Council Regulation (EC) No 2074/2004 of 29 November 2004 imposing a definitive anti-dumping duty on imports of certain ring binder mechanisms originating in the People's Republic of China

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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 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In January 1997, Council Regulation (EC) No 119/97[(2)] imposed a definitive anti-dumping duty on imports of certain ring binder mechanisms ('RBM') originating, *inter alia*, in the People's Republic of China ('PRC' or 'country concerned'). The rate of the definitive duty applicable to the net, free-at-Community-frontier price, before duty, was 32,5 % for World Wide Stationery Mfg ('WWS'), a company which was granted individual treatment and 39,4 % for all other companies in the PRC. These rates of duty were applicable to RBM other than those with 17 or 23 rings (TARIC codes 8305 10 00 11, 8305 10 00 12 and 8305 10 00 19), while RBM with 17 and 23 rings (TARIC codes 8305 10 00 21, 8305 10 00 22 and 8305 10 00 29) 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 price, before duty, whenever the latter was lower than the MIP.

(2) In September 2000, following a request for an anti-absorption review of the abovementioned measures, lodged pursuant to Article 12 of the basic Regulation, the rates of duty applicable to RBM other than those with 17 or 23 rings (TARIC codes 8305 10 00 11, 8305 10 00 12 and 8305 10 00 19) were revised upwards by Council Regulation (EC) No 2100/2000[(3)] to 51,2 % for WWS and to 78,8 % for all other companies in the PRC.

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(3) Anti-dumping and countervailing measures are in force since June 2002 on imports of RBM originating in Indonesia. These measures, which are not subject to the current review, were imposed by Council Regulation (EC) No 976/2002 and Council Regulation (EC) No 977/2002 of 4 June 2002[(4)], respectively.

(4) Following an investigation concerning the alleged circumvention of anti-dumping measures imposed by Council Regulation (EC) No 119/97 by imports of RBM consigned from Vietnam, the measures were extended to imports consigned from Vietnam by Council Regulation (EC) No 1208/2004[(5)].

(5) An investigation concerning the alleged circumvention of anti-dumping measures imposed by Council Regulation (EC) No 119/97 by imports of RBM consigned from Thailand, whether declared as originating in Thailand or not, was initiated in April 2004[(6)].

(6) Both investigations mentioned in the previous two recitals were independent of the results of the present investigation.

2. Request for a review

(7) Following the publication of a notice of impending expiry of the anti-dumping measures in force on imports of certain RBM originating in the PRC[(7)], the Commission received, on 23 October 2001, a request to review these measures pursuant to Article 11(2) of the basic Regulation.

(8) The request was lodged by two Community producers, Koloman Handler AG and Krause Ringbuchtechnik GmbH ('the applicants'), representing a major proportion of the total Community production of RBM. The request was based on the grounds that the expiry of the measures would be likely to result in higher volumes of injurious dumped imports originating in the PRC.

(9) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review pursuant to Article 11(2) of the basic Regulation, the Commission initiated a review[(8)].

3. Investigation

(a) Procedure

(10) The Commission officially advised the exporting producers, importers and users known to be concerned, the representatives of the exporting country, the applicant Community producers and the other known Community producer of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(11) All parties who so requested within the above time limit and who demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.

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(12) Questionnaires were sent to all the parties that were officially advised of the initiation of the review and to those who requested a questionnaire within the time limit set out in the notice of initiation. In addition, one producer in India (analogue country) was contacted and received a questionnaire.

(13) Replies to the questionnaires were received from the two applicant Community producers and one exporting producer in the country concerned, as well as from one producer in the analogue country and two unrelated importers in the Community.

(14) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were granted a period within which to make representations subsequent to disclosure. The comments of the parties were considered and where appropriate, the findings have been modified accordingly.

(b) Interested parties and verification visits

(15) All the information deemed necessary for the purpose of determination of the likelihood of a continuation or recurrence of dumping and injury and of the Community interest was sought and verified. Verification visits were carried out at the premises of the following companies:

(i) *Applicant Community producers*

— Krause Ringbuchtechnik GmbH, Espelkamp, Germany

— SX Bürowaren Produktions- und Handels GmbH (until November 2001 RBM had been manufactured by Koloman Handler AG), Vienna, Austria (see recital (50)),

(ii) *Producer in the exporting country*

— World Wide Stationery Mfg, Hong Kong, PRC

(iii) *Producer in the analogue country*

— Tocheunglee Stationery Manufacturing Co, Chennai, India

(iv) *Unrelated importer in the Community*

— Bensons International Systems B.V., Utrecht, the Netherlands

(c) Investigation period

(16) The investigation on the likelihood of a continuation or recurrence of dumping covered the period from 1 January 2001 to 31 December 2001 (‘investigation period’ or ‘IP’). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 1998 up to the end of the IP (‘period considered’).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

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(17) The product concerned is the same as in the original investigation, i.e. certain ring binder mechanisms made 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 with a small steel-made trigger mechanism fixed to the RBM. The rings can have different shapes, the most common ones being round and D-shaped. RBM are currently classified within CN code ex 8305 10 00 (TARIC codes 8305 10 00 11, 8305 10 00 12 and 8305 10 00 19 for mechanisms other than those with 17 or 23 rings and TARIC codes 8305 10 00 21, 8305 10 00 22 and 8305 10 00 29 for mechanisms with 17 and 23 rings). Lever-arch mechanisms ('LAM') classified within the same CN code are not included in the scope of this investigation.

(18) RBM are used to make paper, cardboard and plastic-coated office files, presentation and other bound files.

(19) A large number of different types of RBM were sold in the Community during the IP. The differences between these types were determined by the width of the base, the type of mechanism, the number of rings, the opening system, the nominal paper holding capacity, the ring diameter, the shape of the rings, the length and the ring spacing. Given the fact that all types have the same basic physical and technical characteristics and within certain ranges, are interchangeable, it was established that all RBM constitute one single product for the purpose of the present proceeding.

2. Like product

(20) It was found that RBM produced and sold on the domestic market in the analogue country (India) and those exported to the Community from the PRC had the same basic physical and technical characteristics and uses.

(21) It was also found that there was no difference in the basic physical and technical characteristics and uses between RBM imported into the Community originating in the PRC and RBM produced by the Community industry and sold on the Community market.

(22) It was therefore concluded that RBM produced and sold on the domestic market in the analogue country, RBM originating in the PRC exported to the Community and RBM produced and sold by the Community industry on the Community market were all like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

(23) 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

(24) Of the three Chinese exporting producers named in the complaint, only WWS, which was granted individual treatment in both the original and the anti-absorption

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investigations, cooperated. The two other exporting companies stated that they had not exported the product concerned to the Community during the IP. However, one of these companies appears to be involved in circumvention practices via Thailand, which has been investigated by the European Anti-Fraud Office (OLAF) (see recitals (42) and (43)).

2. Continuation of dumping

(25) The volume of export sales of the sole cooperating company represented all imports originating in the PRC during the IP, according to Eurostat. This volume represents 1,9 % of the total Community consumption during the IP of the current investigation, compared with 45 % of the total Community consumption during the IP of the original investigation, i.e. from 1 October 1994 to 30 September 1995.

(a) Methodology

(26) Compared with the original investigation, only the choice of analogue country has changed, otherwise the methodology for calculating the dumping margin has remained the same.

(b) Analogue country

(27) Since the PRC is an economy in transition, normal value was determined on the basis of information obtained in an appropriate market economy third country (the 'analogue country') selected in accordance with Article 2(7)(a) of the basic Regulation.

(28) In the original investigation Malaysia was chosen as analogue country. In view of the fact that production in Malaysia has ceased and been transferred, *inter alia*, to India, another representative country had to be chosen. In the expiry review request, India was suggested as analogue country for the purpose of establishing normal value. This choice was not contested. It was also found that the reasons for selecting India, i.e. the size of its domestic market, the openness of its market and its degree of access to basic materials, ensured normal conditions of competition. The Indian producer contacted agreed to cooperate and had representative domestic sales. This company was related to the cooperating Chinese exporting producer, but no reasons were found to consider that this could have an impact on the determination of normal value. Therefore, in accordance with Article 2(7)(a) of the basic Regulation, India was considered to be an appropriate analogue country for establishing normal value.

(c) Normal value

(29) Domestic sales of the like product in the analogue country were found to be profitable and representative during the IP. Therefore, the normal value was based on the price paid or payable in the ordinary course of trade by independent customers in the analogue country, i.e. India.

(d) Export price