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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 976/2002

of 4 June 2002

imposing a definitive anti-dumping duty on imports of certain ring binder mechanisms (RBM) originating in Indonesia and terminating the anti-dumping proceeding in respect of imports of certain RBM 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 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 9 thereof,

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

Whereas:

A. PROCEDURE

1. Previous proceeding concerning imports of ring binder mechanisms originating in the People's Republic of China and Malaysia

(1) In January 1997, by Regulation (EC) No 119/97 [2], the Council imposed definitive anti-dumping duties on imports of ring binder mechanisms (RBMs) originating in the People's Republic of China (the PRC) and Malaysia.

(2) In September 2000, following the initiation of a review pursuant to Article 12 of Council Regulation (EC) No 384/96 (the basic Regulation), the Council, by Regulation (EC) No 2100/2000 [3], amended the definitive anti-dumping duties on imports of RBMs originating in the PRC.

(3) In January 2002, the Commission initiated a review pursuant to Article 11(2) of the basic Regulation of anti-dumping measures applicable to imports of RBMs originating in the PRC [4]. No request for a review was received concerning the measures applicable to Malaysia, which consequently expired in January 2002.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Council Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 22, 24.1.1997, p. 1.
[3] OJ L 250, 5.10.2000, p. 1.
[4] OJ C 21, 24.1.2002, p. 25.

2. Present proceeding

(4) On 18 May 2001, the Commission announced by a notice (Notice of Initiation) published in the *Official Journal of the European Communities* [5] the initiation of an anti-dumping proceeding with regard to imports into the Community of certain RBMs originating in India and Indonesia.

(5) 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 dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(6) The initiation of a parallel anti-subsidy 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* [6] on the same date.

(7) The Commission officially advised the exporting producers, exporters and importers known to be concerned, the representatives of the exporting countries concerned, the complainants and all known other Community producers and users, about the initiation of the proceeding. 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.

(8) One exporting producer in each of the countries concerned made its views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted a hearing.

[5] OJ C 147, 18.5.2001, p. 2.
[6] OJ C 147, 18.5.2001, p. 4.

(9) 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 one of the two complainant Community producers, one exporting producer in India, as well as from its related exporter outside the Community, and from one user and two unrelated importers in the Community. The Commission sought and verified all the information it deemed necessary for the purpose of a determination of dumping, injury, causation and Community interest. Verification visits were carried out at the premises of 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)

(d) *Unrelated importers*

— Bensons International Systems Ltd, United Kingdom

— Bensons International Systems BV, The Netherlands

(e) *User*

— Esselte, United Kingdom.

(10) The investigation of dumping 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).

3. **Provisional measures**

(11) 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 anti-dumping measures were imposed on RBMs originating in India and Indonesia.

4. **Subsequent procedure**

(12) 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.

(13) All parties 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 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**

(14) 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.

(15) 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.

(16) 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.

(17) 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**

(18) 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.

(19) 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.

(20) In view of the lack of cooperation from any Indonesian producer, the Commission relied on facts available in accordance with Article 18 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.

(21) 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(4) of the basic Regulation.

(22) During the IP the product concerned was subject to a conventional customs duty of 2,7 % in 2000 and 2,7 % in 2001. 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. **DUMPING**

1. **India**

(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, this exporting producer accounted for all Indian exports to the Community.

(a) *Normal value*

(24) For the purpose of determining normal value, it was first established whether the total domestic sales of RBMs of the sole cooperating Indian exporting producer were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were not considered representative since the total domestic sales volume of the exporting producer was less than 5 % of its total export sales volume to the Community.

(25) In the absence of representative domestic sales, or sales by any other exporting producer in the domestic market, or other sales in the same general category of products by the exporting producer, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation on the basis of the cost of manufacturing plus a reasonable amount for selling, general and administrative (SG and A) costs and for profits.

(26) The company's own SG and A costs and profit on domestic sales of the product concerned were added to the manufacturing costs of the exported models. In accordance with Article 2(5) of the basic Regulation, SG and A costs declared by the exporting producer were adjusted to reflect its audited financial statements.

(27) Following disclosure of the essential facts and considerations on the basis of which it was intended to impose definitive measures, the cooperating Indian exporting producer argued that, in the absence of representative domestic sales, its own SG and A and profit margin on domestic sales could not be used for the construction of normal value and that the profit margin was not reasonable in comparison to the profit margin, used for the injury elimination level calculation, used in previous investigations and actually attained on export sales.

(28) As regards SG and A, the argument put forward by the Indian exporting producer was not supported by evidence that the company's own SG and A would have been significantly different had the domestic sales been more than 5 % of exports. Accordingly, this claim was rejected.

(29) As regards profit, the situation was reviewed in light of new data obtained for the Indian domestic market. Based on this new data, it was determined that a reasonable profit margin, not exceeding the profit normally realised by other exporters or producers on sales of the same general category of products in the domestic market of the country of origin, India, would not exceed 5 %. The calculation was accordingly revised on this basis.

(b) *Export price*

(30) All export sales to the Community were made to independent importers in the Community and the export price was established pursuant to Article 2(8) of the basic Regulation by reference to the prices actually paid or payable.

(c) *Comparison*

(31) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.

(32) Sales to the Community were made through a related company in Hong Kong. This company carried out the functions of a trader and an adjustment was made to the export price from this company in Hong Kong by deducting a commission from the export price to take account of the functions performed by it.

(33) Allowances for differences in transport, insurance, packing and credit costs have also been made where applicable and justified.

(d) *Dumping margin*

(34) As provided by Article 2(11) of the basic Regulation, the weighted average normal value of each model of the product concerned exported to the Community was compared to the weighted average export price at ex-factory level for the same model and at the same level of trade.

(35) The comparison showed that no dumping existed for exports of RBM made by the cooperating exporting producer during the IP. The definitive dumping margin expressed as a percentage of the CIF import price at the Community frontier duty unpaid is as follows:

— ToCheungLee Stationery Mfg Co. Pvt. Ltd: 0,0 %.

(36) Since the cooperating exporting producer accounted for all Indian exports to the Community of the product concerned, it was decided to set the residual dumping margin at the level of the dumping margin found for this cooperating exporting producer, i.e. 0,0 %.

2. **Indonesia**

(37) The sole known exporting producer in Indonesia and its related importer did not reply to the questionnaire. In accordance with Article 18 of the basic Regulation, this company was duly informed that should it not cooperate findings for it would be based on the facts available. Despite this, the company still did not cooperate with the investigation. In accordance with Article 16(1) of the basic Regulation no verification visit was carried out at the premises of this exporting producer.

(a) *Normal value and export price*

(38) Using facts available and in the absence of any other reliable information available for the country, it was considered appropriate to base the determination on the information submitted in the complaint. In accordance with Article 18(5) of the basic Regulation; this information was checked, where practicable, by reference to information from other independent sources.

(39) Normal value was constructed for five different types of RBMs in Indonesia on the basis of the cost of manufacturing plus a reasonable amount for SG and A costs and for profit.

(40) The export price was determined on the basis of the price to the first unrelated buyer in the Community for each of the five types. Adjustments for SG and A costs and a reasonable profit were made based on information contained in the complaint.

(41) The sole known exporting producer in Indonesia argued that the normal value established on the basis of the complaint was not representative of their true normal value and furthermore, that under Article 18(5) the Commission is required to check the information in the complaint against independent sources including published price lists, official statistics or other independent official information.

(42) As mentioned above, this exporting producer did not provide any data for the establishment of normal value. It was attempted, as much as possible, to find alternative sources of information and to cross-check the complaint data through internet searches, examination of data from an independent importer and analysis of data from Eurostat. In this respect, the complaint included five specific models with a diverse range of prices for normal value and compared those prices with the equivalent export prices for the same models. A comparison of each individual normal value or a simple average of the normal values from the complaint with the weighted average export price from Eurostat would not have provided a meaningful basis for a finding. Consequently, no alternative data was obtained with regard to normal value or export price which was considered more reliable than that in the complaint.

(b) *Comparison*

(43) Adjustments for transport and distribution costs were made where applicable in order to allow a fair comparison. The adjustments were equally based on information contained in the complaint which was verified.

(c) *Dumping margin*

(44) As provided by Article 2(11) of the basic Regulation, the normal values of each type considered, of the product concerned exported to the Community, were compared to the export prices at ex-factory level for each comparable type.

(45) The comparison showed the existence of dumping in respect of Indonesia. The dumping margin expressed as a percentage of the CIF import price at the Community frontier duty unpaid for all Indonesian exporting producers is as follows:

(46) All exporters: 144,0 %.

D. **INJURY**

1. **Preliminary remark**

(47) Given that only one Indian exporting producer cooperated in the investigation and that the Community industry comprises only one company, specific data relating to these companies have been indexed or put in the form of a range in order to preserve the confidentiality of the data submitted in accordance with Article 19 of the basic Regulation.

2. **Community production**

(48) It was established that, in addition to the two complainant Community producers' output, production was also taking place in Italy and Spain. Although the Italian company involved did not supply complete data to the Commission, the information received confirmed that, during the IP, it represented a share of around 10 % of total Community production. As regards the Spanish company, which did not supply complete data to the Commission, it was found that in 2001 it produced negligible volumes of the product concerned, while it imported a major portion of its sales from one of the countries concerned. It was concluded therefore that it should be considered as an importer rather than a producer.

(49) It was also found that a company located in the United Kingdom had formerly been involved in the production of a certain type of RBMs. This company confirmed in writing that its production of the product concerned ceased some years ago. No other producers in the Community are known.

(50) Based on the above, the production of the complainants and the other Community producer located in Italy constitute the total Community production within the meaning of Article 4(1) of the basic Regulation.

3. **Definition of the Community industry**

(a) *Community industry*

(51) Of the two complainant producers one did not reply to the questionnaire (Krause) and was considered to be non cooperating. This producer, even though supporting the complaint, was therefore not regarded as being part of the Community industry. Regarding the other producer (Koloman), it was found that this company not only produced the like product in the Community during the IP, but also produced parts of it in Hungary. In addition to its Community production, Koloman traded the Hungarian products in the Community and also used parts produced in Hungary for its Community production. Moreover, part of the production of the cooperating Community producer was relocated at the beginning of the year 2000 by means of transfer of certain machinery from Austria to Hungary. However, despite the foregoing, the core activity of this company remained in the Community i.e. head office, warehousing, sales office, production of a significant amount of the product range, as well as significant technical and marketing know-how. The imported sales completed the product range of the like product and did not therefore affect the Koloman's status as Community producer. As to the production of parts in Hungary and their subsequent incorporation into the finished product, the investigation established that these incorporated parts represented only a minor proportion of the cost of production of the finished products and thus, of the added value. Consequently, the status of the producer as Community producer is not affected by these imports.

(52) The investigation confirmed that the sole cooperating Community producer represented more than 25 % of the Community production of RBMs, thus fulfilling the requirements of Article 5(4) of the basic Regulation. It was therefore deemed to constitute the Community industry within the meaning of Article 4(1) of the same Regulation and will be hereinafter referred to as 'the Community industry'.

(b) *Events occurring after the investigation period*

(53) In November 2001, i.e. after the end of the IP, the cooperating Community producer Koloman went into receivership and as a result of a liquidation procedure, was taken over by an Austrian company, whose parent company, located in the United Kingdom, also acquired the Hungarian affiliate of Koloman.

(54) The acquirers confirmed to the Commission their ongoing support of the complaint.

(c) *Community consumption*

(55) The apparent Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, the sales of the other Community producers on the Community market as reported in the complaint, duly adjusted as concerns the IP, information provided by the cooperating exporting producer and Eurostat import data. Account was taken of the fact that CN code 8305 10 00 also covers products not included in the scope of this proceeding. However, with regard to Indonesia, given the lack of cooperation of Indonesian exporters, best facts available were used, i.e. Eurostat data. In this respect, based on the complaint as best evidence available, all imports under the abovementioned CN code were considered to constitute the product concerned. The non cooperating Indonesian exporter claimed that its exports to the Community market were around 15 % lower than the import volumes used. However, this claim could not be verified and the difference was such that it could be explained by the ratio used to convert Eurostat statistics, which are in tonnes, to units. On this basis, Community consumption increased by 5 % between 1998 and the IP. In more detail, it remained relatively stable between 1998 and 1999 and then steadily increased until the end of the IP when it was found to be around 348 million units.

4. **Imports from the country concerned**

(56) It is recalled that the proceeding against India is terminated. Therefore, only imports from Indonesia are being analysed as imports from the remaining country concerned.