



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.5.2007
COM(2007) 278 final

Proposal for a

COUNCIL REGULATION

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain saddles originating in the People's Republic of China

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation') in the proceeding concerning imports of certain saddles originating in the People's Republic of China.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Commission Regulation (EC) No 1999/2006 imposing a provisional anti-dumping duty on imports of certain saddles originating in the People's Republic of China

- **Consistency with the other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 7 April 2006, the Commission opened an anti-dumping investigation with regard to

imports into the Community of certain saddles originating in the People's Republic of China.

By Regulation (EC) No 1999/2006 of 20 December 2006, the Commission imposed provisional anti-dumping duties on these imports.

The attached proposal for a Council Regulation is based on the definitive findings on dumping, injury, causation and Community interest which confirmed the provisional findings while introducing some changes to the calculation of the dumping margins.

It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published in the Official Journal no later than 27 June 2007.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic Regulation does not foresee alternative options.

4) **BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

Proposal for a

COUNCIL REGULATION

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain saddles originating in the People's Republic of China

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 Community¹ ('the basic Regulation'), and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EC) No 1999/2006² (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of certain saddles, currently classifiable within CN codes 8714 95 00, ex 8714 99 90 and ex 9506 91 10, originating in the People's Republic of China ('PRC').
- (2) It is recalled that the investigation of dumping and injury covered the period from 1 January 2005 to 31 December 2005 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2002 to the end of the investigation period ('period considered').

B. SUBSEQUENT PROCEDURE

- (3) Following the imposition of a provisional anti-dumping duty on imports of certain saddles originating in the PRC, some interested parties submitted comments in writing. The parties, who so requested, were also granted an opportunity to be heard.
- (4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

¹ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

² OJ L 379, 28.12.2006, p. 11.

- (5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain saddles originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.
- (6) The oral and written comments submitted by the parties were considered, and, where appropriate, the findings have been modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

- (7) One importer argued against the inclusion into the scope of the investigation of essential parts of saddles (bases, cushions and covers) on the grounds that the inclusion of the latter was not justified by any evidence of dumping from either the complaint or the investigation. This importer claimed also that it is not sufficient to consider saddles and saddle parts as one single product on the basis that both were used for the same end product (i.e. bicycles and similar). The same importer further alleged that certain saddle parts were included in the product definition to prevent circumvention in case anti-dumping duties were imposed. On this basis, it was argued that importers in the Community should be allowed to request exemptions from the anti-dumping duty within the meaning of Article 13 (4) of the basic Regulation.
- (8) It should be noted, first of all, that the complaint mentions saddles and essential parts thereof. It is considered, however, that the prima facie evidence of dumping necessary for initiating an investigation does not need to cover all product types included in the scope of the investigation. As long as the parts of a saddle have the same basic technical, physical and chemical characteristics and cannot have another end-use than being incorporated in the whole (i.e. into saddles) and, as such, they are not a distinct product, they are defined as part of the product concerned and should form part of the investigation. Furthermore, the fact that essential parts were not exported as such to the Community by the cooperating exporting producers during the IP does not preclude that this could have happened for the exporters which have not cooperated. It is recalled that the latter exporters represent over 75% of the exports of the product concerned to the Community.
- (9) As outlined in recital (16) of the provisional Regulation, the investigation has shown that, despite differences in shapes, materials and production processes, the different types of the product concerned all share the same basic physical and technical characteristics and are basically used for the same purposes. This finding was not contested by the importer in question (or by any other interested party of this proceeding) who did also not provide any evidence or information which would have contradicted the provisional findings. It results that the determination whether or not certain saddle parts should be considered as one single product was not made on the sole basis of the end-use criterion. The importer's claim that certain essential parts of saddles should not be considered as the product concerned was therefore rejected.
- (10) Likewise, it results from the above that circumvention considerations were not decisive when determining the product concerned in the present investigation.
- (11) In the absence of any other comments concerning the product concerned and the like product, recitals (14) to (18) of the provisional Regulation are hereby confirmed.

D. DUMPING

1. Market economy treatment ('MET') and individual treatment ('IT')

- (12) Following the provisional disclosure, one group of exporting producers whose request for MET or IT was rejected on the grounds that it had provided misleading information within the meaning of Article 18 of the basic Regulation, argued that it should not be treated as non cooperating and that the omission of certain information which was considered by the Commission in its provisional findings as misleading should not lead to the rejection of IT, since the information concerned only the domestic market, and would thus affect the calculation of the normal value.
- (13) However, the company failed to give any satisfactory explanation as to the information which had been omitted, and it is therefore considered appropriate to maintain the provisional findings concerning their level of cooperation. The consequent doubts on the reliability of the whole information submitted by this exporting producer still exist, and in the absence of full cooperation of all related companies within one group of exporting producers, it cannot be determined whether the criteria set out in Article 9(5) of the basic Regulation concerning IT are met in relation to this group.
- (14) The Community industry claimed that the fact that some of the exporting producers benefited from tax exemptions aimed at encouraging foreign direct investment is incompatible with the granting of MET to these exporting producers.
- (15) However, the actual benefits from these tax exemptions to the companies were found to be negligible, and it is therefore considered that they were not incompatible with MET.
- (16) The Community industry also argued that MET should have been denied to one of the groups of exporters, due to the fact that during the IP there were provisions in the Articles of Association of those exporters, specifying a certain percentage of export sales.
- (17) However, it is considered that these provisions, which were not in practice followed by the exporters and have been removed after the IP, did not constitute either *de jure* or *de facto* restrictions on these companies' activities.
- (18) In the absence of any new arguments regarding the granting of MET and IT, the findings as set out in recitals (19) to (27) of the provisional Regulation are hereby confirmed.

2. Normal value

(a) Determination of normal value for the exporting producers in the PRC granted MET

- (19) Following the provisional disclosure, one exporting producer submitted comments concerning the detailed calculations made for establishing the normal value. These comments were found to be justified, and the calculations of the normal value were corrected accordingly.

- (20) In the absence of any other comments regarding the calculation of normal value, the general methodology as set out in recitals (28) to (40) of the provisional Regulation is hereby confirmed.

(b) Determination of normal value for the exporting producers in the PRC not granted MET

(i) Analogue Country

- (21) Following the provisional disclosure, one importer reiterated a statement already made earlier in the procedure by another party, claiming that the only cooperating producer in Brazil enjoyed a dominant position in the Brazilian market and was furthermore related to the complainant, and contested the Commission's choice of Brazil as analogue country. These arguments were already analysed by the Commission and refuted in recital (47) of the provisional Regulation. As no new information was provided in the comments received after the provisional disclosure and there was no indication in the further investigation that the position of the cooperating Brazilian producer on the Brazilian market or its relationship to the complainant may have affected the reliability of the data submitted or the appropriateness of Brazil as analogue country, the conclusion made at provisional stage is confirmed.
- (22) In the absence of any other comments regarding the use of Brazil as an analogue country, recitals (41) to (49) of the provisional Regulation are confirmed.

(ii) Normal value

- (23) The verification of the data submitted by the cooperating producer in Brazil took place before the imposition of provisional measures, but too late in the proceeding for its results to be reflected in those measures. In view of the results of that verification, the calculation of the normal value for the exporting producers in the PRC not granted MET was refined.
- (24) In the absence of any comments with regard to the determination of the normal value for the exporting producers not granted MET, the general methodology as set out in recitals (41) to (51) of the provisional Regulation is definitively confirmed.

3. Export prices

- (25) In the absence of any comments with regard to export prices, the general methodology as set out in recitals (52) to (54) of the provisional Regulation, is hereby confirmed.

4. Comparison

- (26) Following the provisional disclosure, one exporting producer claimed that an adjustment for differences in commissions, according to Article 2(10)(i) of the basic Regulation, made on the export price for sales made through a related company in Taiwan, was not warranted. The exporter claimed that the Taiwanese company does not perform any of the functions referred to in Article 2(10)(i). However, this claim is in contradiction with the description of the sales process given in the company's reply to the anti-dumping questionnaire and as verified during the on-spot investigation, and therefore this claim cannot be accepted.

(27) In the absence of any other comments in this respect, recitals (55) and (56) of the provisional Regulation are hereby confirmed.

5. Dumping margin

a) *For the cooperating exporting producer granted MET*

(28) One cooperating exporting producer claimed that an individual dumping margin should also be attributed to one company in the group who had not exported to the EC during the IP. Given that the group has fully cooperated in the investigation, their claim was accepted and the group's average dumping margin should also be attributed to this company, Cionlli Bicycle Components (Tianjin) Co. Ltd.

(29) In the light of the above-mentioned revisions relating to normal value, the definitive dumping margins, expressed as a percentage of the CIF Community frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Cionlli Bicycle (Taicang) Co. Ltd., Shunde Hongli Bicycle Parts Co. Ltd., Safe Strong Bicycle Parts Shenzhen Co. Ltd. and Cionlli Bicycle Components (Tianjin) Co. Ltd.	5,8 %
Giching Bicycle Parts (Shenzhen) Co. Ltd. and Velo Cycle Kunshan Co. Ltd.	0%

b) *For all other exporting producers*

(30) Following the provisional disclosure, one importer claimed that the country-wide dumping margin should not have been based on the single cooperating exporting producer to which neither MET nor IT was granted. According to this importer, the country-wide dumping margin should also have been based on the export price of the group of exporting producers mentioned in recital (12).

(31) However, as stated in recital (23) of the provisional Regulation, there are serious doubts on the integrity of the whole data provided by that exporter which had deliberately omitted to declare its relationship with one of its main domestic customers and was thus considered as non-cooperating in this investigation.

(32) In light of the comments received it was considered nevertheless, that given the very small volume of exports represented by the single cooperating exporting producer to which neither MET nor IT was granted, it would be more appropriate to base the calculation of the country-wide duty also on import data from Eurostat, based on an average weight of 500 grams per saddle.

(33) Accordingly, the country-wide dumping margin was determined as the weighted average of :

- the dumping margin found for the cooperating exporter to which neither MET nor IT was granted and
 - a dumping margin calculated from Eurostat import data, by excluding the value and quantity of exports from the cooperating exporting producers.
- (34) Some minor corrections were also made to the normal value based on the analogue country data.
- (35) The Community industry claimed that the average weight of 500 grams per saddle used by the Commission in the calculation of the country-wide duty was an over-estimation. The industry argued that an average weight of 420 grams should have been used instead, which would have implied a lower average price per saddle on the basis of Eurostat data. However, the industry was not able to support this claim with enough verifiable evidence. Therefore, the estimate of an average weight of 500 grams, which is supported by the data gathered during the investigation, was maintained.
- (36) On this basis, the definitive country-wide level of dumping is established at 29.6 % of the CIF Community frontier price, duty unpaid.

E. INJURY

1. Community production

- (37) In the absence of comments concerning Community production, recitals (64) and (65) of the provisional Regulation are hereby confirmed.

2. Definition of the Community industry

- (38) In the absence of comments concerning the definition of the Community industry, recitals (66) and (67) of the provisional Regulation are hereby confirmed.

3. Community consumption

- (39) In the absence of comments concerning the Community consumption, recital (68) and (69) of the provisional Regulation are hereby confirmed.

4. Imports into the Community from the country concerned

- (40) In the absence of any comments concerning the imports from the country concerned, recitals (70) to (76) of the provisional Regulation are hereby confirmed.

5. Situation of the Community industry

- (41) In the absence of comments concerning the situation of the Community industry, recitals (77) to (100) of the provisional Regulation are hereby confirmed.

F. CAUSATION

- (42) In the absence of any new and substantiated information or argument in this respect, recitals (105) to (118) of the provisional Regulation are hereby confirmed.

G. COMMUNITY INTEREST

- (43) In the absence of substantially new information or argument in this particular respect, recitals (119) to (135) of the provisional Regulation are hereby confirmed.

H. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level

- (44) In the absence of any other comments concerning the injury elimination level, recitals (136) to (140) of the provisional Regulation are hereby confirmed.

2. Form and level of the duties

- (45) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level sufficient to eliminate the injury caused by the imports without exceeding the dumping margin found.

- (46) On the basis of the above, the definitive duties are as follows:

Company	Definitive duty
Cionlli Bicycle (Taicang) Co. Ltd., Shunde Hongli Bicycle Parts Co. Ltd., Safe Strong Bicycle Parts Shenzhen Co. Ltd. and Cionlli Bicycle Components (Tianjin) Co. Ltd.	5,8%
Giching Bicycle Parts (Shenzhen) Co. Ltd. and Velo Cycle Kunshan Co. Ltd.	0%
All other companies	29,6%

- (47) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

- (48) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission³ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (49) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporters, but also to those companies which did not have any exports during the IP. However, the latter companies are invited, when they fulfil the requirements of Article 11(4) of the basic Regulation, second paragraph, to present a request for a review pursuant to that Article in order to have their situation examined individually.

4. Definitive collection of provisional duties and special monitoring

- (50) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, i.e. Regulation (EC) No 1999/2006, should be definitively collected to the extent of the amount of the definitive duties imposed. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitely collected.
- (51) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures, which only apply to companies for which an individual duty rate is introduced, include the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.
- (52) It is recalled that should the exports by the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the anti-dumping measures, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, *inter alia*, examine the need for the removal of individual duty rates and the consequent imposition of a country-wide duty.

³ European Commission
Directorate-General for Trade
Direction H, office J-79 5/16
1049 Brussels/Belgium

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of saddles and essential parts thereof i.e., bases, cushions and covers, of bicycles and other cycles (including delivery tricycles), not motorised, of cycles fitted with an auxiliary motor with or without sidecars, of fitness machines and of home trainers, falling within CN codes 8714 95 00, ex 8714 99 90 and ex 9506 91 10 (TARIC codes 8714 99 90 81 and 9506 91 10 10) and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products manufactured by the companies listed below shall be as follows:

Company	Anti-Dumping Duty	TARIC Additional Code
Cionlli Bicycle (Taicang) Co. Ltd., Shunde Hongli Bicycle Parts Co. Ltd., Safe Strong Bicycle Parts Shenzhen Co. Ltd. and Cionlli Bicycle Components (Tianjin) Co. Ltd.	5,8%	A787
Giching Bicycle Parts (Shenzhen) Co. Ltd. and Velo Cycle Kunshan Co. Ltd.	0%	A788
All other companies	29,6%	A999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

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

Article 2

Amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EC) No 1999/2006 on imports of saddles and essential parts thereof i.e., bases, cushions and covers, of bicycles and other cycles (including delivery tricycles), not motorised, of cycles fitted with an auxiliary motor with or without sidecars, of fitness machines and of home trainers, falling within CN codes 8714 95 00, ex 8714 99 90 and ex 9506 91 10 (TARIC codes 8714 99 90 81 and 9506 91 10 10) and originating in the People's Republic of China shall be definitively collected. The amounts secured in excess of the amount of the definitive anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

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, [...]

*For the Council
The President*

ANNEX

The valid commercial invoice referred to in Article 1(3) of this Regulation must include a declaration signed by an official of the company, in the following format:

- (1) The name and function of the official of the company which has issued the commercial invoice.
- (2) The following declaration “I, the undersigned, certify that the [volume] of saddles and essential parts thereof sold for export to the European Community covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.”

Date and signature