COUNCIL REGULATION (EC) No 977/2002

of 4 June 2002

imposing a definitive countervailing duty on imports of certain ring-binder mechanisms (RBMs) originating in Indonesia and terminating the anti-subsidy proceeding in respect of imports of certain RBMs originating in India

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1] and in particular Article 15 thereof,

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

Whereas:

A. **PROCEDURE**

1. **Present investigation**

(1) On 18 May 2001, the Commission announced by a notice (hereinafter referred to as 'notice of initiation') published in the *Official Journal of the European Communities* [2] the initiation of an anti-subsidy proceeding with regard to imports into the Community of certain ring binder mechanisms (hereinafter referred to as 'RBM') originating in India and Indonesia and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged on 3 April 2001 by the following Community producers: Koloman Handler AG ('Koloman'), Austria, and Krause Ringbuchtechnik GmbH & Co. KG ('Krause'), Germany, (the 'complainants'), representing a major proportion, in this case about 90 %, of the Community production of RBMs. The complaint contained evidence of subsidisation of the said product, and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The initiation of a parallel anti-dumping proceeding concerning imports of the same product originating in the same countries was announced by a notice published in the *Official Journal of the European Communities* [3], on the same date.

(4) Prior to the initiation of the proceeding and in accordance with Article 10(9) of Regulation (EC) No 2026/97 (hereinafter referred to as the 'basic Regulation'), the Commission notified the Governments of India and Indonesia that it had received a properly documented complaint alleging that subsidised imports of RBMs originating in India and Indonesia are causing material injury to the Community industry. Both Governments were invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. Consultations with both Governments were held with the Commission in Brussels. Due note was taken of the comments made by these Governments in regard to the allegations contained in the complaint regarding subsidised imports and material injury being suffered by the Community industry, and a certain number of the alleged schemes were subsequently not included in the investigation.

(5) The Commission officially advised the Community producers, exporting producers, importers and users known to be concerned, the representatives of the exporting countries and the complainant of the initiation of the proceeding. The parties concerned had 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.

(6) The Commission sent questionnaires to all parties known to be concerned and to all other companies which made themselves known within the deadlines set out in the notice of initiation. Replies were received from the Government of India, one Community producer, one exporting producer in India, as well as from its related exporter outside the Community and from two importers in the Community as well as from one user related to the importers.

The Commission sought and verified all the information it deemed necessary for the purpose of a determination of subsidisation, injury, causation and Community interest. Verification visits were carried out at the premises of the Government of India and the following companies:

(a) *Community producers*

— Koloman Handler AG, Austria

(b) *Exporting producers in India*

— ToCheungLee Stationery Mfg Co. Pvt. Ltd, Tiruvallore

(c) *Related exporters outside the Community in Hong Kong*

— ToCheungLee (BVI) Limited/World Wide Stationery Mfg. Co. Ltd. (ultimate holding company)

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ C 147, 18.5.2001, p. 4.
[3] OJ C 147, 18.5.2001, p. 2.

(d) *Unrelated importers*

— Bensons International Systems Ltd, United Kingdom

— Bensons International Systems BV, The Netherlands

(e) *User*

— Esselte, United Kingdom

(7) The investigation of subsidisation and injury covered the period from 1 April 2000 to 31 March 2001 ('investigation period' or 'IP'). For the purposes of analysing trends relevant for the assessment of injury, the Commission has examined data relating to the period 1 January 1998 up to the end of the IP ('period considered').

2. **Provisional measures**

(8) Given the need to further examine certain aspects of injury, causation and Community interest, in particular in view of the ongoing restructuring of the complainants, no provisional countervailing measures were imposed on RBMs originating in India and Indonesia.

3. **Subsequent procedure**

(9) All parties were informed of the decision not to impose provisional measures. The Commission continued to seek and verify all information deemed necessary for definitive findings. In particular, further on-the-spot investigations were carried out at the premises of a user of RBMs in the Community and of two unrelated importers in the Community.

(10) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive countervailing duties. They were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the findings have been modified accordingly.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(11) The product concerned is certain ring-binder mechanisms ('the product concerned'). These are currently classifiable within CN code ex 8305 10 00. Lever-arch mechanisms, falling within the same CN code, are not included in the scope of this investigation.

(12) 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 with a small steel-made trigger mechanism fixed to the RBM. The rings can have different shapes, the most popular ones being round, rectangular or D-shaped.

(13) RBMs are used to file different kinds of documents or papers. They are used, *inter alia*, by producers of ring-binders, software and technical manuals, photo and stamp albums, catalogues and brochures.

(14) Several hundred different models of RBMs were sold during the IP in the Community. The models varied by size, shape and number of rings, the size of the base plate and the system to open the rings (pull open or opening trigger). In the absence of a clear dividing line in the range of RBMs and given that all of them have the same basic physical and technical characteristics, and that the models of RBMs can, within certain ranges, replace each other, the Commission established that all RBMs constitute one single product for the purpose of the present proceeding.

2. **Like product**

(15) The Commission found that the RBMs produced and sold on the domestic market in India and those exported to the Community from India had the same basic physical and technical characteristics and uses.

(16) The Commission also found that there was no difference in the basic physical and technical characteristics and uses between the RBMs imported into the Community originating in India and the RBMs produced by the Community industry and sold on the Community market.

(17) In view of the lack of cooperation from any Indonesian producer, the Commission relied on facts available in accordance with Article 28 of the basic Regulation. In this regard, and in the absence of any other information available for the country, the Commission considered it appropriate to make use of the information submitted in the complaint, according to which the RBMs produced and sold in Indonesia or exported to the Community and the RBMs produced by the complainant Community producers and sold on the Community market are alike.

(18) It was therefore concluded that the RBMs produced and sold by the Community industry on the Community market, the RBMs originating in India and Indonesia exported to the Community and the RBMs produced and sold on the domestic market in India and Indonesia were all like products within the meaning of Article 1(5) of the basic Regulation.

(19) During the IP the product concerned was subject to a conventional customs duty of 2,7 % in 2000 and 2001. However, under the GSP regime, the product concerned imported from India and Indonesia benefited from a reduction amounting to 100 % of the conventional customs duty payable in 2000 and 2001. As a result, the duty applied was 0 % in 2000 and 0 % in 2001.

C. **SUBSIDIES**

1. **India**

(a) *Introduction*

(20) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission investigated the following schemes that allegedly involve the granting of export subsidies:

— export processing zones/export oriented units (EPZ/EOU)

— duty entitlement passbook scheme (DEPB)

— export promotion capital goods scheme (EPCG)

— income tax exemption scheme (ITE).

(21) The first three schemes are based on the Foreign Trade (Development and Regulation) Act 1992 (effective from 7 August 1992). The Foreign Trade Act authorises the Government of India to issue notifications regarding export and import policy. These are summarised in 'export and import policy' documents which are issued every five years and updated annually. The document relevant to the investigation period of this case covers the policies for the years 1997 to 2002.

(22) The last scheme, the income tax scheme, is based on the Income Tax Act of 1961 which is amended yearly by the Finance Act.

(23) One company replied to the questionnaire for exporting producers. A company outside the Community related to this exporting producer also replied to the questionnaire. On the basis of import data reported by Eurostat, the exporting producer in India accounted for all Indian exports to the Community.

(b) *Export processing zones (EPZ)/export oriented units (EOU)*

(i) Legal basis

(24) An instrument under the export and import policy involving export related incentives is the export processing zones (hereinafter 'EPZ')/export oriented units (hereinafter 'EOU') scheme which was introduced in 1965. During the IP the scheme was regulated by Customs Notification No 53/97, 133/94 and 126/94. Details of the schemes are contained in Chapter 9 of the 1997/2002 export and import policies as well as the relevant handbook of procedures.

(ii) Eligibility

(25) In principle, companies undertaking to export their entire production of goods may be set up under the EPZ/EOU scheme. Once this status is granted, those companies can avail themselves of certain benefits. There are seven identified EPZs in India. EOUs can be located anywhere in India. They are bonded units under the surveillance of customs officials in accordance with Section 65 of the Customs Act. Although EOU/EPZ are generally obliged to export their entire production, the Government of India allows those units to sell a part of their production on the domestic market under certain conditions. The cooperating exporting producer has been granted the status of EOU.

(iii) Practical implementation

(26) Companies requesting EOU status or setting up in an EPZ must apply to the relevant authorities. Such application must include details for a period covering the next five years, of, inter alia, planned production quantities, projected value of exports, import requirements and indigenous requirements. If the authorities accept the company's application, the terms and conditions attached to the acceptance will be communicated to the company. Companies in EPZs and EOUs can be involved in the production of any product. The agreement is valid for a five-year period and may be renewed for further periods.

(27) EPZ/EOU units are entitled to the following benefits:

(i) exemption from import duties on all types of goods (including capital goods, raw materials and consumables) required for the manufacture, production, processing or in connection therewith, provided they are not prohibited items in the negative list of imports;

(ii) exemption from excise duty on goods procured from indigenous sources;

(iii) exemption of income, on which income tax is normally due in accordance with Section 10A or 10B of the Income Tax Act, for a 10 year-period;

(iv) reimbursement of central sales tax paid on goods procured locally;

(v) 100 % foreign equity ownership;

(vi) facility to sell a part of production in the domestic market.

(28) The importer should maintain in the specified format, a proper account of all imports concerned and of the consumption and utilisation of all imported materials and of the exports made. These should be submitted periodically, as may be required, to the development commissioner.

(29) The importer must also ensure minimum net foreign exchange earnings as a percentage of exports and export performance as stipulated in the Policy. The entire operations of an EOU/EPZ are to be done in customs bonded premises.

(iv) Conclusion on EPZ/EOU

(30) In the present proceeding, the EOU scheme was used for imports of capital goods, raw materials and consumables, as well as for the procurement of goods on the domestic market. Therefore, the Commission only examined the countervailability of these concessions.

(31) In this regard, the EOU/EPZ scheme involves the granting of subsidies as the concessions granted under the scheme constitute financial contributions by the Government of India, since government revenues otherwise due are forgone and a benefit is conferred on the recipient.

(32) The suspension of the collection of duties on capital goods has the same effect as an exemption since, as long as the export requirements are fulfilled, it is solely within the discretion of the company if and when to de-bond the capital goods.

(33) This subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, since it cannot be obtained without the company accepting an export obligation, and is therefore deemed to be specific and countervailable.

(v) Calculation of the subsidy amount

Suspension of import duty on purchases of capital goods:

(34) The Indian exporting producer used the EOU scheme in order to obtain a suspension of the import duties normally payable on capital goods.

(35) The benefit to the company has been calculated on the basis of the amount of unpaid customs duty due on imported capital goods by spreading this amount across a period of seven years, which reflects the depreciation period for capital goods actually imported by the company and which is considered to reflect the normal depreciation of such assets in the industry concerned. The amount so calculated which is attributable to the investigation period has been adjusted by adding interest during the investigation period in order to establish the full benefit to the recipient under this scheme. Given the nature of this scheme, which is equivalent to a one-time grant, the commercial interest rate during the investigation period in India, i.e. 10 %, was considered appropriate. This amount has then been allocated over total exports during the investigation period.

(36) On this basis, the company received benefits under this scheme at a rate of 2,42 %.

Exemption from customs duties due on imports of raw materials and consumables:

(37) The Indian exporting producer used the EOU scheme in order to obtain an exemption from customs duties due on imports of raw materials and consumables.

(38) During the verification visit, the nature and quantities of these imported materials were verified. The company was able, for all raw materials being imported during the IP, to demonstrate a clear link to the quantities of the exported finished products and it could be established that no imports in excess of imported quantities of inputs actually used in the exported products had taken place.

(39) These imports therefore fall within the exception to item (I) of the illustrative list of export subsidies contained in Annex I of the Basic Regulation since all the goods which were imported free of duty were incorporated into the exported product and no excess remissions of import duty have occurred.

Exemption from excise duty on goods procured from indigenous sources:

(40) The Indian exporting producer used the EOU scheme in order to obtain an exemption from excise duty on goods procured from indigenous sources.

(41) However, the excise duty paid on purchases by a non-EOU unit (i.e. any company operating without any special status) is credited as drawback (under CENVAT/MODVAT) and is utilised towards payment of excise duty on domestic sales. Thus by exempting excise duty on purchases by an EOU unit no additional revenue is forgone by the Government of India. Consequently, no additional benefit accrues to the EOU.

Reimbursement of central sales tax paid on goods procured locally:

(42) The Indian exporting producer used the EOU scheme in order to obtain the reimbursement of central sales tax paid on goods procured locally. This reimbursement involves the granting of subsidies, since government revenues otherwise due are forgone and a benefit is conferred on the recipient.

(43) The benefit was calculated on the basis of the amount of central sales tax refundable for local purchases during the investigation period. In this respect, it could be established that the Indian exporting producer procured practically all of its local purchases in the State within which it is located (Tamil Nadu) and that central sales tax applies only to inter-state transactions. The amount of central sales tax refundable to this company was therefore limited to 0,01 %.

(c) *Income tax exemption scheme (ITE)*

(i) Legal basis

(44) The income tax exemption scheme is based on the Income Tax Act 1961, which sets out the basis for the collection of taxes as well as various exemptions/deductions which can be claimed. Among the exemptions which can be claimed are those covered by Sections 10A, 10B and 80HHC of the Act, which provide an income tax exemption on profits obtained from export sales.

(ii) Eligibility

(45) Exemption under Section 10A can be claimed by firms located in free trade zones, exemption under Section 10B can be claimed by export oriented units and exemption under Section 80HHC can be claimed by any firm which exports goods.

(iii) Practical implementation

(46) The claim for deduction of export profits is submitted alongside the usual annual income tax declaration.

(iv) Conclusion on the ITE

(47) Under the ITE scheme, the Government of India confers a financial contribution to the company by forgoing government revenue in the form of direct taxes which would otherwise be due. This financial contribution confers a benefit upon the recipient by reducing its income tax liability.

(48) This income tax exemption scheme is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, since only profits earned through export activities can be deducted from the taxable income, and is therefore deemed to be specific and countervailable.

(v) Calculation of the subsidy amount

(49) The Indian exporting producer, being an EOU, was eligible for income tax exemption under Section 10B of the Income Tax Act, and introduced a claim for deduction during the IP. The benefit was calculated by applying the notional tax rate which would have been applied on the profits if no deduction would have been made.

(50) On this basis, the company obtained benefits under this scheme at a rate of 0,15 %.

(d) *Other subsidy schemes*

(51) The investigation has determined that the exporting producer did not use any of the other investigated schemes. It is therefore not necessary to assess their countervailability.

(e) *Amount of countervailable subsidies*

(52) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporter is 2,5 %. This rate is below the de minimis level, and, under these circumstances, the subsidy margin for India has to be considered negligible.

2. **Indonesia**

(a) *Introduction*

(53) Further to the consultations referred to in recital 4, the Commission services decided to limit the investigation to two schemes (BKPM and Cakung EPZ). Accordingly, a questionnaire was sent to the Government of Indonesia requesting the relevant information. However, the Government of Indonesia subsequently did not provide any reply to the questionnaire. Therefore, no verification visit to the Government of Indonesia was carried out. The sole known exporting producer in Indonesia did not reply to the questionnaire, despite an extension of the deadline for submitting the reply. In view of the above non-cooperation, this company was duly informed that definitive findings for it would be based on the facts available pursuant to Article 28(1) of the basic Regulation, with the consequence, in accordance with Article 28(6) of the basic Regulation, that the result may be less favourable for it than if it had cooperated. In accordance with Article 26(1) of the basic Regulation, no verification visit was carried out at the premises of this exporting producer.