# Council Regulation (EC) No 1208/2004 of 28 June 2004 extending the definitive anti-dumping measures imposed by Regulation (EC) No 119/97 on imports of certain ring-binder mechanisms originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam

## COUNCIL REGULATION (EC) No 1208/2004

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## extending the definitive anti-dumping measures imposed by Regulation (EC) No 119/97 on imports of certain ring-binder mechanisms originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam

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 (the basic regulation)[(1)], and in particular Articles 9 and 13 thereof,

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

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) Pursuant to Regulation (EC) No 119/97[(2)], (the original Regulation), 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.

(2) Following an investigation pursuant to Article 12 of Regulation (EC) No 384/96, the Council amended and increased the above duties through Regulation (EC) No 2100/2000 (the anti-absorption investigation). The amended definitive anti-dumping duties ranged from 51,2 % to 78,8 %.

(3) In January 2002, pursuant to Article 11(2) of the basic Regulation, the Commission initiated a review of the above anti-dumping measures[(3)] (the expiry review). This review is still ongoing.

1.2. Request

(4) On 18 August 2003, the Commission received a request pursuant to Article 13(3) of the basic Regulation to investigate the alleged circumvention of the anti-dumping measures imposed on imports of certain RBMs originating in the People's Republic of China. The request was submitted by SX Bürowaren and Ringbuchtechnik

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Handelsgesellschaft GmbH on behalf of producers representing a major proportion of the Community production of certain RBMs (the applicants). The request alleged that the anti-dumping measures in force on imports of certain RBMs originating in the People's Republic of China were being circumvented by means of transhipment via Vietnam.

(5) The request further alleged that there was insufficient due cause or justification other than the imposition of anti-dumping measures for such change in the pattern of trade and that the remedial effects of the existing anti-dumping measures on imports of certain RBMs originating in the People's Republic of China were being undermined both in terms of quantity and price. Significant volumes of imports of certain RBMs from Vietnam appeared to have replaced imports of certain RBMs from the People's Republic of China. In addition, there was sufficient evidence that this increase in imports was made at prices below the non-injurious price established in the investigation that led to the existing measures.

(6) Finally, the applicants alleged that the prices of certain RBMs consigned from Vietnam were dumped in relation to the normal value previously established for the product concerned.

1.3. Initiation

(7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission initiated an investigation according to Regulation (EC) No 1733/2003[(4)] (the initiating Regulation). Pursuant to Articles 13(3), 14(3) and 14(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of certain RBMs consigned from Vietnam, whether declared as originating in Vietnam or not, as from 2 October 2003.

1.4. Investigation

(8) The Commission officially advised the authorities of the People's Republic of China and Vietnam, the producers/exporters, the importers in the Community known to be concerned and the applicant Community industry of the initiation of the investigation. Questionnaires were sent to the producers/exporters in the People's Republic of China and Vietnam as well as to the importers in the Community named in the request or known to the Commission from the original investigation. 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.

(9) One producer/exporter in Vietnam, related to a Chinese exporting producer, submitted a reply to the questionnaire whilst no reply was received from Chinese producers/exporters. Replies to the questionnaire were also submitted by five unrelated importers in the Community.

(10) The following companies cooperated in the investigation and submitted replies to the questionnaires:

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*Unrelated importers*

— Industria Meccanica Lombarda Srl, Italy

— KWH Plast Danmark A/S, Denmark

— OY KWH Plast AB, Finland

— KWH Plast Sverige AB, Sweden

— KWH Plast (UK) Ltd, United Kingdom

*Vietnamese producers/exporters*

— Office Xpress Manufacturing Company Limited, Vietnam; and its related company

— Hong Kong Stationery Manufacturing Corporation Limited, Hong Kong

(11) Verification visits were carried out at the premises of the following companies:

— Office Xpress Manufacturing Company Limited, Vietnam; and its related company

— Hong Kong Stationery Manufacturing Corporation Limited, Hong Kong

1.5. Investigation period

(12) The investigation period covered the period from 1 July 2002 to 30 June 2003 (the IP). Data was collected from 1999 up to the IP to investigate the change in the pattern of trade.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

(i) Determination of the import volume

(13) The export sales volume of RBMs to the Community during the IP reported by the sole cooperating Vietnamese producer/exporter, Office Xpress Manufacturing Company Limited (Office Xpress Manufacturing), substantially exceeded (i.e. by around 50 %) the total import volume of RBMs from Vietnam as recorded in Eurostat during the same period. This was due to the fact that the reported weight did not correspond to the shipment's actual weight but rather to a theoretical, i.e. estimated, weight of the parts. The investigation revealed also that there was only one exporter of RBMs in Vietnam, i.e. Office Xpress Manufacturing. On this basis, it was concluded that the data recorded in Eurostat as imports from Vietnam relate very likely exclusively to exports of Office Xpress Manufacturing. Under these circumstances it was considered that Eurostat data was more reliable than the data reported by Office Xpress Manufacturing.

(14) As far as import trends of RBMs since 1999 are concerned, it should be noted that Office Xpress Manufacturing's related trader in Hong Kong, Hong Kong Stationery Manufacturing Corporation Limited (Hong Kong Stationery) through whom all of Office Xpress Manufacturing's exports to the EU are made, did not provide any such export data pertaining to RBM sales in years prior to the IP. Therefore, in

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the absence of any other more reasonable basis or source of consistently comparable information, Eurostat data were used in order to determine actual import volumes of RBMs in the IP and their import trends from different sources since 1999. Finally, the relevant import data provided by two cooperating unrelated importers confirmed the general findings on Eurostat.

(ii) Community industry

(15) The investigation revealed that one of the unrelated importers in the Community also produced RBMs in the Community during the IP. This company claimed that due to the bankruptcy and closure of one of the applicant's production facilities in the Community, it now produces a major proportion of the Community production of the like product. This importer/producer concluded therefore that the applicants do not have sufficient standing anymore and that the current proceeding should consequently be terminated without extending the anti-dumping measures in force to imports originating in Vietnam.

(16) It should be noted that Article 4(1)(a) of the basic Regulation foresees that Community producers which also import the allegedly dumped product may be excluded from the definition of Community industry. It should also be noted that Article 13(3) of the basic Regulation does not require that a request to initiate an anti-circumvention investigation has to be submitted by Community producers representing a major proportion of the Community production of the like product. Consequently, the fact that a Community producer opposing such investigation would allegedly represent a higher proportion than the party which requested it is not in itself a reason to terminate the proceeding. In any event, and even if this importer would indeed have to be considered as part of the Community industry, the investigation revealed that, even with the closure of one production facility after the IP, the applicants still produced significant quantities and still represented a major proportion of the Community production of the like product. Consequently, the claim to terminate the ongoing proceeding had to be rejected.

2.2. Product concerned and like product

(17) The product concerned is, as defined in the original Regulation, 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 it 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-made trigger mechanism fixed to the product concerned. Generally, RBMs are composed of such as ring, blade, cover, eyelet and, where applicable, trigger.

(18) The investigation showed that the RBMs exported to the Community from the People's Republic of China and those consigned from Vietnam to the Community have the same basic physical characteristics and have the same uses. They are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Nature of the circumvention practice

2.3.1. Change in the pattern of trade

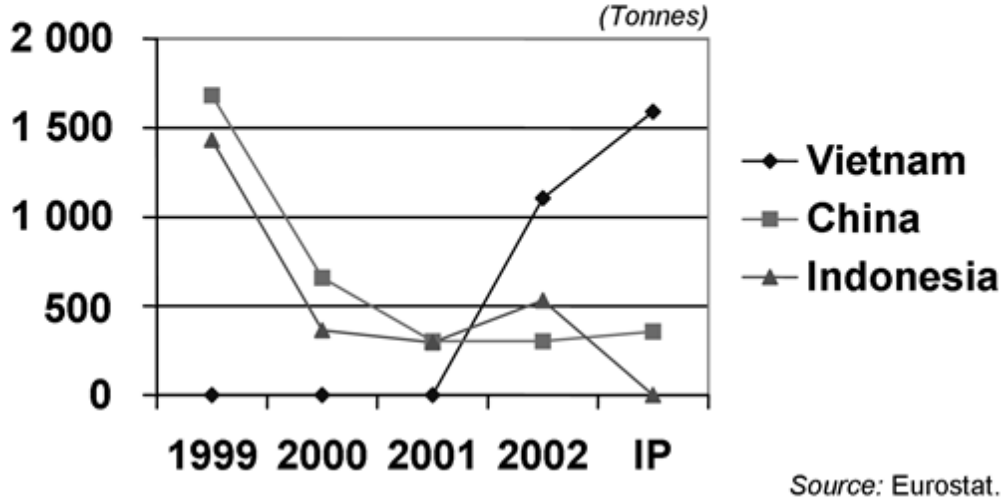
(19) The investigation revealed that after the imposition of definitive measures on imports of RBMs from the People's Republic of China, and in particular after the substantial increase in these measures in 2000 further to the anti-absorption investigation mentioned in recital 2, imports from the People's Republic of China decreased significantly, i.e. from 1 684,3 tonnes in 1999 to 301,9 tonnes in 2002 and to 357,1 tonnes in the IP. During the same period, imports of RBMs from Vietnam increased significantly, i.e. from 0 tonnes between 1999 and 2001 to 1 105 tonnes in 2002. During the IP, imports from Vietnam increased further to 1 589,2 tonnes.

(20) In this context it should be noted that the cooperating Vietnamese producer/exporter's related company, Hong Kong Stationery, has production facilities in China and set up a production/assembly facility in Indonesia in about 1998. The Indonesian facility was shut down in 2002 and there were no imports of RBM from Indonesia during the IP of the current investigation. The setting up of the Indonesian facility and the subsequent EU imports from Indonesia led to the Community industry requesting the initiation of the investigation which resulted in the imposition of anti-dumping and countervailing measures on imports of the product concerned from Indonesia in 2002.

(21) In March 2002, Office Xpress Manufacturing started assembly operations in Vietnam (see below) and imports increased from 0 to 1 105 tonnes reaching import levels similar to those from the People's Republic of China in 1999 before the significant increase of the duties in 2000 (see recitals 1 and 2). This increase occurred immediately prior to the imposition of definitive anti-dumping and countervailing duties on imports of RBMs originating in Indonesia in 2002.

*Chart 1*

**Evolution of imports of Ring Binder Mechanisms originating in Vietnam, China and Indonesia**




*Source:* Eurostat.