Council Regulation (EC) No 818/2008 of 13 August 2008 amending Regulation (EC) No 2074/2004 imposing a definitive anti-dumping duty on imports of certain ring binder mechanisms originating in the People's Republic of China and terminating the investigation concerning the possible circumvention of anti-dumping measures imposed by that Regulation by imports of certain ring binder mechanisms consigned from Thailand, whether declared as originating in Thailand or not

COUNCIL REGULATION (EC) No 818/2008

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation) and in particular Article 13 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) By Regulation (EC) No 119/97[(2)], the Council imposed definitive anti-dumping duties ranging from 32,5 % to 39,4 % on imports of certain ring binder mechanisms (RBMs) originating in the People's Republic of China (PRC). These rates of duty were applicable to RBMs other than those with 17 or 23 rings, while RBMs with 17 and 23 rings were subject to a duty equal to the difference between the minimum import price (MIP) of EUR 325 per 1 000 pieces and the free-at-Community-frontier not cleared through customs price whenever the latter was lower than the MIP.

(2) By Regulation (EC) No 2100/2000[(3)], the Council amended and increased the above mentioned duties for certain RBMs other than those with 17 or 23 rings, following an investigation pursuant to Article 12 of the basic Regulation. The amended duties ranged from 51,2 % to 78,8 %.

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(3) Following an expiry review investigation (the review investigation) pursuant to Article 11(2) of the basic Regulation, the Council, by Regulation (EC) No 2074/2004[(4)], extended the existing anti-dumping measures for four years.

(4) On 1 July 2004, following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, by Regulation (EC) No 1208/2004[(5)] the Council extended the measures to imports of certain RBMs consigned from Vietnam.

(5) On 24 December 2004, by Regulation (EC) No 2231/2004[(6)] the Commission terminated an anti-circumvention investigation concerning imports of certain RBMs consigned from Thailand as it was found that there was genuine production of RBMs in Thailand which accounted for 100 % of Community imports from Thailand during the period of investigation defined for that investigation.

(6) On 12 January 2006, following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, by Regulation (EC) No 33/2006[(7)] the Council extended the measures to imports of certain RBMs consigned from the Lao People's Democratic Republic.

(7) On 6 December 2007, by Regulation (EC) No 1434/2007[(8)] (the initiating Regulation), the Commission initiated an investigation pursuant to Article 13(3) of the basic Regulation concerning the possible circumvention of anti-dumping measures imposed by Regulation (EC) No 2074/2004, by imports of certain RBMs consigned from Thailand, whether slightly modified or not and whether declared as originating in Thailand or not, and by imports of certain slightly modified RBMs originating in the PRC and made such imports subject to registration.

1.2. Request

(8) The anti-circumvention investigation was initiated on the basis of a request, lodged by Ring Alliance Ringbuchtechnik GmbH, which contained sufficient prima facie evidence that the anti-dumping measures are being circumvented by means of a slight modification of the product concerned to make it fall under customs codes which are normally not subject to measures and that the modification does not alter the essential characteristics of the product concerned. Furthermore, the request contained sufficient prima facie evidence that the anti-dumping measures are being circumvented by means of transhipment via Thailand of the product concerned, whether slightly modified or not.

1.3. Product concerned

(9) The product concerned is, as defined in Regulation (EC) No 2074/2004, certain RBMs currently classifiable within CN code ex 8305 10 00. These RBMs consist of two rectangular steel sheets or wires with at least four half-rings made of steel wire fixed on them and which are kept together by a steel cover. They can be opened either by pulling the half rings or by using a small steel trigger mechanism fixed to the RBM.

1.4. Investigation

(10) The Commission officially advised the authorities of the PRC and Thailand, the producers/exporters in Thailand and in the PRC and the importers in the Community known to the Commission of the initiation of the investigation. Questionnaires were sent to the producers/exporters in Thailand and the PRC and to the importers in the Community. 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 initiating Regulation.

(11) One producer/exporter in Thailand, its related Chinese exporting producer and its parent trading company based in Hong Kong submitted a complete reply to the questionnaire as did another Chinese exporting producer together with its Hong Kong based parent trading company. Replies to the questionnaire were also submitted by six importers in the Community. The Commission carried out verification visits at the premises of the following companies:

— Thai Stationery Industry Co. Ltd, Thailand (TSI),

— Wah Hing Stationery Manufactory Limited, Hong Kong (WHS),

— Wah Hing Stationery Manufactory Limited, Pan Yu Shi, Guangzhou, PRC,

— World Wide Stationery Manufacturing Co. Ltd, Hong Kong,

— Donghguan Humen Nanzha World Wide Stationery Manufacturing Co. Ltd, PRC.

1.5. Investigation period

(12) The investigation period covered the period from 1 October 2006 to 30 September 2007 (the IP). Data was collected from 2004 to the end of the IP in order to investigate the change in the pattern of trade (the period investigated).

2. RESULTS OF THE INVESTIGATION

2.1. Slightly modified RBMs

2.1.1. Essential characteristics

(13) The investigation established that one of the two cooperating Chinese exporting producers was producing slightly modified RBMs. The modification consisted in changing the rectangular shape of the sheets by using chamfered sheets which have indentations and by cutting material off the edges of the sheets so that their shape is no longer rectangular. Chamfering means cutting a furrow in the sheet in the form of a column. These particular product types were identified in the Community market as ‘wave blade’ RBMs.

(14) It was also established that this modification of the product concerned enabled importers in the Community to classify these product types under TARIC codes not subject to the measures, in particular TARIC code 8305 10 00 90 which existed until the initiating Regulation came into force.

(15) The question of whether or not the modification mentioned in recital 13 altered the essential characteristics of the product concerned was then investigated. In this regard, it was found that the slightly modified RBMs differ slightly only in the shape

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of the sheets but that that modification does not alter the essential characteristics of the product concerned. Indeed, the slightly modified RBM continues to be comprised of two sheets with at least four half-rings attached to them and continues to be kept together by a steel cover. The opening systems also remain the same since both products can be made to open either by pulling the half-rings or with a trigger mechanism.

(16) Moreover, there were only minor changes in the sheets since otherwise they would have endangered the proper functioning of the slightly modified RBMs in terms of tension and adhesive forces.

(17) It will be recalled that a large number (several hundreds) of different types of RBMs varying in a number of features such as the width of the base, the type of mechanism, the number of rings, the opening system, etc., are present on the Community market. All these types of RBMs were nevertheless considered to constitute one single product in the previous investigations as it was found that all types have the same basic physical and technical characteristics and that they are largely interchangeable. Equally, this rather minor difference in the appearance of the RBMs was found not to be sufficiently different to warrant a finding of different like products. Therefore it is concluded that all RBMs constitute a single product for the purpose of this investigation.

(18) On the basis of the above it was concluded that the slightly modified products with chamfered sheets should be covered by the definition of the product concerned, as this modification did not alter its essential characteristics.

2.1.2. Change in the pattern of trade

(19) The imports into the Community of the slightly modified RBMs started in 2003 after the initiation of the expiry review investigation of the measures applicable to imports of RBMs originating in the PRC.

(20) This type of RBM was designed at the request of an operator in the Community and, on the basis of the information available to the Commission, imports started in the second half of 2003. The import levels identified in the course of the current investigation are as follows: 3,8 million pieces or approximately 234 tonnes in 2004, 2,7 million pieces or approximately 166 tonnes in 2005, 4,3 million pieces or approximately 262 tonnes in 2006 and 2,7 million pieces or 167 tonnes in the IP (representing 1 % of the Community consumption).

(21) In view of the above, it is considered that there was a change in the pattern of trade of the slightly modified RBMs exported by the cooperating Chinese exporting producer to the Community in the period investigated.

2.1.3. Insufficient due cause or economic justification

(22) As noted above, the investigation showed that the modifications made to the product concerned were very minor. It was also found that if a certain saving in the use of the main raw material could be made due to the chamfering operation, this saving was negligible (around 2 %). Moreover, any saving in the consumption of raw materials was

largely offset by costs incurred for the adaptation of machinery before the production process of the chamfered sheets could begin.

(23) It was also found that all sales of the slightly modified product were only to the Community and were essentially made to the operator upon whose request they were designed. This means that the slightly modified RBMs have essentially one buyer worldwide.

(24) Moreover, the group of companies to which the Chinese exporting producer belongs do not produce any wave blade RBMs in their Thai subsidiary. It was stated by the representatives of TSI in this regard that there was no demand for such types, as RBMs originating in Thailand are not subject to anti-dumping measures.

(25) In view of the above, it can be concluded that there was no economic justification other than the imposition of the anti-dumping duties for the change in the pattern of trade between the Chinese exporting producer and the Community stemming from the practice of slightly modifying the product concerned.

2.1.4. Undermining of the remedial effects of the duty in terms of the prices and/or the quantities of the like products

(26) Based on the trade flow analysis set out above, it was found that a change in the pattern of the Community imports is linked to the fact that there were anti-dumping measures in place. While imports of the slightly modified RBMs were absent on the Community market before the imposition of measures, they amounted to 234 tonnes in 2004, to 166 tonnes in 2005, to 262 tonnes in 2006 and to 167 tonnes in the IP, representing 1 % of Community consumption.

(27) The investigation revealed that the imports of slightly modified RBMs from the PRC have taken place at price levels below the export price and well below the normal value established in the review investigation.

(28) On the basis of the above, it was concluded that the change in trade flows, together with the abnormally low export price of the slightly modified products, has undermined the remedial effects of the anti-dumping measures in terms of both quantities and prices of the like products.

2.1.5. Evidence of dumping in relation to the normal values previously established for like or similar products

(29) In accordance with Article 13(1) of the basic Regulation, the question of whether there was evidence of dumping in relation to the normal values previously established for the like product was examined. In this regard, export prices of the slightly modified RBMs made by the Chinese exporting producer during the IP were compared with the normal values established in the review investigation for comparable product types. In the comparison, the different product types were determined by the width of the base, the type of mechanism, the number of rings, the opening system and the length.