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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2100/2000

of 29 September 2000

amending Regulation (EC) No 119/97 imposing a definitive anti-dumping duty on imports of ring binder mechanisms originating in the People's Republic of China

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 12 thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In January 1997, by Regulation (EC) No 119/97 [2], the Council imposed definitive anti-dumping duties on imports of ring binder mechanisms ('RBMs') originating, *inter alia*, in the People's Republic of China. The rate of the definitive duty applicable to the net, free-at-Community frontier price, was 32,5 % for World Wide Stationery, which obtained individual treatment, and 39,4 % for all other companies in the People's Republic of China.

2. Request for a review

(2) On 7 December 1998, a request for a review of the abovementioned measures was lodged pursuant to Article 12 of Regulation (EC) No 384/96 (hereinafter referred to as the 'basic Regulation'). The lodging was made on behalf of the Community producers whose collective output of RBMs constituted a major proportion of the total Community production of that product within the meaning of Article 5(4) of the basic Regulation, namely Koloman Handler AG (Austria) and Robert Krause Ringbuchtechnik GmbH (Germany).

(3) The request contained information which showed that the resale and subsequent selling prices in the Community of the product under consideration did not adequately reflect the level of the anti-dumping measures imposed. This information was based on price lists and other information obtained from the Chinese exporters and their resellers. It was also alleged that in certain Member States, exporters discounted their prices immediately after the imposition of measures and that the insufficient movement in resale and subsequent selling prices after the imposition of measures had led to the continued erosion of prices obtained by the Community industry.

B. REVIEW INVESTIGATION PURSUANT TO ARTICLE 12 OF THE BASIC REGULATION

1. Initiation of the review pursuant to Article 12

(4) On 19 January 1999, the Commission announced by a notice published in the *Official Journal of the European Communities* [3] the initiation of a review, pursuant to Article 12 of the basic Regulation, of the anti-dumping measures applicable to imports of certain imports of RBMs originating in the People's Republic of China and commenced an investigation.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).
[2] OJ L 22, 24.1.1997, p. 1.
[3] OJ C 14, 19.1.1999, p. 4.

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

(6) The Commission services sent questionnaires to all exporters known to be concerned, namely: World Wide Stationery Manufacturing Company Ltd, Hong Kong ('WWS'); Guangzhou Wah Hing Stationery Manufactury Limited, PRC; Hong Kong Stationery Manufacturing Company Limited, Hong Kong; Champion Stationery Manufacturing Co. Ltd, PRC, and Sun Kwong Metal Manufacturing Co. Ltd., PRC.

(7) From the above exporters, only WWS, Hong Kong, provided a complete reply to the Commission's questionnaire.

(8) One exporting producer provided false and misleading information in its reply to the Commission's questionnaire. The information provided by this exporting producer did not coincide with declarations made to the national customs authorities. In fact, some of the goods of Chinese origin were declared to national customs authorities as being of Thai origin and thus avoided payment of the anti-dumping duties normally due. Moreover, certain consignments from the People's Republic of China were entered under the wrong CN code which again meant that there was no payment of the anti-dumping duties. The precise extent of these practices could not be accurately identified and, as a result, the whole reply to the questionnaire had to be disregarded.

(9) In these circumstances, findings had to be made on the basis of the facts available, in accordance with Article 18 of the basic Regulation. In this regard, the facts available indicated absorption of the anti-dumping duty as demonstrated by the fact that invoices of this exporting producer showed that export prices were on an 'anti-dumping duty paid' basis, i.e. the duties were paid by the exporter.

Of the other three producers/exporters, one refused to submit a complete questionnaire reply on the grounds that such a reply would impose an unreasonable and disproportionate burden on it and the remaining two did not make themselves known. Findings were therefore made on the basis of facts available in accordance with Article 18 of the basic Regulation.

(10) Questionnaires were also sent to independent importers known to have imported RBMs from the People's Republic of China so as to ascertain the resale prices of the product concerned before and after the imposition of the anti-dumping duties. In this regard, it should be noted that a high level of cooperation was obtained by the unrelated importers. Replies to the questionnaires were received from the following unrelated importers: Bensons International Systems B.V., The Netherlands, ('Bensons NL'); Bensons International Systems Ltd, United Kingdom, ('Bensons UK'); KWH Plast Vertriebsges. GmbH, Germany, ('KWH Germany'); KWH Plast (Danmark) AS, Danmark, ('KWH Danmark'), and KWH Plast (UK) Limited, United Kingdom, ('KWH UK').

Verification visits were carried out at the premises of KWH Germany and Bensons NL.

(11) The investigation period of this review ('new investigation period') ran from 1 January 1998 to 31 December 1998. This new investigation period was used to determine the level of export prices, resale and subsequent selling prices charged after the imposition of anti-dumping measures to ascertain whether the measures were failing to achieve their intended effects because of increased dumping.

(12) In establishing whether resale and subsequent selling prices had moved sufficiently, the price levels charged in the new investigation period were compared to those charged during the original investigation period which had covered the period from 1 October 1994 to 30 September 1995.

(13) Owing to the volume of data gathered and examined, in particular in view of the complexity of the analysis regarding the movement in the resale and subsequent selling prices of the unrelated importers as well as the enquiries and examination of one exporting company's practices as set out above in recital 8, the investigation exceeded the normal period of six months provided for in Article 12(4) of the basic Regulation.

2. **Product concerned**

(14) The product concerned by the request and for which the review was initiated is the same as in the original investigation, i.e. certain RBMs used as fittings for loose-leaf binders or files, but excluding lever arch mechanisms, which consists of two or more round, arched or D-shaped sturdy metal rings. The product is currently classifiable within CN code ex 8305 10 00.

3. **Movement of export prices from the People's Republic of China and of resale prices in the Community**

(15) The purpose of this investigation was to establish whether measures were having the intended effects and whether any failure to have such effects was as a result of increased dumping through a fall in export prices. For the purpose of the present investigation, such a fall in export prices may be reflected by a fall in the direct export prices charged by exporters to the Community or it may be reflected in a lack of movement or insufficient movement in resale prices or subsequent selling prices in the Community due to a compensatory arrangement.

(16) In this case, it was decided that the problem of absorption should be addressed in relation to movements in resale prices of the product concerned in the Community.

(17) The movement of resale prices in the Community was assessed separately, on the one hand, for WWS, since this company had been granted individual treatment and, on the other, for the other Chinese exporters. The duty rate applicable to it is 32,5 %.

(18) The comparison was made between resale prices both prior to and following the imposition of measures. This comparison was based on the information on resale prices provided by the five cooperating unrelated importers in the Community. The imports of the above five companies account for the great majority of export sales from the People's Republic of China to the Community during the new investigation period. In order to make a proper comparison, a sufficient degree of representativeness was ensured during both the original and new investigation periods in terms of quantity, value and the number of the product types sold and used for comparison.

(19) The comparison showed that the movement of resale prices between the two investigation periods was limited. It was established that on a weighted average basis, for all product types concerned and for all cooperating unrelated importers, the level of movement was 3,1 %, while prices should have increased by over 30 %.

(20) With regard to the non-cooperating parties, findings were made in accordance with Article 18 of the basic Regulation (see recitals 8 and 9 above). In this context, the incomplete information available to the Commission on export prices for these parties indicated that full absorption was taking place. On this basis and given that cooperating parties were absorbing most of the duties, it is reasonable to consider that the non-cooperating parties were absorbing in full.

4. **Claims made by interested parties**

(a) *General*

(21) Interested parties were provided with an opportunity to provide evidence that could justify a lack of movement in prices in the Community following the imposition of measures. The reasons which can justify such a lack of movement include a reduction in the selling, general and administrative (hereinafter referred to as 'SG&A') expenses (efficiency gains) and profit of the importer or a fall in normal value. These allowances cannot be granted for every fall in the level of these items. Rather, they must be restricted to those reductions which can be said to have offset the cost of the anti-dumping duty and which consequently need not be fully reflected in the resale prices. Credit will also be given to the importers and exporters concerned for any amount by which the resale prices have increased between the original and the new investigation period.

(b) *Claims for change in normal value*

(22) Together with its reply to the questionnaire, WWS requested market-economy status and asked the Commission to take into account changed normal values. WWS was informed, however, that a market-economy status review should be pursued under Article 11(3) of the basic Regulation.

(23) Similarly, other non-cooperating companies which requested a revision of normal values in relation to a market-economy treatment request were informed that the request for such treatment should be pursued under Article 11(3) of the basic Regulation.

(c) *Reduction in SG&A and profit*

(24) It was also examined whether the lack of movement of resale prices was due to a lasting decrease in the SG&A expenses and profits of the unrelated importers. All five cooperating importers supplied information to that effect.

(25) It was found that for all cooperating unrelated importers, SG&A expenses had increased by 0,86 %, and profits decreased by 4,72 % between the original and the new investigation periods.

(26) As regards the changes in the profit, it was established that of the total decrease of 4,72 %, 3,8 % was related to offsetting the cost increases of the anti-dumping duty. Therefore, credit of 3,8 % was granted for a fall in profit at resale level, which corresponds to 7,6 % at cif level.

(d) *Increase in resale prices*

(27) Credit was also granted for the amounts by which the resale prices had increased between the original and the new investigation period. Based on the information provided by the five cooperating importers, on an overall level, resale prices had moved between the original and the new investigation period by 3,1 %.

(28) As regards the movement in resale prices between the two investigation periods, the cooperating unrelated importers argued that when converting national currencies into the euro (or its predecessor, the ecu), the exchange rates prevailing during the original and new investigation period respectively should have been used.

(29) In this regard, it should be noted that the methodology adopted to compare the resale prices between both investigation periods, that is, using the exchange rate prevailing during the original investigation period for both investigation periods, was simply used to provide the same result as if the comparison were calculated in each national currency. The reasoning behind the use of a single denominator was that it allowed the calculation of a weighted average result for the Community as a whole. Movements in exchange rates are, therefore, irrelevant.

(e) *Total allowances*

(30) At resale level, the overall credit granted amounted to 6,9 %, i.e. 3,8 % for decrease in profit and 3,1 % for increase in resale prices. Expressed as a percentage of the cif value, this overall credit was 13,8 %.

5. **Reassessment of the export prices**

(31) As it was established that the resale and subsequent selling prices failed to reflect the full amount of the anti-dumping duty, export prices were reassessed on the basis of Article 2(9) of the basic Regulation. Export prices were reconstructed since there appeared to be a compensatory arrangement between the exporters and importers. The reassessment was made by reference to the export prices found in the original investigation period, deducting the amount of the anti-dumping duty in force and adding any adjustments found to be warranted i.e. any reduction in the SG&A expenses of importers, any reduction in the profit level of importers and any amount by which resale prices had increased since the imposition of measures.

(32) In the case of WWS, these adjustments amounted to 13,8 % at cif level. Thus, export prices were reassessed by taking the old export prices, deducting the anti-dumping duty applicable to WWS, i.e. 32,5 % and adding an allowance of 13,8 % for decrease in profit and increase in resale prices.

(33) In the case of other non-cooperating exporters from the People's Republic of China, the reassessment of the export prices was made in accordance with Article 18 of the basic Regulation. Consequently, export prices were re-assessed by taking the export prices found in the original investigation and deducting the amount of the anti-dumping duty paid. For the reasons outlined above in recital 20, no adjustments were granted.

(34) One party alleged that export prices should not have been reassessed in accordance with Article 2(9) of the basic Regulation, since no compensatory arrangement between the exporters and the importers has been proved. This argument was rejected on the grounds that it appeared that the export price was unreliable due to an association or compensatory arrangement and this was considered sufficient reason to reassess export prices on the basis of Article 2(9) of the basic Regulation.

(35) It was also argued that there was no compensatory arrangement since any decrease of the export prices was due to an increase in the value of the US dollar to which the Hong Kong dollar, the currency in which sales are invoiced, was pegged. This argument was rejected as currency movements cannot on their own, without taking account of all factors which could have affected the dumping margins, be used to justify a failure adequately to reflect the cost of measures in resale prices and subsequent selling prices. In any event, in this case, taking account of these movements would not have changed the result.

6. **Recalculation of the dumping margin taking account of reassessed export prices**

(36) As required under Article 12 of the basic Regulation, the dumping margin for the Chinese producers/exporters concerned was recalculated. This was done by comparing the reassessed export prices with the normal values established in the original investigation. For WWS, which has been granted individual treatment in the original investigation, the recalculated dumping margin, expressed as percentage of the cif value is 115,3 %. For all other Chinese exporters, the recalculated dumping margin, expressed as percentages of the cif value, is 168,6 %.

7. **New level of duties**

(37) The measures currently in force are based on the level of injury found in the original investigation which for WWS was 32,5 %, and the residual duty for all other exporters from the People's Republic of China was 39,4 %. In order to ensure that injury is eliminated, the revised measures should be established by comparing the reassessed export prices with the non-injurious price found in the original investigation period. Since the injury margin calculated on this basis is lower than the dumping margin, the new level of the duty should be based in the former. Accordingly, the proposed level of duty expressed as a percentage of the cif value is 51,2 % for WWS and 78,8 % for all other exporters from the People's Republic of China.

(38) One party argued that measures should not have been increased on the grounds of Community interest since such increase would unfairly penalise importers who had cooperated with the investigation and demonstrated that they had passed on the duties in terms of reduced profits and increased prices. This argument cannot be accepted since the investigation showed that the cost of the anti-dumping duty had not been adequately reflected in the resale prices and an allowance was made for the increase in prices and reduction in profits. In any event, Community interest is not taken into account in Article 12 investigations, as these are carried out to verify whether the measures imposed, which were deemed to be in the interest of the Community, are having their intended effects and that such effects are not being undermined through increased dumping,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2)(b) of Regulation (EC) No 119/97 is hereby replaced by the following:

'(b) for mechanisms other than those with 17 or 23 rings (TARIC code: 8305 10 00 10)

	Rate of duty	TARIC additional code
Malaysia	10,5 %	—
People's Republic of China:		
— WWS	51,2 %	8934
— all other companies	78,8 %	8900'

Article 2

This Regulation shall enter into force on the day following that of 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, 29 September 2000.

For the Council
The President
L. FABIUS