Council Implementing Regulation (EU) No 796/2012 of 30 August 2012 imposing a definitive anti-dumping duty on imports of lever arch mechanisms originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 796/2012

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Articles 9(4), 11(2), 11(5) and 11(6) thereof,

Having regard to the proposal from the European Commission ('the Commission') after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) By Regulation (EC) No 1136/2006[(2)] ('the original Regulation') the Council imposed a definitive anti-dumping duty of 27,1 % and 47,4 % on imports of lever arch mechanisms ('LAM') originating in the People's Republic of China ('PRC').

2. **Request for an expiry review**

(2) Following the publication of a notice of impending expiry[(3)] of the definitive anti-dumping measures in force, the Commission received on 26 April 2011 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by LAMMA (Lever arch mechanism manufacturers association) on behalf of three Union producers ('the applicant') representing a major proportion, in this case more than 50 %, of the Union production of lever arch mechanisms.

(3) The request provided sufficient evidence that the expiry of the measures imposed on imports of LAM originating in the PRC would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

3. **Initiation of an expiry review**

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 23 July 2011, by a notice published in the *Official Journal of the European Union*[4] ('the notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. Investigation

4.1. *Review investigation period and the period considered*

(5) The investigation concerning the likelihood of continuation or recurrence of dumping covered the period from 1 July 2010 to 30 June 2011 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2008 to the end of the review investigation period ('the period considered').

4.2. *Parties concerned by the investigation*

(6) The Commission officially advised the applicant, other known Union producers, exporting producers in the country concerned, unrelated importers, users in the Union known to be concerned, as well as the representatives of the country concerned of the initiation of the expiry review.

(7) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(8) In view of the apparently large number of exporting producers in the PRC, unrelated importers and Union producers, sampling was envisaged in the notice of initiation in accordance with Article 17 of the basic Regulation.

(9) In respect of exporting producers in the PRC and unrelated importers, in order to enable the Commission to decide whether sampling would be necessary and, if so, to select a representative sample, those parties were requested to make themselves known within 15 days of the initiation of the review and to provide the Commission with the information requested in the notice of initiation. Given that no exporting producer in the PRC made itself known and provided the Commission with the information requested in the notice of initiation and that only one unrelated importer made itself known but did not provide the Commission with the information requested in the notice of initiation, sampling was not considered necessary in either case.

(10) The Commission announced in the notice of initiation that it had provisionally selected a sample of Union producers. This sample consisted of two companies, out of the six Union producers that were known prior to the initiation of the investigation, selected on the basis of their sales and production volume of the product concerned in 2010 as well as geographic location in the Union. The sample represented over 50 % of the total estimated Union production and sales during the RIP. Interested parties were

invited to consult the file and to comment on the appropriateness of this choice within 15 days of the date of publication of the notice of initiation. No interested party opposed the proposed sample.

(11) The Commission sent questionnaires to the two sampled Union producers, the importer that made itself known and all users known to be concerned.

(12) Replies to the questionnaires were received from the two sampled Union producers and two users. The unrelated importer mentioned in recital 9 that made itself known neither replied to the sampling questions nor filled in a questionnaire reply.

(13) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:

(a) Union producers
- Industria Meccanica Lombarda S.r.l., Offanengo, Italy,
- NIKO Metallurgical company, d.d. Zelezniki, Slovenia;

(b) user
- HIT OFFICE s.r.o., Teplice, Czech Republic.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(14) The product concerned by this review is the same as the one in the original Regulation, namely lever arch mechanisms generally used for archiving sheets and other documents in binders or files currently falling within CN code ex 8305 10 00 (TARIC code 8305 10 00 50) ('the product concerned') and originating in the PRC. These lever arch mechanisms consist of arched sturdy metal elements (normally two) on a back plate and having at least one opening trigger that permits inserting and filing of sheets and other documents. Ring binder mechanisms classified within the same CN code are not included in the scope of the product concerned for the purpose of this investigation.

(15) The present review investigation confirmed that, as in the original investigation, the product concerned and that produced in the Union by the Union producers have the same basic technical and physical characteristics and the same uses. They were therefore considered to be like products according to Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

(16) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

1. Preliminary remarks

(17) As mentioned in recital 9, none of the known Chinese exporting producers contacted at initiation cooperated in the investigation. The Chinese authorities were notified of this fact as well as of the possible application of Article 18(1) of the basic Regulation, and were given an opportunity to present their comments. No comments were received in this regard.

(18) Therefore, and in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping set out below had to be based on facts available, in particular publicly available information such as official company websites and product web search engines, information in the request for review and information obtained from cooperating parties in the course of the review investigation (namely, the applicants and the sampled Union producers).

2. **Dumping of imports during the RIP**

(19) For the purpose of establishing normal value, the notice of initiation made reference to the use of an analogue country.

(20) As concerns the export price, due to the lack of cooperation from both exporting producers in the PRC and unrelated importers in the Union market, the Commission was unable to establish any export sales quantities or prices on a transactional basis. In this respect, the Commission considered alternative means to determine the export price.

(21) Firstly, it was considered whether Eurostat, cross-checked with other available data, could be used as an alternative means to establish export prices. These were considered unsuitable in so far as one of the sources also covered imports other than the product concerned and the other sources did not allow for the possibility to compare export prices with those of the Union industry on a type-per-type basis.

(22) Secondly, the Commission also considered having recourse to the export prices contained in the request for review. It is recalled that this methodology was used in the original investigation and that it permits a comparison on a type-per-type basis. However, the invoices contained in the request for review were for export prices to other third countries.

(23) Accordingly, no dumping calculation could be made on the basis of export prices to the Union and it was not possible to establish an affirmative determination of dumping. The investigation therefore focused on the likelihood of a recurrence of dumping.

3. **Likelihood of recurrence of dumping**

(24) As regards the investigation of the likelihood of recurrence of dumping, the following elements were analysed: the relationship between normal value and export prices to third countries; production capacity, production and spare capacity in the PRC; and the attractiveness of the Union market in relation to imports from the PRC.

3.1. *Relationship between the normal value and export prices to third countries*

(25) In view of the lack of cooperation from exporting producers in the PRC, normal value was compared to export prices from the PRC in accordance with Article 2(7) of the basic Regulation.

3.1.1. *Basis for determining normal value*

(26) Since the PRC is an economy in transition, in accordance with Article 2(7)(a) of the basic Regulation normal value had to be determined on the basis of the price or constructed value in an appropriate market economy third country (the analogue country), or the price from the analogue country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.

(27) The request for review by the Union industry cited a number of producers in market economy countries other than the Union (namely, India, Iran and Thailand). Upon initiation, these producers were duly contacted by the Commission as well as other potential producers in such countries that could be identified from publicly available sources.

(28) The notice of initiation specified that if no cooperation was forthcoming from producers in market economy countries other than the Union, the Commission envisaged using the prices actually paid or payable in the Union as the basis for determining the normal value. Indeed, the prices actually paid or payable in the Union was the basis used to determine normal value in the original investigation.

(29) No interested party commented on the appropriateness of the abovementioned basis for determining normal value.

(30) No producer in market economy countries, other than in the Union, contacted by the Commission decided to cooperate in the present review.

(31) In the above context, the Commission was left with no other alternative than to rely on the prices actually paid or payable in the Union as the basis to determine normal value.

3.1.2. *Normal value*

(32) Pursuant to Article 2(7)(a) of the basic Regulation and as explained in recitals 26 to 31 above, normal value was established using the price actually paid or payable in the Union for the like product which were found to be in the ordinary course of trade.

(33) As a result, normal value was established as the weighted average domestic sales price to unrelated customers of the sampled Union producers.

(34) It was first established whether the domestic sales of the like product to independent customers of the sampled Union producers were representative in accordance with Article 2(2) of the basic Regulation, i.e. whether the total volume of such sales represented at least 5 % of the total sales volume of the product concerned