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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2474/93

of 8 September 1993

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 12 thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee as provided for by the above Regulation,

Whereas :

A. Provisional measures

- (1) By Regulation (EEC) No 550/93⁽²⁾, the Commission imposed a provisional anti-dumping duty on imports into the Community of bicycles originating in the People's Republic of China and falling within CN code 8712 00. By Regulation (EEC) No 1607/93⁽³⁾, the Council extended the validity of this duty for a period not exceeding two months.

B. Subsequent procedure

- (2) Following the imposition of the provisional anti-dumping duty the following parties submitted comments in writing :

Exporters in the People's Republic of China :

- Guangzhou Five Rams Bicycle Industry Corporation,
- Shanghai Bicycle Group,
- Qingdao Bicycle Industrial Corporation,
- Ghangzhou Golden Lion Bicycle Manufacturing & Trading Corp.,

- Xiamen Bicycle Company,
- Anyang Bicycle Industry Company,
- China Henan Light Industrial Products Imp., Exp., Corp.,
- Tianijn Bicycle Imp., & Exp., Corporation,
- Hubei Provincial International Trade Corporation,
- China Bicycles Company (Holdings) Limited,
- Asia Bicycles Co., Ltd,
- Catic Bicycle Co., Ltd,
- Sino-Danish Enterprises Co., Ltd,
- Hanji Town Waimanly Manufactory.

Community Producers :

- Hawk Cycles Ltd,
- Derby Cycle Werke GmbH,
- Cycleurope,
- Raleigh Industries Limited,
- Bicicletas de Alava SA,
- Gazelle BV.

Independent importers and traders :

- Scott (Europe) SA, Switzerland,
- Chung Wai Manufactory Limited, Hong Kong,
- Halfords Ltd, UK.

Parties who so requested were granted an opportunity to be heard by the Commission.

- (3) The parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures and the definitive collection of amounts secured by way of provisional duty. There were also granted a period within which to make representations subsequent to the disclosure.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No L 58, 11. 3. 1993, p. 12.

⁽³⁾ OJ No L 155, 26. 6. 1993, p. 1.

- (4) The parties' comments were considered, and the Commission altered its conclusions where it was deemed to be justified.
- (5) The investigation overran the normal duration of one year provided for in Article 7 (9) (a) of Regulation (EEC) No 2423/88 due to the complexity of the investigation, in particular, in the light of the numerous models of bicycles, and the variety of technical specifications.

C. Product under investigation and like product

- (6) As set out in Regulation (EEC) No 550/93 (see recitals 9 to 11) the Commission established that all types of bicycle were to be considered as one product within the meaning of Article 2 of Regulation (EEC) No 2423/88.
- (7) Some exporters continued to argue that various categories of bicycle should be considered as separate products on the grounds that the specific applications and the use of the bicycles in the various categories are perceived by the market as being different. More particularly they argued that the mountain bicycle was clearly a separate product in terms of components used, price and the perception of the average buyer.
- (8) In Recitals 9 to 11 of Regulation (EEC) No 550/93, the Commission has already replied to most of the arguments made by the exporters and concluded that all bicycles constituted one single product.

Regarding the specific application, use and consumer perception of the bicycles under consideration, it is noted first that all bicycles have the same basic application and perform essentially the same function. In this respect, and as far as the consumers' perception of the bicycles is concerned, it is true that the different categories are, in principle, intended to meet different end-user requirements. However, end users will regularly put a bicycle in a particular category to a variety of uses and applications. A mountain bicycle used for off-road cycling can easily be used by consumers as a normal touring bike. Mountain bikes are sometimes equipped with accessories which are designed for use on the road. Moreover, there is the trend of using bicycles which are designed for more than one specific application. The hybrid bicycle, which can be a cross between a mountain bicycle and a racing bicycle or between a mountain bicycle and a touring bicycle, is an example of this. This trend even increases the interchangeability between various categories of bicycles and thus increases the competition between the overlapping areas.

There is consequently no clear dividing line based on end-users' application and consumers' perception of different categories.

The Commission has also found that the producers themselves often make no distinction between their bicycles, classified in different categories, with regard to production, distribution or accounting. Both Community and Chinese producers have, for all their different categories of bicycles, a similar manufacturing process. Further, almost always the same distribution channels are used for all categories of bicycle,

The Council therefore considers that the similarities of all categories of bicycle, as far as their technical and physical characteristics as well as their application and end use are concerned, outweigh, for the purposes of these proceedings, any differences.

D. Community industry

- (9) The investigation showed that the Community producers which fully cooperated in the investigation accounted for 54,3 % of total Community production of bicycles. Producers representing a further 10 % of Community output supplied some basic information on their production and expressed support for the complaint.
- (10) One exporter requested, in view of the existence of business links between certain Community producers and the Chinese exporters for the purchase of components, that the Community industry should only consist of producers which did not have such links.
- (11) It was found, with very few exceptions, that the bicycles sold by the Community producers were actually produced in the Community from parts which were sourced mainly in the Community, though certain parts were imported from Japan, Singapore, Taiwan and the People's Republic of China. Moreover, Article 4 (5) of Regulation (EEC) No 2423/88 only provides for a possible exclusion of Community producers in cases where they are themselves importers of the products subject to the investigation and not, as suggested by this exporter, when they are merely importing certain components from a country which also exports the finished product under consideration.
- (12) With regard to the Community producers which had imported bicycles from Taiwan and the People's Republic of China, no new evidence was submitted and consequently the Council confirms the conclusion in recital 13 of Regulation (EEC) No 550/93.

- (13) One exporter argued that the Community producers which fully cooperated by replying to the questionnaires sent by the Commission were not representative and that the producers which were sent questionnaires at a later stage of the proceedings should have been excluded from the scope of the Community industry.
- (14) Firstly it should be noted that the Commission initially only sent questionnaires to the Community producers which were listed as complainants in the anti-dumping complaint. Only upon receipt of the replies to the original questionnaires was it found that the Community industry which replied to the questionnaires, represented an estimated 40 % of total Community production of bicycles. The Commission sent out further questionnaires to widen the basis of the injury investigation. This exercise allowed the Commission, without unduly delaying the investigation, to base its findings on a proportion of Community industry which then represented the majority of the Community industry. There was no reason to exclude the producers who had been asked to supply information at a later stage.
- (18) Secondly, in the case of those countries referred to in Article 2 (5) of Regulation (EEC) No 2423/88 (which includes the People's Republic of China), it is not possible to take account of the efficiency or comparative advantage of individual exporters in the establishment of normal value since this must obligatorily be established on the basis of prices or costs in market economy countries. The only way individual treatment could be given to exporters in these countries is by taking account of their individual export prices. In general, this would tend to give rise to distorted, and therefore inappropriate, individual results since it would not take account of the eventual, however impossible to determine efficiency, comparative advantage or characteristics of the products of individual exporters.
- (19) Thirdly, it is in practice extremely difficult to establish in the case of a country such as the People's Republic of China whether a company really enjoys, both in law and in fact, independence from the State and in particular whether a company has permanent independence where it appears to enjoy independence at a certain point in time. The economy of the People's Republic of China is in transition from a fully State controlled economy to a partially market orientated economy. State control subsists in very many aspects of economic life and the law and institutions necessary for the functioning of a market economy are not sufficiently developed and familiar to the economic operators and officials. It is not therefore possible to be certain that contracts and apparent legal guarantees will be effective and the actions of exporters free from governmental interference. Indeed it is clear that the influence of the State on all economic activity in China is still dominant. The State can at any time change the rules applicable to the employment and payment of workers, it controls the supply of energy and can impose limitations on the convertibility and transfer of currency.

E. Methodology

1. Individual treatment

- (15) In Recitals 34 to 36 of Regulation (EEC) No 550/93, the Commission stated that it would continue to examine the question of individual treatment for Chinese exporters in this case.
- (16) Although individual treatment has been given to certain exporters in the People's Republic of China in some previous anti-dumping cases, in particular where they have demonstrated their independence from the State in the conduct of their export policy and in establishing their export prices, the Commission has in the course of this proceeding come to the conclusion, which the Council shares, that for the reasons set out below the utmost prudence is required in this matter.
- (17) Firstly, it must be borne in mind that Regulation (EEC) No 2423/88 merely requires that anti-dumping regulations specify the country and the product on which the duty is imposed. Individual treatment is therefore not a requirement of that Regulation and is appropriate only where this gives a more proportionate and effective remedy against injurious dumping than a single country-wide duty.
- (20) Fourthly, the Commission is, at present, not in a position to verify the declarations of exporters on-the-spot in China due, in the main part, to difficulties inherent to non-market economy countries in establishing facts beyond reasonable doubt. In particular, it is extremely difficult for the Commission to verify whether certain arrangements which ostensibly guarantee a certain independence from the State in export policy matters are genuine or a mere pretence, especially where such arrangements have been made in the knowledge that anti-dumping action might be taken.

- (21) Since the granting of individual treatment may cause inappropriate levels of duty to be imposed and gives rise to an opportunity for the State to circumvent anti-dumping measures by channelling exports through, or concentrating exports on, the exporter with the lowest duty, the Commission and the Council have come to the conclusion that departures from the general rule whereby a single anti-dumping duty is established for State trading countries should only be made where they are completely satisfied that the difficulties outlined above do not arise.
- (22) In the present case most of the known exporters were fully or majority owned by the State.
- (23) Two exporters claimed that they should be given individual treatment which should be denied to the State owned exporters.
- (24) One of these exporters, a Hong Kong company, asked for individual treatment on behalf of a wholly publicly-owned Chinese bicycle manufacturer, whose bicycles it exported from China. This exporter purported to withdraw its application for individual treatment. The Commission considered that individual treatment was in any case inappropriate for such a situation since the Hong Kong company could change its source of supply.
- (25) Another exporter, which was a Chinese manufacturer, claimed to have recently become a joint stock company and that the proportion of its shares still owned by a State body, following a series of complicated and unclear transactions, had now fallen to only a minority shareholding by the State. The Commission was not satisfied that this company was now free from State control. Even a minority shareholding confers to the State a significant influence on the management of a company especially when combined with all other means of influence at the disposal of the State in China. In any case the new structure of the company could not be described as stable or established.
- (26) Further, a representative of the Chinese Government, who claimed that he represented all bicycle manufacturers with a shareholding of the Chinese State, also declared to the Commission that the Chinese State coordinated the activities of all bicycle manufacturers in China.
- (27) For these and other reasons stated in Recitals 15 to 21 above, the Council concludes that individual treatment is not appropriate in this case at the present time.

2. Sampling

- (28) In view of the large number of models and exporters, the Commission had to base its findings on dumping on a representative sample. For this purpose the Commission took the models manufactured by a representative selection of manufacturers. This selection included two state owned organizations, two joint venture companies and one company which sold via a company in Hong Kong. In order to increase the representativity of its sample for its definitive conclusion, the Commission has included in the sample the fully foreign owned company which is the most important in terms of volume of exports. The six companies which are now included in the sample represent 88 % of all exports to the Community by the companies which replied to the questionnaire.

The Council confirms the methodology.

F. Dumping

1. Normal value

- (29) In the provisional duty determination the Commission concluded that Taiwan was an appropriate analogue country for the determination of the normal value of Chinese exports to the Community and normal value was consequently established on the basis of Article 2 (5) (a) (i) of Regulation (EEC) No 2423/88 i.e., prices of bicycles sold by the Taiwanese producers on their domestic market.
- (30) One exporter argued that the People's Republic of China was a market economy country given the extent of economic reform which had taken place in that country. The company claimed that, as far as the bicycle sector was concerned, market economy rules applied. It requested, therefore, that normal value should be based on a constructed value in the People's Republic of China.
- (31) The Commission rejected this argument, for which no evidence was submitted. The People's Republic of China is considered a non-market economy country, in accordance with Article 2 (5) of the Regulation (EEC) No 2423/88 and Regulation (EEC) No 1766/82 (1).
- (32) One exporter requested the Commission to reassess its choice of Taiwan as the analogue country on the grounds that the gross national product per capita and the national distribution of labour had not been taken into account.

(1) OJ No L 195, 5. 7. 1982, p. 21.

(33) In Recital 20 of Regulation (EEC) No 550/93, the Commission concluded that, given the level of competition on the Taiwanese market and the comparability of the models and the scale of the production in Taiwan, its choice as analogue country was appropriate and not unreasonable. The fact that the gross national product per capita and the national distribution of labour were not included in the Commission's criteria, does not render the selection of Taiwan invalid. These criteria are not relevant because there is no direct relationship between them and the cost of production. Secondly, figures for the gross national product of a State trading country and a market economy are not comparable. In any case, the Commission examined exhaustively all proposals made by the exporters and contacted the major producers in the four countries proposed but did not obtain their cooperation. Moreover the Commission has not received any other proposal which, even if it took account of the additional criteria proposed by the exporter, would have been more suitable than Taiwan.

(34) The normal value for the People's Republic of China has been established, for the purpose of the preliminary determination, on the basis of Article 2 (5) (a) (i) of Regulation (EEC) No 2423/88 i.e., on the basis of domestic prices in Taiwan. As explained in recital 20 of Regulation (EEC) No 550/93 the Commission found that the bicycles sold on the Taiwanese market were largely comparable to the Chinese models included in the sample. Prices in Taiwan, which were actually paid or payable in the ordinary course of trade, consequently constituted an adequate basis for normal value with regard to the People's Republic of China. However, in order to increase the representativeness of its dumping calculation, the Commission decided to complete its original dumping calculation by adding certain Chinese models, for which constructed values of comparable models of bicycles exported by Taiwanese producers to the Community were available.

(35) One exporter claimed that the Taiwanese exporters received more favourable treatment than the Chinese exporters on the grounds that the normal value for Taiwan was based on a constructed value while normal value for the People's Republic of China, for the purpose of Regulation (EEC) No 550/93, was based on prices in Taiwan.

(36) The Commission rejects this argument. As regards the bicycles models exported to the Community by the Taiwanese exporters, the Commission found that there were substantial differences between

these models and the models which were sold on the Taiwanese domestic market. As explained in recital 16 of Regulation (EEC) No 550/93 domestic prices should therefore not be used in view of the fact that the adjustments to be made in such a case to the price would be of such significance that it would effectively become meaningless. In the case of the People's Republic of China, the same methodology could not be applied because reliable data on production costs is not available. However, the use of actual Taiwanese prices is not discriminatory against the People's Republic of China. The claim made by the exporter would suggest that normal values calculated in relation with constructed value were lower than actual prices in Taiwan but this was not the case, since the elements of the constructed value were based on actual prices. In fact, the Chinese exporter has most likely benefitted from the use of prices on the Taiwanese market since, as explained in recital 29 of the Regulation (EEC) No 550/93, the Commission endeavoured to use Taiwanese models which were less well equipped than the comparable Chinese model.

The Council confirms the conclusion on normal value.

2. Export price

(37) One exporter claimed that the export sales used by the Commission in its dumping calculation were insufficient and not representative.

(38) In its preliminary determination, the Commission's dumping calculation was based on those Chinese models for which there were comparable models sold in Taiwan, in the ordinary course of trade and in sufficient quantities. It was not possible to extend the number of bicycles included in the dumping calculation since all comparable models sold in Taiwan had been used. As explained in Recital 34, the Commission, having exhausted all possibilities for normal value based on prices in Taiwan, decided to complete its original dumping calculation by adding more Chinese models, for which constructed values of comparable models of bicycles exported by Taiwanese producers to the Community were available. This method was applied for all companies included in the sample and resulted in a ratio of 63 of the number of bicycles included in the dumping calculation in comparison to total exports, which, in the Commission's view, is more than sufficient in terms of representativeness requirements.

(39) Export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community.

- (40) For its preliminary determination, the Commission, for one exporter which sold to the Community via a related company in Hong Kong, calculated the export price in accordance with Article 2 (8) (a) of Regulation (EEC) No 2423/88. The Commission has now re-examined this matter and decided that, in the absence of any export price from the People's Republic of China, the Chinese export price could only be established by way of construction on the basis of the price at which the product concerned was resold by the Hong Kong exporter to independent Community customers, in accordance with Article 2 (8) (b) of that Regulation. Allowance was made for an estimated margin of 5 % to take account of the fact that the sales were made via Hong Kong. This method appeared to be reasonable and the only appropriate treatment for the specific situation.

The Council confirms this approach.

3. Comparison

- (41) One exporter requested that adjustments be made, where applicable, for differences in costs for freight, duty drawback, commissions and salesmen's salaries. The Commission accepted this argument and has, in addition to the adjustments mentioned in Recital 28 of Regulation (EEC) No 550/93 also made adjustments for differences in costs for freight, duty drawback, commissions and salesmen's salaries.
- (42) Several exporters continued to argue that the Commission had taken insufficient account of the quality of Chinese bicycles in comparison to those from Taiwan in restricting the criteria of the differences in the category of the bicycle, the material of the frame and the number of gears. They alleged that there were other factors which required adjustments, which one exporter estimated would represent a further reduction of 5 % on the normal value. On the other hand, one importer claimed that the bicycles he imported from the People's Republic of China were of such a high quality that they did not compete with the bicycles produced by the Community industry.
- (43) Although the arguments by the various parties were contradictory as far as the quality of the exported products is concerned, the Commission has now extended the criteria used for determining which models were comparable to include the make and type of the derailleurs, the chainwheel, the gear levers, the brake sets and hubs, since the quality of a bicycle is also determined by these components. Furthermore, some of the quality differences were
- already accounted for to some degree by the selection of a less well equipped Taiwanese bicycle for comparison as explained in Recital 29 of Regulation (EEC) No 550/93. The Commission has consequently taken account of the major criteria which determine the quality of a bicycle.
- (44) Some exporters argued that some of the model comparisons made by the Commission between the models exported from the People's Republic of China and the comparable model sold in Taiwan were inaccurate and that the Taiwanese models selected by the Commission were not always less well equipped as indicated in Recital 29 of Regulation (EEC) No 550/93. The Community industry, however, argued that the Commission, in many cases, had discriminated in favour of Chinese exporters in its selection of Taiwanese models for normal value. They argued that the real dumping margin was in fact, much higher.
- (45) The Commission has verified the comments made by all parties on model comparison, has adjusted the comparison by adding further criteria as explained in Recital 43 of this Regulation and, where possible, by replacing the models by using the methodology explained in Recital 29 of Regulation (EEC) No 550/93. The calculation of dumping has been adjusted accordingly.
- (46) One exporter requested an adjustment for SG&A expenses incurred by one producer in Taiwan whose domestic sales were made via a related sales subsidiary.
- (47) The Commission examined this argument and came to the conclusion that the fact that sales were made via a sales subsidiary did not affect price comparability.
- (48) One exporter claimed that since its exports to the Community were OEM (original equipment manufacture) sales i.e. sales to an importer which resold in the Community under its own brand name, and these were compared to a normal value based on Taiwanese sales sold as 'own brand sales' to retailers, an adjustment should be made for differences in level of trade.
- (49) This argument cannot be accepted by the Commission. Apart from the fact that the request was unsubstantiated the Commission found, as explained in Recital 27 Regulation (EEC) No 550/93, that it was inappropriate to make an adjustment because prices, costs and profits for OEM sales in Taiwan did not consistently differ from those made under the 'own brand' label.

The Council confirms these conclusion.

4. Dumping margins

- (50) The companies which replied to the Commission's questionnaire constituted only 73 % of the total exports from the People's Republic of China. The Chinese authorities had the opportunity to communicate the names and addresses of the other producers in China so that they could also be sent questionnaires, but the Chinese authorities failed to do so. Accordingly, it can only be assumed that the dumping from these non-cooperating producers is at least as great as that of the co-operating exporters found to be dumping at the highest level. Therefore, the dumping margin is established on the basis of the weighted average per model dumping margin of the six companies included in the sample and for the remaining 27 % of non-cooperating exports for which no reply to the questionnaire was received, on the basis of Article 7 (7) (b) of Regulation (EEC) No 2423/88. In this respect the Commission considered that the best facts available constituted the dumping margins of the models of the company in the sample with the highest margin. On this basis, the dumping margin for the People's Republic of China, expressed as a percentage of cif value amounts now to 30,6 %.

The Council confirms the Commission's findings on dumping.

G. Injury

1. Total consumption volume and market shares of dumped imports

- (51) Following a re-examination of the market share of the Community industry, it was found that the figures given in the provisional duty determination required adjustment. The revised figures show that the market share of the Community industry dropped from 37,8 % in 1989 to 30,2 % during the investigation period. The remainder of recitals 38 and 39 of Regulation (EEC) No 550/93 are confirmed.

2. Prices of dumped imports

- (52) Some exporters claimed that the methodology set out in recitals 40 to 44 of Regulation (EEC) No 550/93 for calculating the level of price undercutting was not sufficiently precise and did not sufficiently take account of the quality of the bicycles.
- (53) The Commission has taken the arguments of the exporters into account and made a new calculation of price undercutting by extending the methodology outlined in Recitals 40 to 44 of Regulation

(EEC) No 550/93. This was done by splitting each of the hundred different groups of bicycles, which were created on the basis of the category of the bicycle, the material of the frame and the number of gears, into a further three segments. These three segments represent different quality levels of the bicycle (high, medium and low) which were determined on the basis of the derailleur system.

- (54) One company argued that the calculation of price undercutting was not representative because it did not include sufficient exports to the Community and because there were no or insufficient sales by certain Community producers included in the calculation.

- (55) The Commission took account of this argument by including more models in its calculations. Thus the calculation now covers more than 75 % of the bicycles sold by all the exporters included in the sample. The Commission also increased the number of models and the number of the Community producers in its calculation.

- (56) One company argued that the adjustment made by the Commission in Recital 42 of Regulation (EEC) No 550/93 for differences in the level of distribution channel was insufficient. The company gave two examples which, it alleged, justified a larger adjustment.

- (57) The Commission has verified the examples given by the company in question and found that one company had a margin which did not substantially vary from the margin used by the Commission while the other company sold to a different level of trade and its figures could therefore not be used. The Commission has made some further investigations of the replies of importers to its questionnaires and has come to the conclusion that its adjustment for differences in the levels of distribution, as set out in Recital 42 of Regulation (EEC) No 550/93, was accurate.

- (58) The Commission consequently reviewed its calculation of price undercutting as described in Recitals 56 and 58 of Regulation (EEC) No 550/93. The weighted average margin of undercutting for exports from the People's Republic of China was found to be 59 %.

3. State of the Community industry

- (59) Several exporters questioned the Commission's provisional findings on the state of the Community industry. They argued that the Community industry made larger profits and benefited fully from the increased consumption in the form of increased production, sales and market share.

- (60) The Commission has subsequently re-examined all the details on the state of the Community industry and requested further details from certain Community producers. The result of this exercise is that the Commission's findings on production, capacity, utilization rate, stocks, sales, market shares, development of prices, profitability and investments have marginally changed but the overall trend, which was provisionally established in Regulation (EEC) No 550/93, is clearly confirmed.
- (a) Production, capacity, utilization rate and stocks
- (61) The production of the Community industry concerned increased from 5 334 000 units in 1988 to 5 876 000 units in 1989 and to 6 620 000 units in 1990. The production decreased to 6 190 000 units during the investigation period.
- (62) The production capacity increased from 7 620 000 units in 1988 to 8 161 000 units in 1989 and to 8 758 000 in 1990. It remained at the same level during the investigation period. Capacity utilization increased from 70 % in 1988 to 72 % in 1989 and to 76 % in 1990. There was a decrease to 71 % during the investigation period.
- (63) The level of the stocks held by the industry rose from 288 000 units in 1988 to 395 000 units in 1989, but decreased subsequently to 330 000 units in 1990 and finally increased again to 419 000 units during the investigation period.
- (b) Sales and market shares
- (64) Between 1988 and 1989 consumption of bicycles in the Community increased by 18,5 % while sales by the Community industry increased by only 11,4 %. Between 1989 and 1990 consumption increased further by 21,1 % while sales by the industry only increased by 10,4 %. The consumption between 1990 and the investigation period increased by 9,2 % while the sales by the Community industry actually fell by 4,2 %.
- (65) The market share held by the Community industry concerned fell continuously from 40,2 % in 1988 to 37,8 % in 1989, to 34,4 % in 1990 and, finally, to 30,2 % in the investigation period.
- (c) Development of prices
- (66) The Commission, for the purpose of its findings for provisional measures, came to the conclusion that, while it was not possible to establish with sufficient precision the exact price development of the numerous models, prices of bicycles did not follow the upgrading of specifications.
- (67) Some exporters claimed that prices of bicycles in the Community have actually increased substantially.
- (68) The Commission has made a further examination to establish more precisely the development of prices charged by the Community industry. The Commission has established that, between 1990 and the investigation period, prices of representative models, which remained virtually unchanged over a certain period of time for the four largest Community producers, decreased, on average, by 7,55 % despite the continuous upgrading of specifications and an increasing demand for bicycles in the Community.
- (d) Profitability
- (69) The Commission found that despite the continuous increase in demand over the last four years, the profits of the Community industry remained relatively low. On the basis of a further examination of the financial situation of the Community industry the Commission established that profits increased from 2,58 % in 1988 to 4 % in 1989 and further to 5,11 % in 1990. In the investigation period profits decreased to 4,81 %.
- (e) Investments
- (70) The investments made by the Community industry increased from ECU 16,5 million in 1988 to ECU 20,7 million in 1989 and further to ECU 25,0 million in 1990 and to ECU 25,3 million during the investigation period.
4. *Conclusion as to injury*
- (71) The Commission, in the light of the final determination of the injury factors, in particular in view of the stagnation of sales, the loss of market share and unsatisfactory profits during a period of increased demand, concludes that the Community industry suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.
- The Council confirms this conclusion and its underlying findings.
- H. *Cause of injury*
- (a) *Effect of dumped imports*
- (72) The Commission has, in its preliminary conclusions, set out in detail the effect of the dumped imports on the Community industry (recitals 55 to 57 of Regulation (EEC) No 550/93). Since no new arguments were put forward in this connection the Commission confirms its findings.

(b) Other factors

- (73) One exporter argued that the reason for any decrease in market share by the Community industry was not dumping but the inability to supply bicycles in accordance with demand due to a lack of investment.

Given the Commission's findings on capacity utilization, which show that the utilization of capacity never reached more than 76 %, the Community industry could easily have supplied more bicycles. Moreover, the fact that the Community industry made increasing investments demonstrated its commitment to the bicycle industry. This argument is consequently rejected.

- (74) As far as recitals 58 to 61 of Regulation (EEC) No 550/93 are concerned no new evidence was received which would lead to a change in the Commission's provisional findings. The Commission consequently confirms its findings.

The Council consequently confirms the Commission's findings concerning the effect of the dumped imports and relating to other factors.

I. Community interest

- (75) As stated in recital 65 of Regulation (EEC) No 550/93, the Commission concluded that it was in the interests of the Community that measures be taken.
- (76) No new information was received subsequently. The Council confirms the above conclusions.

J. Undertaking

- (77) One Chinese exporter has offered a price undertaking. The Commission has rejected this undertaking because the acceptance of an undertaking from an exporter in a non-market economy would presuppose individual treatment for this exporter, which in the present case could not be granted.

K. Definitive duty

- (78) Given that the injury level exceeds the dumping margin, the duty should be based on the latter.
- (79) One exporter requested that the Commission takes account, in accordance with Article 13 of the

GATT anti-dumping code, of the fact that the People's Republic of China is a developing country by applying constructive remedies.

- (80) In this respect, it should be borne in mind that the People's Republic of China is not a signatory to the GATT anti-dumping code.

L. Collection of provisional duties

- (81) In view of the dumping margins established, and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts secured by way of provisional anti-dumping duties should be definitively collected to the extent of the amount of the duty definitively imposed,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of bicycles and other cycles (including delivery tricycles), not motorized falling within CN code 8712 00, originating in the People's Republic of China.
2. The rate of the duty, applicable to the net, free-at-Community-frontier price, before duty, shall be 30,6 %.
3. The provisions in force concerning customs duties shall apply.

Article 2

The amounts secured by way of provisional anti-dumping duty imposed by Regulation (EEC) No 550/93 shall be definitively collected at the rate corresponding to the definitive duty. Amounts secured in excess of the definitive rate of duty shall be released.

Article 3

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

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

Done at Brussels, 8 September 1993.

For the Council

The President

W. CLAES