DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2022/403

of 3 March 2022

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

(notified under document C(2022) 1262)

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 ([1]), and in particular Article 13(4) thereof,

Having regard to Commission Implementing Regulation (EU) 2020/45 of 20 January 2020 amending Implementing Regulation (EU) 2019/1379 as regards the extension of the anti-dumping duty imposed on imports of bicycles originating in the People's Republic of China to imports of certain bicycle parts originating in the People's Republic of China by Council Regulation (EC) No 71/97 ([2]),

Having regard to Commission Regulation (EC) No 88/97 of 20 January 1997 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93 ([3]), and in particular Articles 4 to 7 thereof,

After informing the Member States,

Whereas:

(1) An anti-dumping duty applies on imports of essential bicycle parts originating in the People's Republic of China ('China') ('the extended duty') as a result of the extension of the anti-dumping duty imposed on imports of bicycles originating in China by Council Regulation (EC) No 71/97 ([4]).

(2) Under Article 3 of Regulation (EC) No 71/97 the Commission is empowered to adopt the necessary measures to authorise the exemption of imports of essential bicycle parts which do not circumvent the anti-dumping duty.

(3) Those implementing measures are set forth in Commission Regulation (EC) No 88/97 ('the exemption Regulation') establishing the specific exemption system.

(4) On that basis the Commission has exempted a number of bicycle assemblers from the extended duty.

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) OJ L 16, 21.1.2020, p. 7.
([3]) OJ L 17, 21.1.1997, p. 17.
([4]) Council Regulation (EC) No 71/97 of 10 January 1997 extending the definitive anti-dumping duty imposed by Regulation (EEC) No 2474/93 on bicycles originating in the People's Republic of China to imports of certain bicycle parts from the People's Republic of China, and levying the extended duty on such imports registered under Regulation (EC) No 703/96 (OJ L 16, 18.1.1997, p. 55).

(5) As provided for in Article 16(2) of the exemption Regulation, the Commission has published in the *Official Journal of the European Union* subsequent lists of the exempted parties ([5]).

(6) The most recent Commission Implementing Decision concerning exemptions under the exemption Regulation was adopted on 15 April 2021 ([6]).

(7) For the purposes of this Decision, the definitions set out in Article 1 of Regulation (EC) No 88/97 apply.

(8) On 25 August 2019 the Commission received from the Polish company Rowerland Piotr Tokarz ('Rowerland') ('the company') a request for exemption with the information required to determine whether this request was admissible in accordance with Article 4 of the exemption Regulation.

(9) In accordance with Article 5(1) of the exemption Regulation, pending a decision on the merits of the request, the payment of the extended duty in respect of any imports of essential bicycle parts declared for free circulation by Rowerland was suspended as from the day on which the Commission received its duly substantiated request for exemption.

(10) TARIC additional code C529 was assigned to the party listed in *Table 1*, in order to identify the imports of essential bicycle parts declared for free circulation and subject to the suspension of the payment of the extended duty.

Table 1

TARIC additional code	Name	Address	Date of effect
C529	Rowerland Piotr Tokarz	ul. Klubowa 23, PL-32-600 Broszkowice, Poland	17.10.2019

(11) In accordance with Article 6 of the exemption Regulation, the Commission identified the period 1 November 2019 – 31 October 2020 as the period to be investigated in order to verify the activities of Rowerland during the suspension period and decide whether to grant an exemption ('the investigation period').

(12) In January 2021, as further complemented in May 2021, Rowerland provided the Commission with data and figures according to which during the investigation period the company would have complied with the conditions set out in the exemption Regulation in order to be exempted.

(13) In particular, Rowerland alleged *a)* that it had used essential bicycle parts for the assembly of bicycles in quantities above the threshold of 299 units per type of essential bicycle parts on a monthly basis ('the *de minimis* rule') and *b)* that the value added to the parts brought in during its assembly operations corresponded to more than 25 % of the manufacturing cost ('25 % value added criterion'). Therefore, its assembly operations did not fall within the scope of Article 13(2) of Regulation (EU) 2016/1036 of 8 June 2016 ('the basic Regulation'). Furthermore, Rowerland did not claim that the parts brought in from China constituted less than 60 % of the total value of parts used in the assembly operations during the investigation period pursuant to Article 13(2) of the basic Regulation ('the 60-40 % criterion').

([5]) OJ C 45, 13.2.1997, p. 3, OJ C 112, 10.4.1997, p. 9, OJ C 220, 19.7.1997, p. 6, OJ L 193, 22.7.1997, p. 32, OJ L 334, 5.12.1997, p. 37, OJ C 378, 13.12.1997, p. 2, OJ C 217, 11.7.1998, p. 9, OJ C 37, 11.2.1999, p. 3, OJ C 186, 2.7.1999, p. 6, OJ C 216, 28.7.2000, p. 8, OJ C 170, 14.6.2001, p. 5, OJ C 103, 30.4.2002, p. 2, OJ C 35, 14.2.2003, p. 3, OJ C 43, 22.2.2003, p. 5, OJ C 54, 2.3.2004, p. 2, OJ L 343, 19.11.2004, p. 23, OJ C 299, 4.12.2004, p. 4, OJ L 17, 21.1.2006, p. 16, OJ L 313, 14.11.2006, p. 5, OJ L 81, 20.3.2008, p. 73, OJ C 310, 5.12.2008, p. 19, OJ L 19, 23.1.2009, p. 62, OJ L 314, 1.12.2009, p. 106, OJ L 136, 24.5.2011, p. 99, OJ L 343, 23.12.2011, p. 86, OJ L 119, 23.4.2014, p. 67, OJ L 132, 29.5.2015, p. 32, OJ L 331, 17.12.2015, p. 30, OJ L 47, 24.2.2017, p. 13, OJ L 79, 22.3.2018, p. 31, OJ L 171, 26.6.2019, p. 117, OJ L 138, 30.4.2020, p. 8, OJ L 158, 20.5.2020, p. 7, OJ L 325, 7.10.2020, p. 74, OJ L 140, 23.4.2021, p. 1.

([6]) Commission Implementing Decision (EU) 2021/659 of 15 April 2021 concerning exemptions from the extended anti-dumping duty on certain bicycle parts originating in the People's Republic of China pursuant to Regulation (EC) No 88/97 (OJ L 140, 23.4.2021, p. 1.)

(14) In November 2021 the Commission carried out a verification visit at the company's premises in order to examine the merits of the request for exemption.

(15) The Commission services established during its examination that:

(a) Rowerland complied with the *de minimis* rule as stated in recital (13) both in terms of volumes of bicycles parts purchased and used for the assembly activity, and as verified through volumes of bicycles assembled;

(b) the figures used by the company to demonstrate compliance with anti-circumvention rules could be reconciled with those recorded in the accounting system;

(c) the accounting system used by Rowerland did not allow the company to track the origin of the bicycle parts purchased and used in the assembly operations and therefore the 60-40 % criterion could not be assessed;

(d) the investigation revealed that Rowerland did not manufacture any bicycle parts, apart from bicycle wheels;

(e) in accordance with the documentation and explanations provided by Rowerland during the verification process, several costs reported by Rowerland as value added were amended as detailed under points (i)-(ii) below, while other costs as detailed under points (iii)-(v) below were not accepted as costs directly linked to the assembly activities:

(i) the amount reported as direct energy costs was calculated by Rowerland on the basis of the number of the workers assigned to the assembly operations while the amount reported as indirect energy costs was calculated on the basis of the number of the administrative employees. This methodology was not considered appropriate since the energy costs are linked to the premises where the assembly operations take place and not to the number of employees. Therefore, the energy costs were thus recalculated and allocated on the basis of the square meters of the premises where the assembly operations were carried out (direct energy costs) and of the square meters of the office and of the warehouses where the bicycles parts were stored (indirect energy costs);

(ii) the amount reported by Rowerland as rent/lease and listed as indirect manufacturing cost was amended due to a clerical error;

(iii) the amount reported by Rowerland as indirect energy costs included energy costs for premises not linked to the company's assembly operations. Therefore, these costs were disregarded from the manufacturing costs of the bicycles;

(iv) the amount reported by Rowerland under 'other direct manufacturing costs' included costs relating to painting of bicycle parts not used during the investigation period. Therefore, these costs were also disregarded from the manufacturing costs of the bicycles assembled during the investigation period;

(v) the amount reported by Rowerland as depreciation included depreciation for all the buildings, facilities and premises of the company. The company did not report any depreciation for machinery as the limited equipment owned by the company had already been depreciated. As the depreciation of the commercial building (shop) and relating warehouses was not linked to assembly operations, it was considered as administrative expenses and not part of the manufacturing costs.

(f) after recalculation, the value added to the parts brought in by Rowerland during the assembly operation amounted to less than 25 % of the manufacturing cost.

(16) As a result, the company did not fulfil the criteria for exemption. In particular, during the investigation period Rowerland fell within the scope of Article 13(2) of the basic Regulation.

(17) On these grounds and pursuant to Article 7(3) of the exemption Regulation, the exemption request should be rejected, and the suspension of the payment of the extended duty referred to in Article 5 same Regulation should be lifted.

(18) Consequently, the extended duty should be collected retroactively as from the date on which the suspension took effect, that is 17 October 2019.

(19) On 25 January 2022 the company was informed of the above findings on the basis of which the Commission intended to propose the rejection of its request for exemption, and was given an opportunity to comment. The company was also granted an opportunity to be heard and a hearing took place with the company.

(20) In their comments following disclosure, Rowerland disputed the revision of its costs made by the Commission as stated in recital (15). In particular, Rowerland claimed that the amount of depreciation included in the calculation of value added should include also depreciation expenses corresponding to additional facilities such as the paved square, the tent hall and the commercial building with its warehouse as these facilities were allegedly directly linked to bicycle assembly operations and/or constituted an integral part of the entire plant.

(21) As a general note, it is highlighted that when calculating, pursuant to Article 13(2) of the basic Regulation, whether the value added to the parts brought in during the assembly operation was greater than 25 % of the manufacturing cost, the costs included in the calculation of the value added are costs incurred in the manufacturing process that lead to an increased value of the finished product in addition to its initial costs (for example manufacturing labour costs, factory overheads, depreciation of assembly facilities, internally-manufactured parts). These costs should, therefore, be specifically incurred in the manufacturing and completion process of bicycles. The costs incurred by the company that cannot be linked to the manufacturing process during the investigation period are not included for the purpose of the calculation of value added. Thus, other types of selling, general and administrative expenses are not included in the calculation of the value added as such costs are not incurred by the company in the manufacturing process, and do not increase the value added of the product.

(22) Moreover, it is recalled that as stated in recital (15)(d), Rowerland did not manufacture any bicycle parts, apart from bicycle wheels. The depreciation expenses reported was mainly for several buildings. The investigation revealed that as of April 2020 Rowerland also had a building that was used for selling bicycles. The depreciation of this building was thus not included in the calculation of the value added. However, the depreciation of the buildings where assembly operations took place or that were linked to the assembly operations were included in the calculation for the value added. Moreover, the Commission included also the rent of two warehouses where the bicycle parts were stored as such costs are linked to the manufacturing process. As regards the paved square and the tent, insufficient evidence was provided that there was a direct link to the assembly operation. In any event, the impact of this issue is marginal in practice, as the value added would still be less than 25 %. Therefore, the claim was rejected.

(23) Furthermore, Rowerland disagreed with the Commission's revision of the electricity costs stated in recitals (15)(e)(i) and 15(e)(iii). It claimed that its allocation key used for electricity was selected by a certified auditor. No evidence was submitted in this regard. Therefore, the claim was rejected.

(24) Rowerland also claimed that the expenses linked to the water provided to the employees and the waste disposal should be included in the calculation of the value added. However, these expenses were so low as to have no material impact on the calculation of the value added.

(25) Finally Rowerland claimed that during the verification visit it unintentionally misinformed the Commission's case team about the period of use of certain bicycle parts for which painting costs occurred. It claimed that these parts were used for the assembly of bicycles in the investigation period and therefore the painting costs should be included in the calculation of the added value.

(26) The Commission notes that no evidence was submitted in this regard and therefore the claim was rejected as being unsubstantiated,

HAS ADOPTED THIS DECISION:

Article 1

The request for exemption from the extended anti-dumping duty submitted by the party listed in the table of this Article is hereby rejected pursuant to Article 7(3) of Regulation (EC) No 88/97.

Party for which the suspension shall be lifted

TARIC additional code	Name	Address	Date of effect
C529	Rowerland Piotr Tokarz	ul. Klubowa 23, PL-32-600 Broszkowice, Poland	17.10.2019

Article 2

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

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

Article 3

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

Done at Brussels, 3 March 2022.

For the Commission
Valdis DOMBROVSKIS
Executive Vice-President