COMMISSION REGULATION (EC) No 1465/96

of 25 July 1996

imposing a provisional anti-dumping duty on imports of certain ring binder mechanisms originating in Malaysia and the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 28 October 1995, the Commission announced, by a notice published in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding with regard to imports into the Community of certain ring binder mechanisms originating in Malaysia and the People's Republic of China and commenced an investigation. The proceeding was initiated as a result of a complaint lodged on 18 September 1995 by Krause GmbH and Koloman Handler GmbH, whose collective output was alleged to represent 90 % of Community production of ring binder mechanisms (hereinafter refered to as 'RBM'). The complaint contained sufficient evidence of dumping by the imports concerned and of material injury resulting therefrom to justify the initiation of an anti-dumping proceeding.

2. Investigation

(2) The Commission officially advised the exporters and importers known to be concerned, the representatives of the exporting countries and the complainant Community producers 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 a set time limit.

A number of producers in the countries concerned as well as of Community users made their views known in writing. All parties who so requested within the above time limit were granted a hearing.

(3) The investigation period for the determination of dumping ran from 1 October 1994 to 30 September 1995.

(4) The Commission sent questionnaires to all parties known to be concerned and received detailed replies from the complainant Community producers, from the sole producer in Malaysia, from five Hong Kong exporters and one exporter in the United States, those five being related to Chinese producers, as well as from three importers in the Community related to the producers in the exporting countries concerned and five independent importers in the Community.

(5) The Commission sought and verified all the information it considered necessary for a preliminary determination of dumping and injury and carried out investigations at the premises of the following firms:

(a) *complainant Community producers:*

— Koloman Handler GmbH, Vienna (Austria),

— Krause GmbH & Co. KG. Espelkamp (Germany);

(b) *exporters/producers:*

1. Malaysia

— Bensons Metal Products, Shah Alam;

2. People's Republic of China

Since all of the five Chinese producers/exporters were related to companies in Hong Kong and/or the United States and those companies replied to the questionnaires sent to the producers/exporters in the People's Republic of China, the following related companies were subjected to on-the-spot investigations:

— Champion Stationery Manufacturing Co. Ltd (Hong Kong),

— Hong Kong Stationery Mfg Co. Ltd (Hong Kong),

— Sun Kwong Metal Manufacturer Co. Ltd (Hong Kong),

[1] OJ No L 56, 6. 3. 1996, p. 1.
[2] OJ No C 284, 28. 10. 1995, p. 16.

— US Ring Binder Corp., New Bedford (USA),

— Wah Hing Stationery Manufactory Co. Ltd (Hong Kong),

— World Wide Stationery Manufacturing Co. Ltd (Hong Kong).

Champion Stationery Manufacturing Co. Ltd and Sun Kwong Metal Manufacturer Co. Ltd are owned by the same group of companies and both sell their Chinese RBM to a related company located in the United States (US Ring Binder);

(c) *importers related to producers/exporters:*

— Bensons International Systems BV, Utrecht (The Netherlands),

— Bensons International Systems Ltd, Stroud (UK),

— Hong Kong Stationery Ltd, Eastleigh (UK);

(d) *independent importers:*

— KWH Plast (UK) Ltd, Milton Keynes (UK),

— KWH Plast Vertriebs GmbH, Speyer (Germany).

3. Market economy third country

(6) As the People's Republic of China is considered a non-market economy country, the Commission announced at the initiation of the proceeding that Malaysia was envisaged as an appropriate market economy third country for the purpose of establishing normal value in respect of the People's Republic of China. This choice was based on the information submitted in the complaint, which alleged that, in terms of cost structure and production technology, the situation in Malaysia was reasonably close to that found in China. Furthermore, it was alleged that the producers in both countries incur few if any environmental costs in producing the product concerned.

(7) All interested parties were given the opportunity to comment on the choice envisaged and one importer objected to it but failed to substantiate his claim sufficiently and did not propose any alternative market-economy country.

(8) The investigation showed that Malaysia is the sole market-economy country outside the Community in which RBM are produced by a company which has no links to the complainant Community producers.

(9) Based on the information submitted by a company related to a Chinese exporter, the Commission could establish that the production process and technology and the level of automation in Malaysia and the People's Republic of China are comparable.

(10) With respect to the competitive situation on the Malaysian market, it appears that there is competition between local production and imports. Indeed, the Commission found that RBM originating in Malaysia and in the People's Republic of China were sold on this market.

(11) Therefore, in view of the facts described above, the Commission considered it appropriate and reasonable to use Malaysia as a market economy third country for the establishment of normal value for the Chinese exports of RBM to the Community.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(12) The product concerned by the proceeding is certain RBM used for manufacturing ring binders, software and technical manuals, photo and stamp albums, catalogues and brochures, which consist of two rectangular steel sheets or wires with at least four half-rings made of steel wire fixed on it, which are kept together by a steel cover. They can be opened either by pulling the half rings or with a small steel trigger mechanism fixed to the RBM. RBM fall 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.

(13) Several hundred different types of RBM were sold during the investigation period in the Community. The types 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). However, in view of the fact that all RBM have the same basic physical characteristics and that the types of RBM can, within a certain range, replace each other, the Commission established that all RBM exported from Malaysia and the People's Republic of China constitute one single product for the purpose of the present proceeding.

2. Like product

(14) The Commission was able to establish that the RBM produced and sold in Malaysia were identical to or have physical characteristics closely resembling those of the RBM exported from that country and from the People's Republic of China to the Community.

(15) The investigation has also shown that the RBM produced by the Community industry and the ones exported to the Community from Malaysia and the People's Republic of China are either identical or have characteristics closely resembling each other.

(16) An importer also claimed that mechanisms with 17 and 23 rings are not like products in relation to 'standard' two to four-ring mechanisms and should be excluded from the scope of the proceeding. In support of its claim, this importer argued that the products in question are much more sophisticated and their cost of production is three to six times higher than that of RBM with fewer rings. The importer concerned also argued that the 17 and 23-ring mechanisms were part of a niche market found in The Netherlands only.

Those arguments cannot be accepted, since the 17 and 23-ring mechanisms have the same basic physical characteristics, applications and use as other RBM; moreover Community production covers the full range of products, including 17 and 23-ring mechanisms.

(17) Accordingly, the Commission considers that RBM produced and sold in the Community, RBM produced and sold in Malaysia, and those exported to the Community from Malaysia and the People's Republic of China should be regarded as 'like products', within the meaning of Article 1 (4) of Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation').

C. DUMPING

1. Malaysia

(18) Due to the large number of different models of RBM exported to the Community, only the best-selling models, covering more than 75 % of the total sales volume by the Malaysian exporter to the Community during the investigation period, were taken into account for the purpose of the dumping calculation.

(a) *Normal value*

(19) The sales of RBM by the sole Malaysian producer on its domestic market during the investigation period amounted to 5,8 % of its exports to independent customers in the Community over the same period. Consequently, those domestic sales were considered to have been made in sufficient quantities.

(20) Where models were sold on the Malaysian domestic market in sufficient quantities in the ordinary course of trade, normal value for the comparable models exported to the Community was established on the basis of the average domestic price paid by independent customers, since less than 20 % of those sales were made at a loss.

In other cases where domestic sales of a model were not made in sufficient quantities, normal value for the comparable model exported to the Community was constructed on the basis of the cost of production in Malaysia plus an amount for selling, general and administrative costs (SG&A) and for profits. SG&A and profits were established on the basis of the Malaysian producer's actual data pertaining to production and sales, in the ordinary course of trade, of the like product.

(b) *Export price*

(21) As all exports to the Community during the investigation period were made by the Malaysian producer concerned to related importers, the export price had to be constructed, in accordance with Article 2 (9) of the Basic Regulation, on the basis of the price at which the imported products were first resold to an independent buyer in the Community. In order to establish a reliable export price at Community frontier level, all costs incurred by the related importers between importation and resale, as well as a margin of profit of 7,8 % were deducted from the reselling price. The margin of profit was established on the basis of the average profit normally realized by independent importers of RBM in the Community.

(c) *Comparison*

(22) For comparison purposes, the Commission looked at the main physical characteristics of an RBM. On the basis of technical information gathered during the investigation, the following six main physical characteristics were selected in order to identify comparable models:

— type of mechanism (blade or wire)/opening system (if blade type),

— number of rings,

— shape of rings,

— ring spacing,

— nominal paper-holding capacity,

— width of base.

No interested party contested the selection of the abovementioned characteristics.

(23) When comparing the normal value with the export price, the Commission found that the normal value was established at a different level of trade than the export price, since sales in Malaysia were made to end-users, whereas the export price corresponded to that payable by distributors. This difference in the level of trade was considered to have an impact on the prices of RBM, and, for the purpose of its provisional findings and in the absence of any evidence as to how far prices would be affected by such difference, the Commission estimated the impact to be 10 % of the average gross margin (the difference between selling price and manufacturing cost) achieved by the Malaysian producer on its domestic sales to end-users. On this basis, the Commission considered it reasonable to reduce the normal value accordingly.

(24) In accordance with Article 2 (10) of the Basic Regulation, other allowances were made for the purpose of a fair comparison. Thus, adjustments were made for rebates, transport, insurance, handling, loading and ancillary costs, as well as for credit terms and commissions, which were either claimed by the exporter or identified during the on-the-spot investigation, and which affected prices and price comparability.

(d) *Dumping margin*

(25) The weighted average normal value per model was compared to the weighted average export price of the comparable model on an ex-works basis, in accordance with Article 2 (11) of the Basic Regulation.

(26) This comparison revealed the existence of dumping, the dumping margins corresponding to the amount by which the normal value of a model exceeds the export price of the comparable model. The average dumping margin on all models considered, expressed as a percentage of the actual export price, free at Community frontier, amounted for Bensons Metal Products, the sole Malaysian exporter concerned, to 42,8 %.

2. People's Republic of China

(27) In view of the large number of different models of RBM exported by the Chinese producers to the Community, the Commission limited its dumping calculation to the best-selling models of each producer, covering at least 80 % of their total volume exported to the Community during the investigation period.

(28) For the reasons explained under subheading 2 of heading (b) of recital (5), Champion Stationery Manufacturing Co. Ltd and Sun Kwong Metal Manufacturer Co. Ltd have been treated as one company for the determination of dumping.

(a) *Normal value*

(29) The People's Republic of China being considered as a non-market economy country and Malaysia having been selected an appropriate market economy third country, normal value for the Chinese exports had to be established on the basis of the prices and costs prevailing on the Malaysian market.

The Commission found that, for each of the Chinese producers except one (World Wide Stationery Manufacturing Co. Ltd), the sales of all models of RBM on the Malaysian market were made in sufficient quantities in relation with the comparable models sold for export to the Community by these producers during the investigation period.

(30) For these producers normal value was established on the basis of the average sales price for the comparable model sold in sufficient quantities and in the ordinary course of trade in Malaysia or, where there were no or insufficient sales of the comparable model in Malaysia, on the basis of the constructed value for that model. The normal value was constructed on the basis of the cost of production plus an amount for selling, general and administrative costs (SG&A) and for profits, which was established on the basis of the Malaysian producer's actual data pertaining to production and sales, in the ordinary course of trade, of the like product.

(31) With respect to World Wide Stationery Manufacturing Co. Ltd, since no individual model comparable to those sold for export to the Community by that company had been sold in sufficient quantities on the Malaysian market, normal value had to be constructed for all models, by applying the same methodology as was explained in recital (30) above.

(b) *Export price*

(32) Since all Chinese exports to the Community were made via related companies located in third countries, in establishing the export price on a fob China port basis, the direct selling costs incurred by those companies were deducted.

(33) Where exports were made via a related company located outside the Community to related importers in the Community and in order to establish a reliable export price at Community frontier level, the export price was constructed, in accordance with Article 2 (9) of the Basic Regulation, by deducting all costs incurred by the related importer between importation and resale to the first independent buyer in the Community, as well as a margin of profit of 7,8 % from the reselling price to that independent buyer. The margin of profit was established on the basis of the average profit normally realized by independent importers of RBM in the Community.

(c) *Comparison*

(34) In order to make a proper comparison between the Chinese models exported to the Community and the models used for the establishment of normal value, the Commission applied the same methodology as is described in recital (22).

(35) In comparing the normal value with the export price, the Commission determined that normal value was established at a level of trade different to the export price, since sales in Malaysia were made to industrial end-users, whereas the export price corresponded to that payable by distributors. Therefore, for the same reason as that set out in recital (23), an allowance for level of trade calculated in the manner described therein was deducted from the normal value.

(36) In accordance with Article 2 (10) of the Basic Regulation, other allowances were made for the purpose of a fair comparison. Thus, adjustments were made for rebates, transport, insurance, handling, loading and ancillary costs, as well as for credit terms and commissions, which were either claimed by the exporter or identified during the on-the-spot investigation, and which affected prices and price comparability.

(d) *Individual treatment*

(37) Champion Stationery Manufacturing Co. Ltd, Sun Kwong Metal Manufacturer Co. Ltd and World Wide Stationery Manufacturing Co. Ltd requested, within the time limits prescribed, the establishment of individual dumping margins.

(38) However, since Champion Stationery Manufacturing Co. Ltd was unable to provide, during the on-the-spot investigation, any relevant documents for the investigation period which could justify its claim, the Commission had to reject the latter on the grounds of non-cooperation.

(39) With respect to Sun Kwong Metal Manufacturer Co. Ltd and World Wide Stationery Manufacturing Co. Ltd, the information provided showed that their Chinese manufacturing operations had not been independent of the Chinese authorities with regard to their employment policy, their source of raw materials and other production materials and their method of conducting business in the People's Republic of China. In view of these findings, the Commission did not consider it appropriate to establish individual dumping margins for those two companies.

(e) *Dumping margin*

(40) The weighted average normal value per model fob Malaysian port was compared to the weighted average export price of the comparable model fob China port, in accordance with Article 2 (11) of the Basic Regulation.

(41) This comparison revealed the existence of dumping, the dumping margins corresponding to the amount by which the normal value of a model exceeds the export price of a comparable model. The weighted average dumping margin of all models considered, expressed as a percentage of the actual export price free at Community frontier, amounted for the People's Republic of China to 112,8 %.

D. COMMUNITY INDUSTRY

(42) The investigation has confirmed that the two complainant Community producers account for a major proportion, namely more than 90 %, of total Community production of RBM.

(43) In this respect, it was found that a limited portion of the sales of one of the complainant Community producers related to products which had undergone their last substantial processing in Hungary and had therefore to be excluded from its Community production. On the other hand, it was established that some products, which were reported in import statistics as being of Hungarian origin, were merely assembled in Hungary from Austrian parts and were therefore considered to be part of the Community production of the producer concerned, since the assembly operation which the products in question had undergone in Hungary did not, on the basis of non-preferential rules of origin, confer

Hungarian origin on the finished products. The fact that such products had been reported in import statistics as being of Hungarian origin was considered irrelevant, since their origin had been declared on the basis of the preferential rules of origin, which are not applicable to this investigation.

(44) It was also established that, in addition to the two complainant Community producers' output, some production was also taking place in Italy and Spain. Although the companies involved did not supply complete data to the Commission, information obtained from various market sources confirmed that the producers in those two countries did not represent a significant share of the production of RBM in the Community.

One of the companies concerned, located in Spain, made itself known and requested to be considered as part of the Community industry. This company, however, was not a party to the complaint which was lodged by producers representing a major proportion of the total Community production. In addition, it was found that this company's sales were mostly of products imported from the People's Republic of China and therefore that its main core of business could not be considered to be the production of RBM in the Community. This company could therefore not be considered part of the Community industry.

(45) On this basis, the Commission has determined that the two complainant Community producers, who fully cooperated with the investigation and whose total Community output represents a major proportion of the total Community production of RBM, constitute the Community industry in accordance with Article 4 (1) of the Basic Regulation.

E. INJURY

1. Preliminary remarks

(46) For the purpose of establishing injury in the present proceeding, the Commission has analysed data relating to the period 1992 to September 1995. The geographical scope of the investigation over this period was the Community as composed at the time of initiation, therefore including all fifteen Member States. All necessary data for that purpose were collected from Community producers, exporters and importers.

One exporter argued that the complaint was inadmissible and that the evidence of injury contained therein was misleading in so far as it referred to a period prior to 1995. According to this exporter, one of the complaining Community producers, located in Austria, could not be considered part of the Community industry before 1 January 1995 when Austria became a Member of the European Union.

Since Austria had been a Member of the Union at the time of the lodging of the complaint, the Commission considers that the Austrian producer is part of the Community industry as defined in accordance with Article 4 (1) of the Basic Regulation and was therefore entitled to act as complainant.

As to the second part of this argument, the Commission takes the view that taking into account data relating to production in Austria during a period when that country had not yet acceded to the European Union is not only possible, but indispensable. Since any measures would be applicable to imports into the Community as a whole (15 Member States) the investigation should also cover the Community as a whole. In this respect, the period used for analysing the injury data is irrelevant in respect of the inclusion or exclusion of any Member States. This is in conformity with Article VI of GATT 1994.

It should also be recalled that the Agreement on the European Economic Area came into force on 1 January 1994, from which date the markets of *inter alia* the three new Member States (Austria, Finland and Sweden) could not be regarded as separated from the Community market. Due to the relatively limited number of producers in the world, the European market, in its geographical meaning, has been relatively well integrated since at least the early 1990s, for which reason the market conditions were not influenced by the accession of the new Member States.

It was considered therefore that the claim was unfounded.

2. Total consumption on the Community market

(47) In calculating total apparent consumption of RBM on the Community market, the Commission added the EC sales of Community producers to the total imports into the Community (based on replies from the cooperating exporters). For countries other than Malaysia, the People's Republic of China and Hungary, the estimate had to be based on Eurostat import statistics. In this connection, account was taken of the fact that CN code 8305 10 00 also covers products not included in the scope of this proceeding.

On this basis, the apparent EC consumption of RBM on the Community market increased from 240 million units in 1992 to 283 million units in the investigation period — an increase of 18 %.

3. Cumulative assessment of the effects of the dumped imports

(48) Although the volume of imports from Malaysia decreased from 1992 to the investigation period, the market share of Malaysian imports remained significant. The dumping margin of both Chinese and Malaysian imports is far from being *de minimis*, nor is the volume of imports. In addition, on the Community market the conditions of competition between imported products and between the imported and Community products are similar. There are no significant differences in quality between the Malaysian and the Chinese products and they are aimed at the same customers. Furthermore, the fall in Malaysian sales on the Community market is merely the result of the decision of the sole related importer of Malaysian products to source part of its requirements from the People's Republic of China. It is therefore a company decision to shift sourcing, which has to be taken into account when assessing the changing pattern of imports from Malaysia.

(49) On that basis, the Commission considers that the requirements laid down in Article 3 (4) of the Basic Regulation to assess the effects of Malaysian imports cumulatively with the imports from the People's Republic of China are met and, accordingly, the effect of the dumped imports from the two countries should be assessed jointly.

4. Volume and market share of the dumped imports

(50) The aggregate volume of dumped imports from Malaysia and the People's Republic of China has increased from 115,7 million units in 1992 to 160,2 million units in the investigation period — an increase of 38 %.

(51) The market share of RBM imported from Malaysia and the People's Republic of China went up from 48,1 % in 1992 to 56,5 % during the investigation period.

5. Prices of the dumped imports

(52) In order to determine whether the exporting producers were undercutting the prices of the Community producers during the investigation period, a price comparison was made on the basis of sales by the Community industry and resales by related importers to unrelated customers, considered to be at the same level of trade (mainly producers of binders). In the case of Chinese exports to unrelated importers, an adjustment was granted to reflect the difference in level of trade between importers and EC producers' customers. This adjustment, which was based on the costs and profits of the importers, included the customs duty to be paid. All prices were compared net of all discounts and rebates. In order to ensure a fair comparison, prices of models with similar physical characteristics were compared.

(53) Some importers have argued, without substantiating further their allegation, that the product concerned was manufactured in the People's Republic of China from steel of a lower quality than that used for the production of RBM in the Community and that this difference affected the comparability of the products. It was, however, established during the investigation that Chinese products were sold to end-users who also bought Community-produced products for the same uses. Therefore, it was considered that such an alleged difference in quality, even if it had been substantiated, would not have been sufficient to justify a distinction being made between these products.

(54) Owing to the large number of different models, the price comparison was made on the basis of a sample of models representing more than 60 % of both the volume of imported products and the EC producers' sales.

On that basis, the existence of price undercutting was established for imports from the countries concerned and it was found that the level of undercutting for imports originating in the People's Republic of China, expressed as a percentage of the Community industry's average selling price, was 11,5 %. Imports from Malaysia were found to undercut Community producers' prices by 3,1 %.

6. Situation of the Community industry

(a) *Production*

(55) In a period of expanding consumption, production of RBM by the Community industry between 1992 and the investigation period was relatively stable and therefore did not reflect this expansion. Indeed, the slight increase in production over this period is due to increased sales outside the Community.

(b) *Capacity and capacity utilization*

(56) Since the production capacity of the Community industry increased between 1992 and the investigation period, its utilization rate, which had stood at 55 % in 1992, declined to 49 % in the investigation period.

The increase of capacity was due to improvements in the efficiency of manufacturing machines which were bought before 1993 and reached their full production capacity in 1994.

(c) *Stocks*

(57) The Community industry's end-of-year stocks increased by 14 % between 1992 and the investigation period.

(d) *Sales*

(58) Between 1992 and the end of the investigation period, the quantity of RBM sold on the Community market by the Community industry Remained stable, but in value terms the sales decreased by 10 %.

(e) *Market share*

(59) The Community industry's share of the EC market, in volume, dropped from 41,4 % in 1992 to 35 % in the investigation period.

(f) *Price depression*

(60) For all products, the weighted average net selling price of the Community industry fell by 10 % from 1992 to the investigation period. In order to verify that this decrease was not due to a change in the product mix, the Commission evaluated the trend in prices for a sample of models representing more than 50 % of Community sales. It was established that the decrease in prices based on this sample, with a fixed product mix, was even more marked (around 20 %). The existence of a significant price depression is therefore confirmed.

(g) *Profitability*

(61) The industry incurred losses on its sales of the like product over the whole period and a loss of 5 % has been established for the investigation period. As a consequence of ongoing automation and restructuring, the Community industry has been able to reduce its losses between 1992 and the investigation period. This slight improvement was the result of a reduction in manufacturing and overhead costs, which was more marked than the general fall in prices.

(h) *Employment and investments*

(62) The workforce of the Community industry has declined by 28 % between 1992 and the investigation period, and investment has decreased considerably over the same period.

7. Conclusion on injury

(63) It is clear that the situation of the Community industry has worsened between 1992 and the end of the investigation period, in particular in respect of market share and selling prices.

(64) In a growing market, the total growth rate being 18 % between 1992 and the end of the investigation period (that is, an annual growth rate of around 6 %), the Community producers have lost 6 % of the market overall. Given that, in terms of volume, their sales remained stable, this means the Community producers have been prevented from benefiting from the market expansion.

(65) The Community industry's overall profitability on its sales of the like product although slightly improving over time, continued to be negative. This is due to the fact that its prices, significantly undercut, could not be increased, even slightly, between 1992 and the end of the investigation period. Its prices have in fact decreased on average by 10 % over this period of time. The Community producers' financial situation has become critical and, if allowed to continue, will not be sustainable. This creates a serious risk of the Community producers' ceasing and/or relocating their production in a relatively short time.

(66) In view of the above, the Commission considers that the Community industry has suffered material injury.

F. CAUSATION

1. Introduction

(67) The Commission examined whether the injury suffered by the Community industry was caused by the Malaysian and Chinese dumped imports and whether other factors had caused or contributed to that injury.

The RBM produced in the Community and the RBM imported from Malaysia and the People's Republic of China are in direct competition with each other, essentially on their price. This is due to the fact that there are no significant differences in quality between the imported products and Community produced ones. The products are aimed at the same customers, namely binder producers, in the same geographic area through similar sales channels.

2. Effect of the dumped imports

(68) In examining the effects of the dumped imports, it was found that the increasing volume and market share of such imports, in combination with their undercutting and decreasing prices, coincided with the loss of market share and the depression of the sales prices of the Community industry.

(69) For the major part of the Community market, which consists of standard RBM, the market is transparent and as such price-sensitive. Consequently, sales at low prices inevitably have substitution effects as customers choose to be supplied at the lowest price offered. It was therefore concluded that these low-priced imports can clearly be linked to the deteriorating situation of the Community industry.

3. Effect of other factors

(70) Consideration was given to whether factors, other than the dumped imports from Malaysia and the People's Republic of China, might have led to or contributed to the weak situation of the Community industry and especially whether imports from countries other than the two subject to this proceeding may have contributed to this situation.

(a) *Hungary*

(71) As was explained in recital (43), part of the production of one Community producer takes place in Hungary and has therefore been excluded from the production of this Community producer for the purpose of assessing injury. In order to determine whether the imports from Hungary, in isolation, caused injury to the Community industry, the Commission examined the level of imports and prices on the Community market.

As explained in recital (43), the Eurostat import statistics do not properly reflect actual trade flows of RBM originating in Hungary, and therefore the analysis of the Commission as regards Hungarian imports between 1992 and September 1995 had to be based on data restricted to those RBM actually originating in Hungary in accordance with non-preferential rules of origin. On this basis, it was established that the level of Hungarian-origin imports remained stable between 1992 and the investigation period and that, when comparing prices to first independent customers, the imports in question were undercut by the Chinese and Malaysian imports. Owing to the price pressure from the countries concerned, those Hungarian products were sold at a slightly lower level than the Community production.

The Commission therefore considered that Hungarian imports did not materially contribute to the deteriorating situation of the Community industry.

(b) *Other third countries*

(72) The Eurostat import statistics also show imports from Slovenia, but according to reliable market sources those imports relate to lever arch mechanisms, which are outside the scope of the current investigation.

The volume of imports into the Community from other third countries is therefore neither significant nor increasing. In these circumstances, it is concluded that the imports from other sources made no contribution to the injury suffered by the Community industry during the period used for the determination of injury.

(c) *Other arguments*

(73) It has been alleged that anti-competitive practices took place in the past involving the two Community producers and a third party producing in the Community at that time, and that the complainants therefore contributed to their own injury.

However, it has been established that the issue has not been raised by any Community or national competition authority and thus remains merely an unsubstantiated assertion of which no account could be taken at this preliminary stage.

4. Conclusion on causation

(74) The Commission considers that dumped imports from Malaysia and the People's Republic of China have caused material injury to the Community industry. This conclusion is based on the evidence set out above and especially the market share gained and the quantities concerned, which have resulted in a strong downward price pressure on the Community market for RBM and in particular on the prices of the Community industry.

G. COMMUNITY INTEREST

1. General

(75) Pursuant to Article 21 (1) of the Basic Regulation, the Commission provisionally examined, on the basis of all evidence submitted, whether it could clearly conclude that it was not in the Community interest to apply measures.

For this purpose, the Commission considered the impact of possible measures and the consequences of not taking provisional measures for all parties involved in the proceeding.

2. Consequences for the Community industry

(76) As regards the Community industry, it is thought highly probable that, without measures to correct the effects of dumped imports, the Community industry will have to lower its prices further or lose market share at an increased rate. In both situations, the financial situation of the Community industry will worsen. Should the recurrent losses since 1992 continue, production in the Community would, within a short period of time, no longer be viable and would cease or would be moved outside the Community, with the negative consequences for employment and investment, and the level of competition on the Community market. This situation would not be the result of normal competition conditions, as the information gathered appears to indicate that Community producers are cost-efficient, in particular when compared to the situation in Malaysia. In this context, it should be noted that the Community producers subcontract part of their production, and that their suppliers and subcontractors are mainly small and medium-sized companies, which would be negatively affected in a similar way.

3. Impact on users

(77) Several interested parties have submitted that it would not be in the interest of the Community to impose anti-dumping measures. In particular, it has been alleged that the cost of RBM constitutes, depending on the model, a significant element in the cost of manufacture of binders, and that the imposition of measures would have an adverse impact on the downstream industry (manufacturers of ring-binder files and other stationery products).

However, the users making these allegations failed to submit sufficient evidence to substantiate their claims in time to permit verification prior to the impositon of provisional measures. The Commission intends to examine this issue in greater detail prior to any definitive findings.

(78) It was also argued that imposition of measures would lead to a duopoly of supply to the EC market, with possible adverse effects on prices.

The Commission cannot accept this line of reasoning. It does so because the argument ignores the corrective, rather than prohibitive, nature of anti-dumping measures, which neither prevent exporters in third countries from entering the Community market, provided that exports take place at fair price levels, or reduce effective competition or the quality and diversity of supply.

(79) Finally, it has been submitted that anti-dumping measures would affect EC binder manufacturers' competitive position *vis-à-vis* binder producers located in third countries, which would continue to have access to RBM from the countries concerned at low prices. It has been alleged that this could result in the Community binder industry losing market share and thus being tempted to relocate its production in neighbouring countries.

As regards the competition from binder producers in third countries, it should be noted that a part of the binder market is business-to-business oriented, and that, for this part of the market, it is fundamental that producers are situated close to their customers, and have flexibiltiy in production and a sound knowledge of the market. Moreover, the competition from such third countries is for the time being limited and the potential for increase is tempered by the fact that transportation costs per unit are up to five times higher in respect of the finished products than for the product concerned, owing to higher volume. Thus, it does not appear likely that imports of RBM would be replaced by imports of the final products (ring binders) in the foreseeable future.

In addition, the Commission received no evidence to suggest that the imposition of anti-dumping measures on RBM would be a decisive factor leading to the moving of the binder industry outside the Community.

(80) The Commission therefore considers that the medium and longer-term interest of the users and consumers would be better served by the maintenance of the widest possible range of suppliers of RBM, which will result from anti-dumping measures, than a reduction or the disappearance of the Community's production of the product concerned. Finally, it should also be kept in mind that the price advantages which the buyers previously enjoyed originated from unfair pricing practices and that there is no justification for allowing these unfair low prices to persist.

4. Conclusion

(81) In examing the various interests involved, the Commission considers, provisionally, that there are no compelling reasons not to take action against the imports in question.

Leaving the Community industry without adequate protection against the unfair competition as established would add to the difficulties of the industry and could lead to its disappearance or relocation outside the Community. The foreseeable price increase and the consequent extra cost to the consumer can by no means be considered to be of the same magnitude as the cost of the total disappearance of a Community industry.

Prior to definitive findings, the Commission intends, to the extent considered appropriate in accordance with the provisions of Article 21 of the Basic Regulation, further to examine matters deemed relevant in analysing the issue of Community interest.

H. DUTY

(82) In accordance with Article 7 (2) of the Basic Regulation, the Commission examined what level of duty would be adequate to remove the injury to the Community industry caused by dumping. For that purpose, it was considered that a price level based on the Community producers' cost of production together with a reasonable profit margin should be calculated.

Here, it was found that a profit margin of 5 % of turnover could be regarded as a reasonable minimum, taking into account the need for long-term investment, and, more particularly, the amount which the Community industry could be expected to obtain in the absence of injurious dumping. This profit margin was established on the basis of the normal revenue a shareholder would expect under normal competitive circumstances namely a return on equity of 10 %.

(83) Since there are different types of models, the Commission calculated for the Community industry's best selling models (60 % by volume), and for each category of these models with the same basic characteristics, a price level consisting of the weighted average cost of production of the Community producers, due consideration being given to the overall profitability of the Community industry, together with the above profit margin.

(84) It was considered that the duty should, for matching categories, cover the difference between this calculated price and the actual selling prices of the exporters in the Community. In order to determine the level of the duty, the price increases thus established have been expressed as a percentage of the weighted average, free-at-Community frontier, value of the imported goods.

(85) As was mentioned in recital (52), the Chinese export prices to independent importers had to be adjusted upwards in order to ensure comparison at the same level of trade.

For the People's Repulbic of China, an injury elimination level of 35,4 % was found. Since this margin is lower than the dumping margin as provisonally established, the rate of the provisional anti-dumping duty should be at this level.

(86) For Malaysia, an injury elimination level of 10,5 % was found. Since this margin is lower than the dumping margin as provisionally established, the rate of the provisional anti-dumping duty should be at this level.

I. FINAL PROVISIONS

(87) In the interest of a sound administration, a period should be fixed in which the parties concerned may make their view known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of certain ring binder mechanisms falling within CN code ex 8305 10 00 (Taric code 8305 10 00 10) originating in Malaysia and the People's Republic of China. For the purpose of this Regulation, ring binder mechanisms 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 trigger mechanism fixed to the ring binder mechanism.

2. The rate of duty applicable to the net free-at-Community price, before duty, shall be as follows:

(a) 10,5 % for imports originating in Malaysia;

(b) 35,4 % for imports originating in the People's Republic of China.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, the parties concerned may make their views known in writing and apply to be heard orally by the Commission within 15 days of the date of entry into force of this Regulation.

In accordance with the provisions of Article 21 (4) of Regulation (EC) No 384/96, the parties concerned may provide comments on the application of this Regulation within one month of the date of its entry into force.

Article 3

Subject to Articles 7, 9, 10 and 14 of Regulation (EC) No 384/96, Article 1 of this Regulation shall apply for a period of six months, unless the Council adopts defintiive measures before the expiry of that period.

Article 4

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 July 1996.

For the Commission

Leon BRITTAN

Vice-President