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CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

ADVISORY OPINION

7 AUG 1974

Mr. Aaron Locker
Aberman, Greene & Locker
540 Madison Avenue
New York, New York 10022

Dear Mr. Locker:

This is in response to your July 25, 1974, request for an advisory opinion concerning the effective date of the bicycle regulation as it applies to importers of bicycles.

As you have indicated, the regulation applies to any bicycle of the defined type "that is introduced into interstate commerce on or after January 1, 1975..." (16 CFR §1500.18(a)(12)). This phrase is applicable to goods shipped from foreign countries into the United States at the time that they enter a United States port of entry. This means that all bicycles which do not conform to the provisions of the regulation and which enter such a port on or after January 1, 1975, will be considered to be in violation of the Federal Hazardous Substances Act under section 4(a), 15 U.S.C. §1263(a).

Imports are defined, in part, by the time that they first enter a United States port. As a practical and jurisdictional matter, enforcement of the Hazardous Substances Act is first possible at this time, as well. Therefore, the Commission considers foreign products to be introduced into interstate commerce when they are brought within the limits of a United States port of entry.

We trust that this is responsive to your request. If you have any questions, please do not hesitate to call this office.

Sincerely,

Michael A. Brown

Michael A. Brown
General Counsel

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CABLE ADDRESS
ABGREE

July 25, 1974

Mr. David Schmeltzer, Esq.
Consumer Product Safety Commission
Washington, D. C. 20207

Dear Dave:

This will confirm my request for an advisory opinion on the effective date of the bicycle regulation as it applies to importers of bicycles.

The regulation appearing at 16 CFR, Part 1512 provides that it shall become effective January 1, 1975.

Paragraph 28 of the Commission's discussion of the comments received on the proposal of May 10, 1973, as to when the regulation should become effective states that "Part 1512, promulgated below, shall be applicable to bicycles (except 'track bicycles' and 'one-of-a-kind bicycles') that are introduced into interstate commerce on or after January 1, 1975."

I have been asked to obtain an advisory opinion from the Commission with respect to the manner in which this phrase will be applied to goods which are shipped from foreign countries into the United States. For example, will goods which are delivered to a carrier at a foreign port for shipment into the United States to an American manufacturer to whom title has passed in said foreign country prior to January 1, 1975, be regarded as having been "introduced into interstate commerce before January 1, 1975"?

The regulation in issue has been promulgated under the Federal Hazardous Substances Act.

Section 2(b) of that Act defines the term interstate commerce to mean "commerce between any State or territory and any place outside thereof." Accordingly, Congress has included both interstate and foreign commerce within the definition since it is not limited solely to commerce among the several States.

Clause 3, Section 8, Article I of the Constitution provides that Congress shall have power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." For the purposes of a particular statute, Congress by definition may include foreign and interstate commerce within a single expression. See Border Pipe Line Co. v. Federal Power Commission, 171 F.2d 149 (D.C. Cir. 1948).

The inclusion of foreign and interstate commerce within a single expression is reasonable in light of the Congressional intent to prohibit the sale or delivery of misbranded hazardous substances or banned hazardous substances in the United States.

This interpretation is consistent with the power of the Commission to refuse admission of imported hazardous substances under Section 14(a) of FHSA. If the Commission can ban a bicycle which is imported on or after January 1, 1975, it should deem the delivery of such bicycle to a carrier at a foreign port for shipment to the United States as having been introduced into interstate commerce prior to that date.

Certainly the delivery of goods to a carrier in a foreign port for shipment into the United States to an American manufacturer to whom title has passed has a substantial economic effect upon interstate commerce. It is well established that a delivery of goods to a common carrier for shipment to another state is in interstate commerce from the time of its delivery to the carrier until it reaches the consignee. U.S. v. Burton, 475 F.2d 469 (8th Cir. 1973).

I would appreciate your opinion with reference to the above at your earliest convenience since it affects a substantial segment of the bicycle industry.

Sincerely yours,

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MAR 26 1976

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Mr. David J. Mytelka
D.J. Mytelka & Associates Inc.
1080 Lousons Road
Union, New Jersey 07083

Dear Mr. Mytelka:

This is in response to your telecable request for an advisory opinion concerning the question of whether the bicycle regulations would be applicable to bicycles manufactured out of the United States and arriving on May 10, 1976 in Oakland, California, and then trans-shipped in containers to points further east.

Enclosed for your information is advisory opinion #131 which concludes that foreign products are introduced into interstate commerce when they are brought within the limits of a United States port of entry. Therefore, as the regulation is now worded with regard to the effective date, bicycles arriving at a port of entry prior to the effective date May 11, 1976, would not be required to meet the requirements of the regulation even though the bicycles were trans-shipped after the effective date.

Sincerely,

Original signed by
Michael A. Brown

Michael A. Brown
General Counsel

Enclosure

DSCHMELTZER:jh 3-26-76
cc: Schmeltzer
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