JUDGMENT OF THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)
26 September 2000 *

In Case T-80/97,

Starway SA, established in Luynes (France), represented by J.-F. Bellis and P. De Baere, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of L. Lorang, 3 Rue de la Chapelle,

applicant,

v

Council of the European Union, represented initially by R. Torrent and A. Tanca, and subsequently by R. Torrent and S. Marquardt, of its Legal Service, acting as Agents, and P. Bentley, Barrister, with an address for service in Luxembourg at the Chambers of A. Morbilli, General Counsel in the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: French.

supported by

Commission of the European Communities, represented by N. Khan, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

intervener,

APPLICATION for annulment of Article 2 of 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 1997 L 16, p. 55, corrigendum (Spanish and French versions only) published in OJ 1997 L 95, p. 30),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Third Chamber, Extended Composition),

composed of: K. Lenaerts, President, V. Tiili, J. Azizi, M. Jaeger and P. Mengozzi, Judges,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 October 1999,

gives the following

Judgment

Legal and factual framework

1 Pursuant to Article 13(1) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1, hereinafter 'the basic regulation'), anti-dumping duties imposed pursuant to that regulation may be extended to imports from third countries of like products, or parts thereof, when circumvention of the measures in force is taking place. In accordance with paragraph 2 of that article, an 'assembly operation in the Community or a third country shall be considered to circumvent the measures in force where:

(a) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures; and

(b) the parts constitute 60% or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25% of the manufacturing cost,

and

(c) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products'.

2 Paragraph 4 of that article is worded as follows:

'[p]roducts shall not be subject to registration pursuant to Article 14(5) or measures where they are accompanied by a customs certificate declaring that the importation of the goods does not constitute circumvention. These certificates may be issued to importers, upon written application following authorisation by decision of the Commission after consultation of the Advisory Committee or decision of the Council imposing measures and they shall remain valid for the period, and under the conditions, set down therein.'

3 According to Article 13(5) of the basic regulation, '[n]othing in this Article shall preclude the normal application of the provisions in force concerning customs duties'.

4 Article 14(3) of that regulation provides that '[s]pecial provisions, in particular with regard to the common definition of the concept of origin, as contained in Council Regulation (EEC) No 2913/92, may be adopted pursuant to this Regulation'.

5 Article 26(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) provides that '[c]ustoms legislation or other Community legislation governing specific fields may provide that a document must be produced as proof of the origin of goods'.

6 The applicant is a company engaged in the manufacture and sale of bicycles and has been established in Luynes, in France, since 1985. In 1992 the applicant was bought by companies connected with the China Bicycles Company group ('CBC'), which has production units in the People's Republic of China. The invoices for the parts which the applicant purchases are issued by two CBC companies established in Hong Kong, Hong Kong (Link) Bicycles Ltd and Regal International Development Co. Ltd.

7 On 8 September 1993 the Council adopted Regulation (EEC) No 2474/93 imposing a definitive anti-dumping duty on imports into the Community of bicycles originating in the People's Republic of China and collecting definitively the provisional anti-dumping duty (OJ 1993 L 228, p. 1, hereinafter 'the initial regulation').

8 Following a complaint from the European Bicycle Manufacturers Association, the Commission adopted Regulation (EC) No 703/96 of 18 April 1996 initiating an investigation concerning the circumvention of anti-dumping measures imposed by Council Regulation (EEC) No 2474/93 on imports of bicycles originating in the People's Republic of China by assembly operations in the European Community (OJ 1996 L 98, p. 3, hereinafter 'the regulation initiating the investigation'). That regulation entered into force on 20 April 1996. The investigation covered the period 1 April 1995 to 31 March 1996.

9 According to Article 1 of the regulation initiating the investigation, that investigation, which was initiated pursuant to Article 13(3) of the basic

regulation, related to imports of bicycle parts falling within the CN codes ranging from 8714 91 10 to 8714 99 90 originating in the People's Republic of China and used in bicycle assembly operations in the European Community.

10 Article 2 of that regulation states that '[t]he customs authorities are hereby directed, pursuant to Article 14(5) of Regulation (EC) No 384/96, to take the appropriate steps to register the imports 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, in order to ensure that, should the anti-dumping duties applicable to imports of bicycles originating in the People's Republic of China be extended to the former imports, they may be collected from the date of such registration'. It also states that '[i]mports shall not be subject to registration where they are accompanied by a customs certificate issued in accordance with Article 13(4) of [the basic regulation]'.

11 Article 3 of the regulation initiating the investigation provides: '[i]nterested parties must, if their representations are to be taken into account during the investigation, make themselves known, present their views in writing, submit information and apply to be heard by the Commission within 37 days from the date of transmission of this Regulation to the authorities of the People's Republic of China. The transmission of this Regulation to the authorities of the People's Republic of China shall be deemed to have taken place on the third day following its publication in the Official Journal of the European Communities....' That regulation was published in the *Official Journal* on 19 April 1996 and the period in question therefore expired on 29 May 1996.

12 Recital 8 in the preamble to that regulation, in the section headed 'Questionnaires', states that, '[i]n order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the bicycle assemblers in the Community' named in the complaint and that '[i]nformation, as appropriate, may be sought from Community producers'.

13 Following the initiation of that investigation, the Commission sent a number of the companies concerned, including the applicant, a questionnaire, which the applicant completed and returned.

14 By letter of 8 July 1996, the Commission informed the applicant's legal representative that it intended, within the framework of the investigation, to carry out an inspection at the company's headquarters in Luynes. That letter listed a series of documents which the applicant was requested to make available to the Commission's representatives during that inspection. It also stated that other questions might be asked, and other documents requested, during the course of the inspection.

15 The inspection took place on 10 to 12 July 1996.

16 By letter of 4 September 1996, the Commission requested the applicant to clarify certain figures which were essential to the investigation.

17 On 30 October 1996, the Commission sent the applicant a disclosure document in which it informed the applicant that it intended to propose that the anti-dumping duty on bicycles originating in the People's Republic of China be extended to imports of certain bicycle parts originating in that country. As regards the condition laid down in Article 13(2)(b) of the basic regulation, namely that an anti-dumping duty is circumvented where the imported parts constitute 60% or more of the total value of the parts of the assembled product, the disclosure document contained the following passages:

'For Starway and one other assembler, which had the same supplier of parts in China, it has been established that all imported parts were shipped *from* China. The investigation has also established that, to the very limited extent to which those assemblers used parts not imported from China in the assembly of bicycles,

they used parts of EU origin. For some of the imported parts these assemblers presented Chinese certificates of origin (Form A) to the customs in order to benefit from preferential treatment for the goods falling under the GSP, while the rest of the goods were declared as being of non-Chinese origin and were thus subject to the normal third country duty.

During the on-spot investigation the investigators requested these companies to supply appropriate documentary evidence proving the respective Chinese, Community and other third country origin of the parts used. While the companies were able to demonstrate the Community origin of the parts sourced in the EU, they were unable to prove that any part consigned from China had any other origin than Chinese.

As a result, the Commission services concluded that for Starway and the other assembler, all imported parts consigned from China were of Chinese origin and that more than 60% of the total value of the parts of the assembled product were under these circumstances Chinese.

The latter conclusion is reinforced by the evidence found for the three other companies: they imported complete bicycles made out of parts declared as being 100% Chinese. Two of them even showed A Forms at importation (certifying the Chinese origin of the goods) for *all* bicycle parts destined to be assembled. All of this leads to a reasonable suspicion regarding the non-Chinese origin of the parts declared by Starway and the other assembler mentioned earlier.'

18 The applicant replied by letter of 7 November 1996. It disputed that the Commission's officials had demanded evidence of the origin of the imported bicycle parts during the on-the-spot inspection. It also stated that it was not apparent from the Commission's letter of 8 July 1996 (see paragraph 14 above)

that the Commission was seeking evidence of the origin of the imports. Finally, the applicant maintained that if the argument put forward in the disclosure document was correct, the Commission should have informed the applicant, pursuant to Article 18(4) of the basic regulation, that it was rejecting certain evidence or certain information and stated its reasons for doing so.

19 At a meeting with Commission officials on 8 November 1996, the applicant's representatives handed those officials copies of declarations made by the suppliers.

20 By letter of 12 November 1996, the Commission adopted a position on the applicant's allegations concerning the disclosure document. Although the Commission considered that it had already requested specific information on the origin of the bicycle parts concerned, it stated that it was prepared to allow the applicant to prove the origin of the parts in question during a new on-the-spot inspection. The applicant was therefore requested to provide, by 5 p.m. on 25 November 1996, on the occasion of that second inspection, the certificates of origin of the imported parts and full documentary evidence of the means whereby they were transported from the country of origin to the People's Republic of China, in such a way that a link could be established between the purchase of those parts and their consignment to the Community. Furthermore, the Commission also disputed the evidential value of the suppliers' declarations which the applicant handed over at the interview on 8 November 1996.

21 By letter of 13 November 1996 the applicant rejected the Commission's assertion, in its letter of 12 November 1996, that it was impossible to establish a link between the suppliers' declarations and the imported parts. It also asserted that it had stated during the on-the-spot inspection that it was prepared to explain how that link could be established with the assistance of CBC's bills of materials, but that the Commission officials had expressly refused to take those documents into consideration.

22 By letter of 15 November 1996 the Commission confirmed what it had said in its letter of 12 November 1996 with regard to the second on-the-spot inspection.

23 By letter of 20 November 1996 the applicant requested the Commission to explain the purpose of that second inspection, and pointed out that some of the documents to which the Commission referred were only available at CBC's headquarters in Hong Kong.

24 By letter of 21 November 1996 the Commission informed the applicant that the purpose of the second inspection was to examine the documents requested in its letter of 12 November 1996. It stated that if that documentation was not made available at the applicant's headquarters the applicant would be regarded as significantly impeding the investigation within the meaning of Article 18(1) of the basic regulation.

25 In order to comply with the Commission's request in its letter of 12 November 1996, the applicant deposited three boxes of documents, with a total volume of approximately one cubic metre, at the Commission's offices at 4.45 p.m. on 25 November 1996. By letter of the same date, the applicant informed the Commission why it was unable to submit certificates of origin and adopted a position on the legality of the requirement for such certificates in the instant case.

26 The second inspection took place at the applicant's headquarters between the morning of 26 November 1996 and noon on 27 November 1996.

27 On 2 December 1996 the applicant sent the Commission certain documents which had been requested during that inspection but which had not then been available at its headquarters.

28 By letter of 19 December 1996 the Commission informed the applicant of the conclusions which it drew from the second on-the-spot inspection and that it had decided to adhere to the conclusion already set out in the disclosure document of 30 October 1996.

29 On 10 January 1997 the Council adopted Regulation (EC) No 71/97 extending the definitive anti-dumping duty imposed by the initial regulation 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 the regulation initiating the investigation (OJ 1997 L 16, p. 55, corrigendum (Spanish and French versions only) published in OJ 1997 L 95, p. 30, hereinafter 'the regulation extending the duty'). That regulation entered into force on 19 January 1997.

30 Pursuant to Article 2(1) and (3) of that regulation, the definitive anti-dumping duty applicable to imports of bicycles originating in the People's Republic of China was extended to imports of certain essential bicycle parts defined in Article 1 of that regulation originating in that State and collected on imports registered in accordance with Article 2 of the regulation initiating the investigation and Article 14(5) of the basic regulation.

31 Article 2(2) of the regulation extending the duty provides that '[e]ssential 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.'

32 Paragraph 4 of that article provides that, '[u]nless otherwise specified, the provisions in force concerning customs duties shall apply'.

33 Article 3(1) of the regulation extending the duty provides that the Commission is to adopt by regulation 'the necessary measures to authorise the exemption of imports of essential bicycle parts which do not circumvent the anti-dumping duty imposed by [the initial regulation] from the duty extended by Article 2'.

34 Under Article 3(2) of the regulation extending the duty, the regulation adopted by the Commission is to provide, *inter alia*, for 'authorisation of the exemption and control of imports of essential bicycle parts used by companies whose assembly operations are not circumventing' and also 'rules governing the functioning of such exemptions in accordance with the relevant customs provisions'. Likewise, under paragraph 3 of that article, the Commission regulation is also to provide, *inter alia*, for 'the examination of whether the conditions of non-circumvention are fulfilled, in particular in case of requests by... parties whose assembly operations were found to be circumventing during the investigation' and also for 'the necessary procedural provisions for such examination'.

35 Article 3(4) of the regulation extending the duty provides that, '[f]ollowing an examination under paragraph 3, the Commission may, where justified..., decide to authorise the exemption of the operation concerned from the extension of the measures provided for by Article 2'.

36 Article 3(5) of the regulation extending the duty provides:

'Authorisation 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 authorisation in other cases.'

37 In recital 5 in the preamble to the regulation extending the duty, the applicant and a competitor, Moore Large & Co. ('Moore Large'), are referred to by name as companies which made themselves known within the period prescribed in the regulation initiating the investigation and returned completed questionnaires to the Commission. It is apparent from recital 8 in the preamble to that regulation, however, that neither of those companies requested a certificate of non-circumvention.

38 Furthermore, recital 10 in the preamble to the regulation extending the duty states that during the investigation period certain of the assemblers referred to in recital 5 had ordered almost complete bicycles in a disassembled form from producers established in the People's Republic of China. Those assemblers' suppliers ensured that bicycle parts destined for the same assembler were spread across different containers, sent on different dates and sometimes unloaded at different ports. By this practice, the assemblers were able to ensure that the imported parts were not subject to the anti-dumping duty introduced by the initial regulation.

39 It is also apparent from that recital that one company, identified during the proceedings before the Court as Moore Large, applied that practice to approximately 75% of its total assembly of bicycles during the investigation period. However, that company changed its sourcing pattern and towards the end of that period it assembled its 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 those manufacturers established in the Community.

40 Recitals 14 and 15 in the preamble to the regulation extending the duty state that it had been established during the investigation, for certain assemblers which had ordered almost complete bicycle sets in the People's Republic of China, that all the parts had been consigned from the People's Republic of China. Two of those assemblers, identified during the proceedings before the Court as the applicant and Moore Large, claimed that more than 40% of the parts used in the assembly

of bicycles based on those sets originated in other countries. Despite being given extended deadlines for retrieving appropriate documentation — such as certificates of origin, invoices of producers and transport documents —, those assemblers were unable to provide the Commission with sufficient evidence to prove that the parts concerned originated in a country other than the People's Republic of China. The Commission therefore concluded that, in the absence of evidence to the contrary, 'all parts which [had been] consigned from [the People's Republic of 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'.

41 Last, as regards the arrangements for exemption from the extension of the duty, it may be seen from recital 32 in the preamble to the regulation extending the duty that 'it was... found appropriate' not to extend the anti-dumping duty to imports by Moore Large, for the reasons set out in paragraph 39 above.

42 On 20 January 1997 the Commission adopted Regulation (EC) No 88/97 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by the regulation extending the duty of the anti-dumping duty imposed by the initial regulation (OJ 1997 L 17, p. 17, 'the exempting regulation').

43 On the basis of the regulation extending the duty, and in particular Article 3 thereof, the exempting regulation lays down the procedure for the application of the arrangement for exemption from the extended duty. Furthermore, under Article 12 of the exempting regulation certain companies, listed in Annex II, are exempted from the extended duty with effect from 20 April 1996. Those companies include Moore Large but not the applicant.

44 On 18 April 1997 the applicant applied for exemption from the extended duty, on the basis of the exempting regulation.

45 On 28 January 1998 the Commission adopted Decision 98/115/EC exempting imports of certain bicycle parts originating in the People's Republic of China from the extension by the regulation extending the duty of the anti-dumping duty imposed by the initial regulation (OJ 1998 L 31, p. 25, hereinafter 'the exempting decision of 28 January 1998'). That exemption was granted to a number of assemblers, including the applicant, and in the latter's case took effect on 18 April 1997. According to recital 3 in the preamble to that decision, '[t]he facts as finally ascertained by the Commission show that the assembly operations of the applicants concerned do not fall within the scope of Article 13(2) of [the basic regulation]', since the conditions laid down in subparagraph (b) of that provision were no longer satisfied.

Procedure and forms of order sought by the parties

46 By application lodged at the Registry of the Court of First Instance on 28 March 1997, the applicant brought the present action.

47 By order of 17 September 1997, the President of the Fifth Chamber (Extended Composition) granted the Commission leave to intervene in support of the form of order sought by the Council.

48 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber, Extended Composition) decided to open the oral procedure. Within the framework of the measures of organisation of procedure, it put a number of written questions to the parties, which were answered within the time allowed.

49 The parties presented oral argument and answered the Court's questions at the hearing on 12 October 1999.

50 In its application, the applicant claims that the Court should:

— annul Article 2 of the regulation extending the duty in so far as it applies to the applicant;

— order the Council to pay the costs.

51 At the hearing, the applicant stated that by its action it merely sought to challenge the lawfulness of Article 2 of the regulation extending the duty in so far as it applied to imports effected by the applicant between 20 April 1996, the date on which the regulation initiating the investigation entered into force, and 18 April 1997, the date on which the exempting decision of 28 January 1998 took effect *vis-à-vis* the applicant.

52 The Council contends that the Court should:

— dismiss the action as inadmissible and unfounded;

— order the applicant to pay the costs.

Admissibility

Arguments of the parties

53 Without formally raising an objection of inadmissibility, the Council, supported by the Commission, challenges the admissibility of the action, on the ground that the applicant is not individually concerned by the regulation extending the duty.

54 The Council and the Commission contend that the sole effect of the regulation extending the duty is to extend the initial anti-dumping duty to imports of bicycle parts by all operators, with the exception of those granted an exemption. It does not determine the different and individual margins and degrees of circumvention for each of the undertakings which participated in the investigation. Thus, the regulation is a measure of general application affecting all present and potential importers of the products concerned who have not been exempted following an application for the issue of a certificate of non-circumvention.

55 Nor is the applicant individually identified by that measure, either by virtue of its participation in the investigation or by virtue of the fact that it is expressly referred to in the regulation extending the duty as a company having done so. The regulation extending the duty was adopted on the basis of general considerations, not because of the specific situation of the applicant or other operators, so that the recitals in the preamble thereto in which the applicant's particular situation is analysed could be removed without there being any need to amend the operative part. Nor has the applicant put forward any arguments from which it might be concluded that it was in a situation comparable with that of the applicant in Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501.

56 The Council and the Commission further maintain that the regulation extending the duty does not definitively determine the applicant's case. As well as extending the anti-dumping duty, that regulation also provides for the possibility of obtaining an exemption with retroactive effect to 20 April 1996, the date on which the regulation initiating the investigation entered into force, provided that the person seeking the exemption made itself known during the investigation and proved that its assembly operations did not constitute a circumvention of the anti-dumping duty from that date. Under Article 3 of the regulation extending the duty, that power of exemption was delegated to the Commission, which, in order to deal with those applications, adopted the exempting regulation. It was by virtue of the latter regulation, and not, as the applicant contends, the regulation extending the duty, that Moore Large was able to be exempted by the Commission with retroactive effect to 20 April 1996.

57 Accordingly, the applicant is individually concerned only by the exempting regulation, or indeed by any decision that the Commission might take *vis-à-vis* the applicant should it apply for a certificate of non-circumvention pursuant to Article 13(4) of the basic regulation or request exemption from the extended duty under Article 3 of the exempting regulation. Only those measures would definitively determine whether the applicant is subject to the extended duty introduced by the regulation extending the duty or whether, like Moore Large, it is exempted from that duty. Since the applicant only submitted a request for exemption from the extended duty on 18 April 1997, more than three months after the adoption of the regulation extending the duty, that regulation cannot in any event be regarded as a decision in respect of that request.

58 The applicant challenges that argument. It points out that it participated in the investigation and that its individual situation is expressly referred to in the regulation extending the duty. It further observes that the regulation extending the duty contains a decision altering the applicant's situation and that that decision is definitive, since the exempting regulation does not permit the Commission to adopt exempting decisions with retroactive effect to a date before the date on which the request was submitted. In practice, the applicant could not have submitted such a request before the exempting regulation was adopted.

Furthermore, the Council did not regard submission of a request for a certificate of non-circumvention as a precondition of an exempting decision for undertakings not practising circumvention, since it exempted Moore Large from the extended duty even though that company had not requested such a certificate. Thus, the regulation extending the duty, which entered into force three days before the exempting regulation was adopted, produces definitive effects *vis-à-vis* the applicant and is of direct and individual concern to it.

Findings of the Court

59 According to Article 14(1) of the basic regulation, '[p]rovisional or definitive anti-dumping duties shall be imposed by Regulation'. The same applies where anti-dumping duties imposed pursuant to that provision are extended, in accordance with Article 13(1) and (3) of the basic regulation, to imports from non-member countries of like products, or parts thereof. Although, in the light of the criteria set out in the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC), those regulations are indeed, owing to their nature and their scope, of a general character in that they apply to all the traders concerned taken as a whole, their provisions may none the less be of direct and individual concern to certain traders (judgment of the Court of Justice in Joined Cases 239/82 and 275/82 *Allied Corporation and Others* v *Commission* [1984] ECR 1005, paragraph 11; judgment of the Court of First Instance in Case T-170/94 *Shanghai Bicycle* v *Council* [1997] ECR II-1383, paragraph 35).

60 Although the Council, supported by the Commission, expressly raise an objection only as regards the question whether the regulation extending the duty is of individual concern to the applicant, it also puts forward arguments intended to show that the regulation is not of direct concern to the applicant, since the latter's legal situation, they claim, is not directly affected by it.

The requirement that the applicant be directly concerned

61 It is settled case-law that for a person to be directly concerned by a Community measure, the latter must directly affect the legal situation of the individual and leave no discretion to the addressees of that measure who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from Community rules without the application of other intermediate rules (see, for example, Case C-404/96 P *Glencore Grain* v *Commission* [1998] ECR I-2435, paragraph 41).

62 In the present case, it follows from Article 2(1) of the regulation extending the duty that the anti-dumping duty imposed by the initial regulation is to be extended to imports of bicycle parts originating in the People's Republic of China and listed in Article 1 of the regulation extending the duty. Pursuant to Article 13(3) of the basic regulation and Article 2(3) of the regulation extending the duty, the extended duty is to be collected by the customs authorities of the Member States on imports of those products with effect from the entry into force of the regulation initiating the investigation on 20 April 1996, and the customs authorities have no discretion in that regard.

63 In the present case, it is common ground that the imports of bicycle parts referred to in the regulation extending the duty effected by the applicant between 20 April 1996, the date of entry into force of the regulation initiating the investigation, and 18 April 1997, the date on which the exempting decision of 28 January 1998 became applicable, were subjected to the extended duty.

64 Furthermore, as regards the imports effected by the applicant after 18 April 1997, it is clear from the answers given by the Council to the written questions put by the Court that the applicant obtained authorisation for exemption from the Commission only after changing its method of obtaining bicycle parts. Instead of importing the products concerned through a company associated with CBC established in Hong Kong and having them consigned via the People's Republic of

China, as it had previously done, the applicant, following the entry into force of the regulation extending the duty, ordered and imported the bicycle parts directly from, and made payment directly to, its suppliers, which were established in other Asian countries. The applicant was therefore exempted from the extended duty only after significantly altering its supply procedure.

65 It follows that the regulation extending the duty directly affected the applicant's legal situation.

66 Contrary to what the Council and the Commission maintain, that conclusion is not invalidated by the fact that, on the basis of Article 13(4) of the basic regulation, the regulation extending the duty provides that imports not constituting circumvention of the initial duty may be exempted from the extended duty by decision of the Commission.

67 It follows, admittedly, from Article 3(5) of the regulation extending the duty that the applicant, which made itself known during the Commission's investigation, could in principle be exempted from the extended duty without having first submitted a request for a certificate of non-circumvention from the national customs authorities. It also follows from that provision that the Commission could, in principle, grant such exemption with retroactive effect to the date of the entry into force of the regulation initiating the investigation, so that even the imports effected by the applicant before the entry into force of the Commission exempting decision would not have been subjected to the extended duty.

68 However, as may be seen from recital 15 in the preamble to the regulation extending the duty (see paragraph 40 above), the wording of which must be taken into account in determining the exact meaning of what is stated in the operative part of that regulation (see, for example, Joined Cases T-213/95 and T-18/96 *SCK and FNK* v *Commission* [1997] ECR II-1739, paragraph 104), the Council

confirmed the Commission's view that it was impossible to grant the applicant an exemption. Following the investigation which it carried out, the Commission considered that the applicant had not succeeded in showing that its imports did not constitute a circumvention of the initial duty, since the evidence which it had adduced in order to prove the origin of the products in issue was not sufficient. In the present case, the possibility that the Commission might grant the applicant such an exemption was therefore purely theoretical, since in the light of the regulation extending the duty its intention not to do so was not in doubt (see, in that regard, Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraphs 6 to 9, and *Glencore Grain* v *Commission*, cited in paragraph 61 above, paragraph 42).

69 It follows from the foregoing that the Council's and the Commission's argument that the regulation extending the duty does not directly concern the applicant, since, having regard to the possibility of an exemption from the extended duty, it does not in itself affect the applicant's legal situation, must be rejected.

The requirement that the applicant be individually concerned

70 The applicant is also individually concerned by the regulation extending the duty. First, the bicycle parts which it imports are subjected to the extended duty imposed by the regulation extending the duty, which produces the same legal effects *vis-à-vis* the undertakings subjected to that duty as a regulation establishing a definitive anti-dumping duty does *vis-à-vis* the undertakings subjected to such a definitive duty. Second, it participated in the administrative procedure, in accordance with Article 3 of the regulation initiating the investigation, and did so to the best of its ability (by responding to the Commission's questionnaire, cooperating in on-the-spot inspections, returning documents, undertaking an intensive exchange of correspondence concerning, in particular, the disclosure document, and taking part in interviews with officials of the Commission). Moreover, its participation is expressly referred to in the regulation extending the duty, in particular in recitals 10 to 24 in the preamble thereto, which contain a

summary of the results of the Commission's investigation, so that that regulation thus 'identifies' the applicant (judgment in *Shanghai Bicycle*, cited in paragraph 59 above, paragraph 39).

71 It follows from the foregoing that the present application is admissible.

Substance

72 The applicant relies on two pleas in law in support of its action, alleging, first, infringement of Article 13(2) of the basic regulation and, second, breach of the obligation to state reasons. It is appropriate to examine the first plea first.

General introduction to the plea

73 The applicant submits that the Council infringed Article 13(2) of the basic regulation in so far as, pursuant to Article 2(1) of the regulation extending the duty, it extended the anti-dumping duty imposed by the initial regulation on imports of bicycles originating in the People's Republic of China to imports of essential bicycle parts originating in that country effected by the applicant, although the conditions laid down by Article 13(2) of the basic regulation were not satisfied. The applicant maintains that the Council was incorrect to consider, as the first subparagraph of Article 2(2) of the regulation extending the duty (hereinafter 'the contested provision') makes clear, that the applicant had not adduced proof that the bicycle parts imported during the period of investigation from the People's Republic of China originated in another country.

The interpretation of Article 13(2) of the basic regulation as regards the subject-matter and the burden of proof

Arguments of the parties

74 In its application, the applicant contends that the condition set out in Article 13(2)(a) and (b) of the basic regulation which an assembly operation must fulfil in order to be considered to circumvent the measures in force is only satisfied where the parts constituting 60% or more of the total value of the parts of the assembled product originated in the country concerned. In its reply, on the other hand, it states that that condition is not satisfied where it is established that those documents originated in another country. It claims that the Community institutions have never adduced proof that the value of the parts originating in the People's Republic of China used by the applicant in its assembly operations represented 60% or more of the total value of the parts of the assembled product.

75 The Council, supported by the Commission, observes that it follows from the wording of Article 13(2) of the basic regulation that an assembly operation is considered to circumvent the measures in force where the parts constituting 60% or more of the total value of the parts of the assembled product come from the countries to which those measures apply. Accordingly, the Community institutions are not, in principle, obliged to examine whether, still less to prove that, the parts coming from the countries to which the measures apply also originate in those countries.

76 The Council contends that the applicant cannot validly challenge the legality of the contested provision, since it is common ground that its imports of bicycle parts constituting 60% or more of the total value of the parts of the assembled product came from the People's Republic of China.

77 However, the Council and the Commission acknowledge, in that regard, that Article 13(2) of the basic regulation must be interpreted as meaning that the Community institutions are permitted to consider that an assembly operation does not constitute a circumvention where it is proved that the parts concerned are merely transshipped via the country to which the measures apply without undergoing any processing there. Such an interpretation is consistent with the principle inherent in Article 1(3) of the basic regulation, namely that imports coming from a country to which anti-dumping measures apply cannot be subjected to those measures where the products concerned are merely transshipped via that country. However, the Council and the Commission observe that in the present case the bicycle parts concerned were not merely transshipped via the People's Republic of China, but were sorted there, and any missing items replaced, before being consigned to France.

Findings of the Court

78 Under Article 13(1) of the basic regulation, anti-dumping duties imposed pursuant to that regulation may be extended to imports from third countries of like products, or parts thereof, when circumvention of the measures in force is taking place. Article 13(2) of that regulation provides that an assembly operation, such as that carried out by the applicant in the present case, is to be considered to circumvent the measures in force where the conditions set out in subparagraphs (a) to (c) are satisfied (see paragraph 1 above).

79 More particularly, it follows from Article 13(2)(a) and (b) of the basic regulation that an assembly operation is to be deemed to constitute circumvention where parts having a value of 60% or more of the total value of the parts of the assembled product 'are from the country subject to measures'.

80 Examination of the various language versions of that provision shows that the German and Italian versions provide that an assembly operation is to be

considered to circumvent the measures in force where the parts concerned originate in the country subject to measures ('die verwendeten Teile ihren Ursprung in dem Land haben, für das Maßnahmen gelten'; 'pezzi utilizzati sono originari del paese soggetto alla misura'). According to the Spanish ('procedan del pais'), Danish ('fra del land'), Greek ('προέρχονται από τη χώρα'), English ('are from the country'), French ('proviennent du pays'), Dutch ('afkomstig... uit het land'), Portuguese ('provientes do países'), Finnish ('tulevat maasta') and Swedish ('från det land') versions, however, it is sufficient that the parts come from that country.

81 It follows from the case-law of the Court of Justice that the need for a uniform interpretation of Community regulations means that a particular provision should not be considered in isolation but in cases of doubt should be interpreted and applied in the light of the other official languages. Moreover, in the case of divergence between language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (judgment in Case C-372/88 *Milk Marketing Board of England and Wales* v *Cricket St Thomas* [1990] ECR I-1345, paragraph 19).

82 In that regard, it should be observed that there is no divergence between language versions in the case of Article 13(1) of the basic regulation, which provides that measures in force may be extended to imports 'from' third countries of like products, or parts thereof. Article 13(2) of the basic regulation constitutes a specific provision by comparison with Article 13(1). There is nothing in the basic regulation to support the presumption that the Community legislature intended, as regards assembly operations, that Article 13 should apply only to parts originating in the country subject to the measures when it clearly envisaged a wider scope for other possible methods of circumvention. To the contrary, it follows from recital 20 in the preamble to the basic regulation that the legislature's intention in introducing Article 13 was 'to deal with practices, including mere assembly of goods in the Community or a third country, which have as their main aim the circumvention of anti-dumping measures'.

83 Furthermore, it should be pointed out that, on a uniform interpretation, Article 13(2) of the basic regulation differs from the corresponding provision of the legislation applicable in anti-dumping matters prior to its entry into force, namely Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1988 L 209, p. 1). Without any discrepancy between the language versions, that regulation provides, essentially, in the third indent of Article 13(10)(a), that the extension of an anti-dumping duty in force was subject to the condition that the value of the parts used in the assembly operations and 'originating in the country of exportation of the product subject to the anti-dumping duty' exceeded the value of all the other parts used by at least 50%. By choosing different words from those used in its own previous regulation, the legislature may be presumed to have deliberately departed from that wording in order to amend the scope of the rule.

84 It follows that, pursuant to Article 13(2) of the basic regulation, the Community institutions, as well as satisfying the other conditions listed there, must show that the parts constituting 60% or more of the total value of the parts of the assembled product are from the country subject to the measures, but they are not required to prove that those parts also originate in that country.

85 Consequently, it follows from the basic regulation, and in particular from Article 13 thereof and recital 20 in the preamble thereto, that the purpose of a regulation extending an anti-dumping duty is to ensure the effectiveness of that measure and to prevent its being circumvented by, in particular, assembly operations in the Community or a non-member country. Thus, a measure extending an anti-dumping duty is merely ancillary to the initial measure imposing that duty. It would therefore be contrary to the purpose and general scheme of Article 13 of the basic regulation to impose an anti-dumping duty, initially imposed on imports of a product originating in certain countries, on imports of parts of that product from the country subject to the measures where the operators carrying out the assembly operations investigated by the Commission prove that those parts, constituting 60% or more of the total value of the parts of the assembled product, originated in another country. In such a

situation, the assembly operations cannot be considered to circumvent the anti-dumping duty initially imposed, within the meaning of Article 13 of the basic regulation.

86 That conclusion is borne out by the fact that the Community legislature provides in Article 13(4) of the basic regulation that imports are to be exempted from the extended duty where proof is adduced that they do not constitute circumvention.

87 Contrary to what the Council and the Commission maintain, on the other hand, there is no reason to conclude that such proof is in any event possible only where the imported parts are merely transshipped via the country to which the measures apply. The argument put forward by the Council and the Commission that Article 13(2) of the basic regulation must be interpreted by analogy with Article 1(3) of that regulation cannot be followed. First, Article 1(3) contains a definition of 'exporting country', a concept to which Article 13(2) does not refer even by implication. Second, although as a general rule where the parts in question are merely transshipped via the country subject to the measures they originated in another country, it cannot be precluded as a matter of principle that proof of such origin may be adduced in other circumstances.

88 Consequently, Article 13(2) of the basic regulation must be interpreted as meaning that an assembly operation in the Community or in a non-member country is to be regarded as circumventing the measures in force where, as well as satisfying the other conditions referred to in that provision, the parts constituting 60% or more of the total value of the parts of the assembled product are from countries subject to the measures, unless the trader concerned provides the Community institutions with proof that those parts originated in another country.

Examination of the evidence by the Community institutions

Arguments of the parties

89 The applicant contends that the Community institutions were incorrect to consider that it did not adduce proof that it used bicycle parts originating in the People's Republic of China in its assembly operations up to less than 60% of the total value of the parts of the assembled bicycles.

90 The applicant criticises the Community institutions for having required production of certificates of origin for the parts imported during the investigation period, which preceded not only the adoption of the regulation extending the duty but also the adoption of the regulation initiating the investigation.

91 Furthermore, the applicant contends that, contrary to what emerges from recital 15 in the preamble to the regulation extending the duty, it adduced proof that the bicycle parts concerned did not originate in the People's Republic of China, by producing other documents.

92 First, the applicant refers to its customs declarations, which were not challenged by the customs authorities and which formed the basis for its reply to the Commission's questionnaire. Those declarations show that less than 60%, in fact 46.9%, of the total value of the parts of the assembled product originated in the People's Republic of China.

93 The applicant denies every assertation by the Council and the Commission calling in question the evidential value of its declarations in the present case. There is no reason to presume, it claims, that it made a false declaration when it declared that certain parts were not of Chinese origin. First, it observes that those customs declarations were made *in tempore non suspecto*, well before the investigation was initiated. Contrary to what the Community institutions maintain, there was no reason to foresee that an investigation into the circumvention of the anti-dumping measures would subsequently be initiated. Thus it had no financial interest in making false customs declarations. Next, the applicant claims that the Community institutions' argument does not explain why it declared parts accounting for 53.1% of the total value of the parts of the assembled product, an amount significantly higher than the 40.1% minimum which, pursuant to Article 13(2)(b) of the basic regulation, was required if anti-circumvention measures were not to be imposed, as being of non-Chinese origin. Nor is it in any event plausible that the applicant intentionally made false customs declarations solely in order to mislead the Community institutions. Had it done so it would have lost its status as a preferential importer, since, unlike the People's Republic of China, the countries mentioned in the declarations as to the origin of the parts were not subject to a preferential tariff arrangement. The applicant would therefore have lost substantial and immediate financial advantages. Last, the applicant claims that the Commission never referred during the investigation to the slightest specific evidence on which it might call in question the accuracy of the declaration of origin made when the parts were imported.

94 Second, the applicant refers to the declarations of its suppliers in Asian countries other than the People's Republic of China that confirm its own customs declarations. The applicant does not dispute that its suppliers' declarations were specially drawn up for the purposes of the investigation. Although it accepts that it is reasonable to treat the declarations made by its producers or suppliers as being equivalent to its own declarations owing to the connections between it and those producers and suppliers, there is no reason why those declarations should be categorically rejected as having no protective value.

95 Third, the applicant contends that it is possible to check the accuracy of its customs declarations with the assistance of the documents which it delivered to the Commission on 25 November 1996 at the latter's express request. Those

documents consist of bills of materials detailing the parts ordered from CBC's suppliers for each model assembled by the applicant, suppliers' invoices in respect of those parts addressed to CBC, and packing lists and bills of lading. As the applicant demonstrated to the Commission's officers during the second on-the-spot inspection, those documents make it possible to establish a definite link between the consignment of the bicycle parts concerned from their country of origin to CBC and their re-consignment by CBC to France. There is nothing unusual about the fact, pointed out by the Commission during the inspection, that CBC's suppliers numbered the invoices differently from CBC, since each undertaking uses its own numbering system. The other irregularity found by the Commission, namely that in certain cases the country of origin declared by one of CBC's suppliers was not the one shown on CBC's invoices, may be explained by the fact that that supplier transferred its production site to a different country from the one mentioned on the invoices. Furthermore, that irregularity does not affect the calculation of the value of the parts of non-Chinese origin.

96 The Council, supported by the Commission, claims that the applicant has not adduced proof that the bicycle parts concerned did not originate in the People's Republic of China.

97 Contrary to what the applicant maintains, the Commission was entitled in the present case to require production of certificates of origin. In answer to the written questions put by the Court, the Council and the Commission stated at the hearing that, since the Commission found during the investigation that the bicycle parts concerned had not merely been transshipped via the People's Republic of China but had been sorted there, and any missing parts replaced, before being re-consigned to France, a certificate of origin was the only reliable proof.

98 The Council and the Commission do not dispute what the applicant states about either the absence of a specific provision requiring production of a certificate of origin or the fact that it was impossible to obtain such certificates retroactively.

However, they contend that a prudent trader in the applicant's position should have known as soon as the initial anti-dumping duty was imposed or, at the very least, when the basic regulation providing against the risk of circumvention entered into force that he might have to prove the origin of his imports. Therefore, since the applicant imported bicycle parts through an undertaking linked with CBC with production facilities in the country subject to the initial anti-dumping duty, it should have ensured that it had that sole reliable proof available.

99 Consequently, the Council and the Commission contend that in any event the documents presented by the applicant in the course of the investigation did not establish that the bicycle parts coming from the People's Republic of China had originated in another country.

100 First, the Council and the Commission contend that, in the context of an investigation into circumvention, the origin of the products cannot be established by the customs declarations made by the importer, especially where the importer is connected with the exporter in the country concerned. They refer to Articles 68 and 78 of the Community customs code and claim that the Commission was entitled to check the accuracy of those declarations and to require the applicant to submit other documents for that purpose. The Council and the Commission also dispute that the customs declarations were made *in tempore non suspecto*, since the initial anti-dumping investigation had been initiated in 1991, before the applicant was taken over by the CBC group in 1992. Furthermore, it is evident from the applicant's replies to the questionnaire that its bicycle assembly operations expanded between 1992 and 1993. It follows that there was reason to suspect that the applicant's imports constituted circumvention of the measures in force; and the applicant ought reasonably to have supposed that it might be required to provide reliable evidence of the origin of the parts of the product forming the subject of an investigation and, subsequently, an anti-dumping duty.

101 Next, the Council and the Commission maintain that the suppliers' declarations carry little weight as evidence, since they were made for the purposes of the

investigation by persons with an interest in the bicycle parts in question being declared as not being of Chinese origin.

102 Last, as regards the documents delivered to the Commission on 25 November 1996, the Council and the Commission put forward a series of arguments to the effect that the proof proposed by the applicant was not in itself reliable. Instead of producing certificates of origin for each imported bicycle part from the People's Republic of China, the applicant communicated a whole mass of documents, namely the applicant's orders to its suppliers in Hong Kong (CBC), the suppliers' invoices to the applicant and the invoices from CBC's suppliers to CBC, the transport documents relating to those invoices and the documents drawn up by the applicant for the purposes of the present dispute in order to enable the route followed by the products to be traced. The Council and the Commission emphasise that, in having recourse to this means of proof, the applicant required six pages of explanations in its reply, and 82 pages of annexes, to demonstrate the origin of a single isolated part. All together, the documents delivered to the Commission occupied a volume of one cubic metre. Such voluminous evidence made it impossible to carry out a reliable check within a reasonable time. The Council and the Commission maintain that, even supposing that, on the basis of the checks carried out on one particular model of bicycle, it had been established that the documents from CBC's supplier referred to the same parts as those sent to the applicant by CBC, it could not have been inferred that such a link existed in the case of the other models assembled by the applicant. According to a principle applied in anti-dumping matters, the undertakings concerned by an investigation are required to present the information requested in such a way as to enable a reliable check to be carried out within a reasonable time. Furthermore, a link between invoices and transport documents can only be established with the assistance of parts lists, which, because they are purely internal CBC documents, are less reliable than a certificate of origin issued by an authority in the country of origin.

103 Last, the Council and the Commission observe that the Commission found certain irregularities in the course of the investigation. The numbers of the documents used by CBC's suppliers did not correspond with those of the parts which CBC delivered to the applicant. Furthermore, in certain cases the country of origin declared by CBC's suppliers was not the one shown on its invoices. In those circumstances, even if those irregularities could be explained by organisa-

tional problems within the undertakings involved, the Commission was entitled to take the view that those documents did not prove that the bicycle parts exported to the Community from the People's Republic of China had been imported into that State by CBC from other countries.

Findings of the Court

104 It is clear from the case-file that, in accordance with Article 13(2) of the basic regulation as interpreted in paragraph 88 above, the Commission requested the applicant, during the investigation, to adduce proof of the accuracy of its statements in the questionnaire, and based on its customs declarations, to the effect that the relevant bicycle parts from the People's Republic of China did not originate in that country.

105 As may be seen from the letters of 12 and 21 November 1996 (see paragraphs 20 and 24 above), the Commission therefore requested the applicant, with a view to carrying out a second on-the-spot inspection, to submit, for each bicycle part concerned and by 25 November 1996, certificates of origin and full documentary evidence relating to its shipment from the country of origin to the People's Republic of China. Following that second request, the applicant deposited, for each bicycle part concerned and within the prescribed period, the documentation referred to in paragraph 102 above. However, it did not comply with the request to produce certificates of origin, but informed the Commission that such certificates were not in its possession. It further stated that, under the legislation applicable when the imports in issue were effected, it was not required to submit them. Furthermore, it claimed that the Commission's request was unfair, since in order to comply with it the applicant was required to obtain, retroactively and at very short notice, certificates of origin for thousands of bicycle parts purchased from a large number of suppliers before the investigation in question had commenced.

106 Following the on-the-spot inspection of 26 and 27 November 1996, the Commission's officers concluded that the applicant had not adduced the proof requested since no certificate of origin had been produced and since they had detected certain irregularities in the documents submitted by the applicant which indicated that its customs declarations were inaccurate. It was on the basis of those facts that the Council adopted the regulation extending the duty, as may be seen from recital 15 in the preamble to that regulation.

107 In the light of the foregoing, it must be observed at the outset that, as regards the imports of bicycle parts effected during the investigation period, the applicant was under no legal obligation by virtue of Community law to obtain certificates of origin in order to prove the non-preferential origin of those goods, that is to say, that they originated in a country not benefiting from preferential tariff measures with the Community.

108 Admittedly, it follows from Articles 13(5) and 14(3) of the basic regulation and from Article 26(1) of the Community customs code that the Community institutions may introduce specific rules in relation to the documents that importers must be able to produce in order to show that the goods concerned have a non-preferential origin. However, the parties are agreed that before the entry into force of the regulation extending the duty no such specific rules had been adopted.

109 Furthermore, the applicant submitted, without being contradicted by the Council and the Commission, that in the absence of a legal obligation in force in the country of import of the goods concerned, it is not customary practice in international trade to draw up certificates of origin in order to prove the non-preferential origin of those goods.

110 Last, the Council and the Commission are wrong in their contention that a prudent trader should, even before the investigation had been initiated, have ensured that he had certificates of origin available in order to be able to adduce proof of the non-preferential origin of the goods concerned should that be necessary. First, such an obligation to show diligence cannot be inferred from the initial regulation. That regulation confines itself to imposing an anti-dumping duty on imports of bicycles originating in the People's Republic of China; it makes no reference to the rules to be observed when parts of that product are imported into the Community and does not even hint that the Community institutions will take particular care to ensure that the regulation is not circumvented by imports of parts of that product. Nor can such an obligation be inferred from the adoption of the basic regulation, which contains general provisions concerning the extension of the anti-dumping duties in the event of circumvention of a measure in force. Not only does the basic regulation confine itself to introducing a general system of protection against dumped imports, but, in addition, it does not contain any specific provision concerning the means of proof required when goods are imported. In that regard, moreover, the basic regulation does not differ from its predecessor, Regulation No 2423/88.

111 None the less, even in the absence of a legal obligation to submit certificates of origin, there is nothing in principle to prevent the Community institutions from requesting importers, in the interests of administrative efficiency, to produce such documents in order to prove the accuracy of the information given in their customs declarations, with a view to ensuring that the objective of Article 13 of the basic regulation, namely to thwart circumvention, is attained.

112 However, the Community institutions cannot, without infringing Article 13(2) of the basic regulation as interpreted in paragraph 88 above, require certificates of origin to the exclusion of any other means of proof where they are or should be aware that some of the traders concerned are unable to produce such certificates for reasons beyond their control. In those specific circumstances, such a requirement would be contrary to the principles of legal certainty and respect

for the rights of defence, in so far as it makes it impossible, in a dispute likely to lead to the imposition of a pecuniary charge, to prove that such a charge does not fall to be imposed. In such specific circumstances, to refuse other means of proof is tantamount to denying the defending party the right to produce exculpatory documents (*ultra posse nemo tenetur*).

113 In those circumstances, moreover, the requirement of such evidence is not an appropriate means of attaining the objective pursued, namely to thwart circumvention of the duty initially imposed. The requirement of proof that is impossible to furnish may have the consequence that the application of the extended duty is not limited solely to imports of parts in circumstances constituting circumvention of the duty within the meaning of Article 13 of the basic regulation. Such a requirement would therefore also be contrary to the principle of proportionality.

114 In the present case, it follows from the facts summarised in paragraphs 104 to 106 above that the applicant informed the Community institutions that it did not have the certificates of origin for the bicycle parts in question in its possession and that it was physically impossible to obtain such certificates retroactively and within the period specified by the Commission for the imports effected during the investigation period. For that matter, it may be added, it was indeed, as became apparent during the proceedings before the Court, wholly impossible for the applicant to submit the certificates of origin which it had been requested to produce. In an annex to its reply, the applicant produced affidavits from the Chambers of Commerce of the two Asian countries in which the bicycle parts concerned originated, which state that certificates of origin are not issued more than three months after the products concerned have been despatched. That evidence was not disputed by the Council or Commission.

115 In the exceptional circumstances of the present case, the Commission's officers could not validly demand production of certificates of origin, but were required

to examine, not cursorily, but carefully and impartially, the documents which the applicant had delivered to them during the investigation in order to prove the accuracy of the information given in its customs declarations, namely that the bicycle parts which it imported into the Community originated in countries other than the People's Republic of China.

116 It is therefore necessary to consider whether the Community institutions did in fact carefully and impartially examine the documents communicated by the applicant before rejecting them as insufficient evidence.

117 In that respect, the Community institutions have in the first place essentially submitted argument to the effect that, in view of the volume and complexity of the documentation transmitted, that evidence was not acceptable as such, since it did not enable the Commission to carry out a reliable check within a reasonable time. However, while it is true that tight deadlines and, accordingly, increased need for administrative efficiency are characteristic of anti-dumping procedures, it should be pointed out that in the present case it was impossible for the applicant to provide alternative evidence which could have been checked more easily. Moreover, as the Commission's letters of 12 and 21 November 1996 show (see paragraphs 20 and 24 above), it was at the Commission's express request that the applicant sent it that voluminous documentation in order to prove the accuracy of its customs declarations. The Community institutions were therefore wrong, in the exceptional circumstances of the present case, in rejecting that evidence because of its volume and complexity.

118 It is true, moreover, that in the letter of 19 December 1996 summarising the results of the second on-the-spot inspection the Commission identified two irregularities in relation to those documents. According to that letter, the numbers

of the parts delivered by CBC's suppliers did not correspond with the numbers of the parts which CBC used for its supplies to the applicant and, in certain cases, the country of origin declared by those suppliers was not the one shown on CBC's invoices. It is clear from the documents before the Court, however, that during the second on-the-spot inspection the applicant provided explanations for each of those irregularities. When questioned by the Court about those irregularities and the documents which it and the Commission maintained the applicant should have produced, the Council replied that in its view it was 'extremely difficult' to adduce proof of the origin of the bicycle parts concerned without certificates of origin. The Council further stated at the hearing that, in the circumstances of the present case, namely where the bicycle parts had not merely been transshipped via the People's Republic of China, the production of certificates of origin was the only reliable means of proof and the documents presented by the applicant could not have been accepted as sufficient proof even if the Commission had not detected those irregularities.

119 In the light of the foregoing, the Court is satisfied that the Community institutions did not carefully and impartially examine the documents sent to them. In an exceptional situation such as that obtaining in the present case, the Community institutions could not validly reject the documents as being, without further consideration, of no evidential value and require the applicant to adduce evidence of a nature that it was impossible for it to provide.

120 It follows that the Council was wrong in concluding that the applicant had not adduced proof that the bicycle parts which it imported from the People's Republic of China, constituting 60% or more of the total value of the parts of the assembled bicycles, originated from a country other than that State. Consequently, the Council infringed Article 13(2) of the basic regulation by extending the anti-dumping duty imposed by the initial regulation to imports of bicycle parts effected by the applicant.

Conclusion

121 Without its being necessary to examine the merits of the second plea in law, Article 2 of the regulation extending the duty must therefore be annulled in so far as it concerns the applicant.

122 Pursuant to Article 2(3) of the regulation extending the duty, the extended duty is to be collected on imports of essential bicycle parts which, in accordance with Article 2 of the regulation initiating the investigation, were registered by the customs authorities on the entry into force of the latter regulation on 20 April 1996. Consequently, and having regard to the form of order sought by the applicant (see paragraph 51 above), Article 2 of the regulation extending the duty must be annulled in so far as it concerns imports of essential bicycle parts by the applicant between 20 April 1996 and 18 April 1997, the date on which the decision of exemption of 28 January 1998 took effect.

Costs

123 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has been unsuccessful, it must be ordered to bear its own costs and pay those incurred by the applicant.

124 In accordance with Article 87(4) of the Rules of Procedure, the Commission must be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)

hereby:

1. Annuls Article 2 of 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, in so far as it concerns imports of essential bicycle parts by the applicant between 20 April 1996 and 18 April 1997;

2. Orders the Council to bear its own costs and to pay those incurred by the applicant;

3. Orders the Commission to bear its own costs.

Lenaerts Tiili Azizi

Jaeger Mengozzi

Delivered in open court in Luxembourg on 26 September 2000.

H. Jung
Registrar

K. Lenaerts
President