

COUNCIL IMPLEMENTING REGULATION (EU) No 792/2011

of 5 August 2011

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain ring binder mechanisms originating in Thailand

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁽¹⁾, (the basic Regulation) and in particular Article 9(4) thereof,

Having regard to the proposal submitted by the European Commission (the Commission) after having consulted the Advisory Committee,

Whereas:

1. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EU) No 118/2011 of 10 February 2011⁽²⁾ (the provisional Regulation) imposed a provisional anti-dumping duty on imports of certain ring binder mechanisms originating in Thailand.
- (2) The proceeding was initiated as a result of a complaint lodged on 6 April 2010 by Ring Alliance Ringbuchtechnik GmbH (the complainant) on behalf of producers representing a major proportion, in this case more than 50 % of the total Union production of certain ring binder mechanisms (RBM). The complaint contained prima facie evidence of dumping of the said product and of material injury resulting there from, which was considered sufficient to justify the initiation of a proceeding.
- (3) It is recalled that, as set out in recital 7 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 April 2009 to 31 March 2010 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the investigation period (injury investigation period).

2. SUBSEQUENT PROCEDURE

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures (provisional disclosure), several interested parties made written

submissions making known their views on the provisional findings. The parties who so requested, in particular two importers and the Thai producer, were granted the opportunity to be heard.

- (5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings with respect to dumping, injury, causality and Union interest. In addition to the verifications mentioned in recital 6 of the provisional Regulation, a further verification was carried out at the premises of Rima Benelux Holding BV, the only user that had cooperated in the investigation by replying to a user's questionnaire.
- (6) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain ring binder mechanisms originating in Thailand and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period of time within which they could make representations subsequent to this disclosure.
- (7) The oral and written comments submitted by the interested parties were considered and taken into account where appropriate.

3. PRODUCT CONCERNED AND LIKE PRODUCT

- (8) In the absence of any comments concerning the product concerned and the like product, recitals 8 to 11 of the provisional Regulation are hereby confirmed.

4. DUMPING

4.1. Normal Value

- (9) It is recalled that, as explained in recital 14 of the provisional Regulation, only one Thai exporting producer cooperated in the investigation and that its exports to the Union during the IP accounted for all Thai exports to the Union. The exporting producer and one cooperating unrelated importer claimed that the independent external expert who assisted the Commission during the on-spot visit to the exporting producer made some calculation errors in his report. One of the tasks of the expert was to examine the nickel coating process and the amount of raw materials consumed by the exporting producer in the different production phases. As mentioned in recital 15 of the provisional Regulation, the investigation revealed that the exporting producer provided incomplete and incorrect information with regard to significant elements of its cost of production and other raw materials. The allegations made by the exporting

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 37, 11.2.2011, p. 2.

producer and an importer regarding calculation errors in the expert's report were examined by the Commission and it was concluded that they were not founded. Therefore, the findings as set out in recital 15 of the provisional Regulation are confirmed.

- (10) The exporting producer and an importer also contested the provisional findings as set out in recitals 19 to 20 of the provisional Regulation. In particular, they claimed that the methodology used for the provisional determination of the normal value for types other than those for which a specific normal value was established was over-stated, because it had been incorrectly based on an arithmetic average of the normal values. The Commission accepted the claim, adjusted the methodology and revised the calculation of the normal values for these other types taking account of the product mix of the Thai producer, which more accurately reflects his situation.
- (11) The exporting producer further argued that the rates used for selling, general and administrative expenses (SGA) and profit margins of respectively 16 % and 8 % were too high. The exporting producer argued that the SGA rate should not exceed 12,59 %, reflecting its own SGA excluding inland freight costs.
- (12) It is recalled that as outlined in recitals 15 to 17 of the provisional Regulation the exporting producer did not cooperate with the investigation and consequently did not provide data about its full SGA costs. Under these circumstances and given the fact that no further information was provided on the company's full SGA costs, it was decided to continue to rely on the information available in the complaint. Furthermore, in the light of the information available and insofar as it could be verified, a SGA rate of 16 % was considered to be reasonable. Therefore, the claim was rejected.
- (13) The exporting producer claimed that the profit level of 8 % used in the provisional calculation was too high and instead, a profit level of 5 % should have been used. The arguments put forward were, firstly, a profit level of 5 % has been used for the target profit in the injury analysis and, secondly, a profit level of 5 % would be in line with previous investigations on the same product. On the first argument, the Commission noted that the determination of a target profit for the Union industry and the profit level used for the determination of a normal value do not follow the same logic and therefore, do not have to be the same. On the second argument, the Commission agreed that there were some grounds for using the same profit level as in previous investigations on the

same product and decided to accept this claim and to change the profit level used in the calculation of the normal values accordingly.

- (14) Further to final disclosure, the Union industry and the exporting producer submitted some comments. The Union industry disagreed with the correction made regarding the profit margin arguing that a profit rate of 5 % would not be sufficient to cover the profitability requirements of the three related companies involved in the production and sales of the product concerned, but without providing any other substantial arguments. Therefore, the claim was rejected.
- (15) The exporting producer claimed that the cost for depreciation, building and insurance used in the calculation of the normal value of one type was not the same as the one used for the other types and the same figure should apply to all types. The Commission verified the claim and indeed found an error in the calculation. However, contrary to the exporting producer's claim the error was found to be made in the calculation of the normal value of the other types. A correction to the normal value for the other types was made accordingly.
- (16) The exporting producer also claimed that the normal values for types other than those for which a specific normal value was established did not take fully into account the actual product mix of the exporting producer. In this respect, the exporting producer reiterated his claim that a weighted average of the normal values found should be used for the other types, thus reflecting the actual product mix of the exporting producer. As mentioned in recital 10 above, the Commission agreed to revise the calculation of the normal values for these other types in order to take into account of the actual product mix of the Thai producer and, irrespective of the actual sales volumes for each type, a normal value for small, medium and large RBM was calculated. However, the Commission rejected the argument that in addition a weighting factor based on the exporter's sales to the Union should be taken into consideration in the absence of substantiated reasons.
- (17) In addition, the exporting producer claimed that the Commission's method of calculating NV on the basis of the length of the ring binder mechanisms was imprecise and incomplete and proposed a new method for the calculation of the averages which would take into account their various lengths more accurately. As explained in recital 16 above the Commission calculated a normal value for types other than those for which a specific normal value was established and calculated

normal values reflecting small, medium and large RBM. The exporter's calculation was found to be flawed and result-oriented. Therefore, the claim was rejected.

- (18) Apart from the changes mentioned above and in the absence of any other comments, the content of recitals 15 to 20 of the provisional Regulation concerning the establishing of the normal value is hereby definitively confirmed.

4.2. Export price and comparison

- (19) The exporting producer claimed that the currency used for the computation of transport costs in the dumping calculation was not the correct one. The Commission accepted this claim.
- (20) In the absence of any other comments, the content of recitals 21 to 24 of the provisional Regulation concerning the establishing of export prices and comparing the export prices with the respective normal value is hereby definitively confirmed.

4.3. Dumping margin

- (21) The exporting producer claimed that the calculation of the dumping margin did not take into account the specific normal value for two types. The claim was accepted and corrected accordingly.
- (22) In the light of the above-mentioned changes in the calculation of the normal value and the comparison, and after correction of the calculation error regarding export price mentioned above, the amount of dumping finally determined, expressed as a percentage of the CIF Union frontier price, duty unpaid, is as follows:

Exporting producer	Dumping margin
Thai Stationery Industry Co. Ltd, Bangkok, Thailand	16,3 %

- (23) Since the cooperating exporting producer accounted for all Thai exports to the Union of the product concerned, it was considered that the residual dumping margin should be set at the level of dumping margin found for this cooperating exporting producer, i.e. 16,3 %.

5. DEFINITION OF THE UNION INDUSTRY

- (24) In the absence of any comments concerning the definition of the Union industry, the findings set out in recitals 28 to 32 of the provisional Regulation are hereby confirmed.

6. INJURY

6.1. Union consumption and imports from Thailand

- (25) The Thai producer and several importers questioned the trends in Union consumption established in the provisional Regulation. In particular, they argued that the consumption decreased to a higher extent than what was provisionally established (by around 30 %). They also asked for clarifications concerning the methodology followed by the Commission to establish consumption, because the RBM is included in a customs tariff heading including other products.
- (26) It should be mentioned that although these interested parties contested the findings related to the consumption, no supporting evidence or figures have been provided to substantiate their arguments. They also did not point to any methodological flaw.
- (27) As to the methodology, it should be recalled that, as mentioned in recital 33 of the provisional Regulation, the consumption was established on the basis of the verified sales figures provided in the questionnaire's reply of the cooperating parties (the two Union producers and the Thai exporter for the periods 2008-IP) and on the basis of Eurostat figures for the rest of the imports. Given that RBM from other sources are subject to anti-dumping measures, imports (from all sources) are registered under sub-headings codes in the customs tariff database (TARIC) which are very largely specific to the product under investigation. These sub-headings were used in order to ensure that only imports of the product concerned were considered, despite a minor update of the product definition in this investigation.
- (28) Furthermore, given that Eurostat figures are expressed in kilograms, while the consumption has been calculated in pieces, one importer requested clarifications as to the methodology used to convert kilograms into pieces. It should thus be clarified that a conversion factor of 50 gram/piece has been used, which is in line with previous investigations and was found to be reasonable, when compared to the information provided by the Thai exporting producer. It should be also added that, if the Commission had used exactly the average weight per piece resulting from the information provided by the Thai exporting producer, the imports from Thailand would have shown during the overall injury investigation period a steeper increase in terms of both absolute volume (by 25 %, as compared to 19 % established in the provisional Regulation) and market shares (from 11,8 % to 15,5 %, as compared to 12,0 % to 15,0 % established in the provisional Regulation).
- (29) One importer also claimed that the Thai imports actually decreased by 40 % during the injury investigation period,

but this was based on the import value — and not on the volume — for the totality of the customs code, thus including products other than those under investigation. This claim had to be rejected.

- (30) In view of the above, the findings in recitals 33 to 40 of the provisional Regulation concerning the Union consumption (which decreased by more than 15 % between 2008 and the IP) and the imports from Thailand, are hereby confirmed.

6.2. Economic situation of the Union industry

- (31) One importer submitted that the injury analysis was biased because the poor financial situation of the Union industry should be seen in conjunction with the situation of one of its related companies, which is allegedly making profits in the RBM's business. In this respect it is noted that the injury analysis should only focus on the Union industry's sales on the Union market of the product concerned produced in the Union. Since, as mentioned in recital 69 of the provisional Regulation, the related company in question is not a producer in the Union and is mostly trading products not originating in the Union, it should not be taken into consideration for the purpose of the injury analysis.
- (32) Without prejudice to the above, it is nevertheless underlined that the importer has provided no information showing that the above-mentioned related company would be in a good financial situation. To the contrary, the figures obtained during the investigation show that also this company decreased significantly its sales volume of RBM during the investigation period.
- (33) Account taken of the above and in the absence of other comments in respect to the injury analysis, the recitals 41 to 57 of the provisional Regulation are hereby confirmed, and it is concluded that the Union industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

7. CAUSATION

7.1. Effects of the dumped imports

- (34) Even though some interested parties contested the provisional findings regarding the effect of other factors (see below), none of them contested the provisional conclusion that dumped imports from Thailand caused injury to the Union industry. The recitals 58 to 64 of the provisional Regulation are thus hereby confirmed.

7.2. Effects of other factors

- (35) Some interested parties contested the provisional findings concerning the effect of other factors, and submitted that alternately contraction in demand, competition between Union producers, imports from India and self-inflicted injury would be the main cause of injury.
- (36) Concerning the contraction in demand, reference is made to recitals 25 to 30 above which confirm the trend of the consumption established in the provisional Regulation. The allegations that the effects of the contraction in demand have been underestimated should therefore be rejected. Nevertheless, it should be recalled that the recital 67 of the provisional Regulation concluded that the decrease in consumption indeed might have contributed to the material injury suffered by the Union industry, although this effect was considerably reinforced by the effect caused by the dumped imports. However, the effect of the decrease in consumption was not such as to break the causal link between the dumped imports and the injury found.
- (37) It was also argued by the Thai exporter that the injury suffered by the Union industry was also caused by the competition between the Union producers. This is mainly because the loss of the Union industry's market share coincided with the market share increase of the other Union producer.
- (38) In this respect, even if the calculations presented by the Thai exporter are not entirely correct, it is true that overall the market share of the second producer also increased during the injury investigation period. It should however be recalled that, as mentioned in the recital 30 of the provisional Regulation, this producer is importing a significant quantity of RBM from Thailand. Interestingly, the year when this producer managed to increase its sales of Union made products and market shares it also significantly increased its sales of RBM from Thailand. Actually, it even became a significant importer of Thai RBM, by purchasing a major part of the Thai exports during that year. Therefore, even if indeed the second Union producer managed to take over some market shares from the Union industry, it is difficult not to conclude that this company managed to do this because it also benefited from the dumped imports of RBM from Thailand. It is recalled that this producer was excluded from the definition of the Union industry because of his important import activities as compared to his own production.
- (39) Furthermore, the claim already addressed in recital 69 of the provisional Regulation that Indian imports also caused injury to the Union industry was reiterated

by interested parties. This was based on the fact that India holds around 50 % share of the Union market, i.e. three times more than Thailand, and that the corresponding average prices decreased by 3 % between 2009 and IP, while undercutting Union prices by 24 %. It was also underlined that a significant portion of the Indian imports was purchased by a company related to the Union industry.

- (40) No new arguments were however given in this respect and these claims were already addressed in the provisional Regulation. Even if the absolute level of Indian imports was indeed overall higher than that of Thailand, it was shown in the provisional Regulation that these imports developed differently: while Thai imports increased overall during the injury investigation period, both in absolute and relative terms, Indian imports decreased (by almost 10 %) and market shares also slightly diminished. In addition, the Indian average price level was also higher than the Thai import price. Furthermore, even if a company related to the Union industry is importing RBM from India, the investigation established that the level of these imports has significantly decreased over the years as mentioned above in recital 32.

- (41) Finally, several interested parties also claimed that the complainant lost its customers because it became active on the downstream market via its mother company, Ring International Holding (RIH), and that sales of RBM to related companies should be considered carefully because they would not be made at arm's length. These claims have however been rejected because they were not substantiated and the investigation showed that sales to related companies were negligible as compared to total sales.

7.3. Conclusion on causation

- (42) Based on the above, the provisional conclusions laid down in recitals 65 to 76 of the provisional Regulation are hereby confirmed. Even if factors other than imports also had some impact on the situation of the Union industry, it is concluded that dumped imports from Thailand have caused material injury to the Union industry, within the meaning of Article 3(6) of the basic Regulation, based on an analysis which has properly distinguished and separated the effects of all known factors from the injurious effects of the dumped imports.

8. UNION INTEREST

- (43) Two of the five importers that cooperated during the investigation reacted to the disclosure of the provisional findings and submitted comments in writing. One of these importers requested to be heard as well as another importer. The Commission also decided to carry out a visit at the premises of the sole user that participated to the investigation.

- (44) No comments were made with respect to the recitals 79 to 90 of the provisional Regulation concerning the description of the market and the section related to the interest of the Union industry.

8.1. Importers and traders

- (45) It is firstly recalled that in the provisional Regulation it was concluded that the imposition of measures could only have a significant negative impact on the situation of one importer, which also produces RBM in the Union. This importer did not react to the imposition of the provisional measures.
- (46) One other importer, which also requested a hearing chaired by the Hearing Officer, mainly questioned the calculation of the dumping margin, the injury analysis and the calculation of the Union consumption. It did however not raise any new comment regarding the Union interest analysis.

- (47) A third importer, representing 20 % of the overall Thai imports, requested a hearing during which it was explained that, contrary to the information submitted previously during the investigation, it did not cease all its activities related to RBM — as mentioned in recital 92 of the provisional Regulation — but has transferred them to another office. During the hearing, this importer explained that its RBM-business is only complementary to its core one covering other products and did not exclude importing RBM from Thailand even if measures are imposed. However, because of the overhead costs of its large distribution network, this will depend on the level of the anti-dumping duties and on the possibility to increase the price to customers. Alternatively, this importer would not suffer significant negative consequences from stopping the RBM-business given the minor importance of this activity as compared to its overall business.

8.2. Users

- (48) As mentioned in recital 5 above, the questionnaire reply of the only cooperating user was verified during the visit at its premises after the imposition of the provisional measures. This user is purchasing from a variety of sources, including the Union, India and Thailand. It also used to import from China but changed its source of supply since the imposition of anti-dumping duties.
- (49) Thai imports represent around 10 % of its total purchases of RBM, and the company decided not to import Thai products since the imposition of the provisional

measures. Even if so far the measures did not seem to have significantly affected its economic situation, this company nevertheless deplored the limitation of its sources of supply, and especially the fact that now it cannot rely always on short-term delivery of RBM.

- (50) Interested parties reiterated their claim, already addressed in the provisional Regulation, that the imposition of measures would lead to limited sources of supply on the Union market. It is thus worth restating that indeed the investigation showed that the Union market is characterised by a limited number of players: there is one producer in India, one in Thailand, two in the Union and some in China. The purpose of anti-dumping measures is to restore fair competition on the Union market and not to prevent imports. This may indeed result in a reduction of the level of imports, while measures offset the trade distorting nature of these imports. This is however, as such, not a sufficient reason to question the imposition of measures against dumped imports. It could even be argued that fair competition should be guaranteed on the Union market to ensure the continued existence of all sources of supply in the long term.

- (51) It is expected that with a level of the definitive duty, which is lower than the provisional one, Thai imports could still enter the Union market, while the investigation has shown that there are also other sources of supply, even if in limited number.

8.3. Conclusion on the Union interest

- (52) In the light of the above, and in the absence of any other comments, recitals 77 to 110 of the provisional Regulation are hereby confirmed and it is concluded that overall, based on the information available concerning the Union interest, there are no compelling reasons against the imposition of definitive measures against imports of RBM originating in Thailand.

9. DEFINITIVE ANTI-DUMPING MEASURES

9.1. Injury elimination level

- (53) In the absence of any comments as to the injury elimination level, recitals 111 to 114 of the provisional Regulation are hereby confirmed.

9.2. Definitive measures

- (54) With respect to the amount of duty necessary to remove the effects of the injurious dumping, it has been commented that the anti-dumping duty should be

reduced to 6 %, since allegedly Indian imports are not dumped and are 6 % higher than Thai imports. In this respect, it is noted that the purpose of anti-dumping duties is not to align prices to those of other sources but to eliminate the distorting effects of injurious dumping.

- (55) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the dumping found. This was calculated at 16,3 % having fallen significantly since the provisional stage.
- (56) On the basis of the above, the rate of the definitive anti-dumping duty for the cooperating exporter is 16,3 %.

10. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

- (57) In view of the magnitude of the dumping margin found and given the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of the duty definitively imposed by this Regulation. Since the definitive duty is lower than the provisional duty, the amounts secured in excess of the definitive duty rate should be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on certain ring binder mechanisms, currently falling within CN code ex 8305 10 00 (TARIC codes 8305 10 00 11, 8305 10 00 13, 8305 10 00 19, 8305 10 00 21, 8305 10 00 23, 8305 10 00 29, 8305 10 00 34, 8305 10 00 35 and 8305 10 00 36) originating in Thailand. For the purpose of this Regulation, ring binder mechanisms shall consist of at least two 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 trigger mechanism fixed to the ring binder mechanism.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 shall be 16,3 %.

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

Article 1 of this Regulation. The amounts secured in excess of the rate of the definitive anti-dumping duty shall be released.

Article 2

Amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EU) No 118/2011 shall be definitively collected at the rate of the definitive duty imposed pursuant to

Article 3

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

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

Done at Brussels, 5 August 2011.

For the Council
The President
M. DOWGIELEWICZ
