parties were informed of the essential facts and considerations on the basis of which the Commission intended to propose the extension of the definitive anti-dumping duty in force to the parts concerned and have been given the opportunity to comment.

Interested parties have also been informed about the main features of the exemption system which will be established (see recital 37),

HAS ADOPTED THIS REGULATION:

#### *Article 1*

'Essential bicycle parts' within the meaning of this Regulation are:

- Painted or anodized or polished and/or lacquered bicycle frames currently classifiable under CN code ex 8714 91 10,
- Painted or anodized or polished and/or lacquered bicycle front forks currently classifiable under CN code ex 8714 91 30,
  - derailleur gears (CN code 8714 99 50),
  - crank-gear (CN code 8714 96 30), and
  - free-wheel sprocket-wheels (CN code 8714 93 90), whether or not presented in sets,
  - other brakes (CN code 8714 94 30), and
- brake levers (CN code ex 8714 94 90), whether or not presented in sets,
- Complete wheels with or without tubes, tyres and sprockets currently classifiable under CN code ex 8714 99 90, and
- Handlebars currently classifiable under CN code 8714 99 10, whether or not presented with a stem, brake and/or gear levers attached.

#### *Article 2*

1. The definitive anti-dumping duty imposed by Regulation (EC) No 2474/93 on imports of bicycles falling

within CN code 8712 00 and originating in the People's Republic of China is hereby extended to imports of essential bicycle parts originating in the People's Republic of China.

2. Essential bicycle parts which are consigned from the People's Republic of China shall be deemed to originate in that country unless it can be proven by production of an origin certificate issued in accordance with the origin provisions in force in the Community that the parts in question originate in another specific country.

Where essential bicycle parts are consigned from a country other than the People's Republic of China, customs authorities may require production of an origin certificate issued in accordance with the origin provisions in force in the Community certifying that the parts in question originate in a country other than the People's Republic of China.

3. The duty extended by paragraph 1 shall be collected on imports of essential bicycle parts originating in the People's Republic of China registered in accordance with Article 2 of Regulation (EC) No 703/96 and Article 14 (5) of Regulation (EC) No 384/96.

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

#### *Article 3*

1. The Commission shall, after consulting the Advisory Committee, adopt by regulation the necessary measures to authorize the exemption of imports of essential bicycle parts which do not circumvent the anti-dumping duty imposed by Regulation (EEC) No 2474/93 from the duty extended by Article 2.

2. The Commission regulation shall, in particular, provide for:

- authorization of the exemption and control of imports of essential bicycle parts used by companies whose assembly operations are not circumventing,
- authorization of the exemption and control of imports of essential bicycle parts, in particular by intermediaries or with regard to their use in small quantities by small-scale operators,
- rules governing the functioning of such exemptions in accordance with the relevant customs provisions, and
- exchanges of information between customs authorities and the Commission concerning the operation of such exemptions.

3. The Commission regulation shall also provide for:

- (a) the examination of whether the conditions of non-circumvention are fulfilled, in particular in case of requests by:

- parties, carrying out assembly operations, who made themselves known during the investigation but after the time-limit set out in Article 3 of Regulation (EC) No 703/96,
  - parties whose assembly operations started using essential bicycle parts for the production or assembly of bicycles only after the investigation period ending on 31 March 1996,
  - parties whose assembly operations were found to be circumventing during the investigation,
  - other parties whose assembly operations use essential bicycle parts for the production or assembly of bicycles, and which had not made themselves known by the end of the investigation, and
- (b) the necessary procedural provisions for such examination, and in particular the conditions under which future requests for an examination will be accepted. To this end, where essential bicycle parts are declared for free circulation by an assembly operation in respect of which an examination by the Commission is pending, the Commission regulation shall also make provision that:
- the payment of the customs debt incurred for the anti-dumping duty extended or to be collected pursuant to Article 2 be suspended pending the outcome of the examination by the Commission,
  - where upon examination the operation is found to be non-circumventing, the customs debt arising pursuant to Article 2 be extinguished, and
  - in other cases, the suspension of the customs debt be lifted.

The Commission regulation may also provide that Customs authorities may require the provision of a security when necessary to guarantee the payment of the customs debt in the event the suspension is lifted.

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

Done at Brussels, 10 January 1997.

4. Following an examination under paragraph 3, the Commission may, where justified and after consulting the Advisory Committee, decide to authorize the exemption of the operation concerned from the extension of the measures provided for by Article 2.

5. Authorization for exemptions granted pursuant to the Commission Regulation shall have retroactive effect to the date of initiation of the present circumvention investigation, provided the party concerned made itself known during that investigation. It shall have retroactive effect to the date of the request for an authorization in other cases.

6. The Commission regulation shall also provide for the revocation of authorizations for exemption, where justified and after consulting the Advisory Committee.

#### *Article 4*

Customs authorities are hereby directed to discontinue registration pursuant to Article 2 of Regulation (EC) No 703/96 and Article 14 (5) of Regulation (EC) No 384/96 of bicycle frames, forks, rims and hubs falling within CN codes 8714 91 10, 8714 91 30, 8714 92 10 and 8714 93 10 respectively.

#### *Article 5*

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

*For the Council*

*The President*

J. VAN AARTSEN