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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 119/97

of 20 January 1997

imposing definitive anti-dumping duties on imports of certain ring binder mechanisms originating in Malaysia and the People's Republic of China and collecting definitively the provisional duties imposed

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 Articles 9 and 23 thereof,

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

Whereas:

I. PROVISIONAL MEASURES

(1) By Commission Regulation (EC) No 1465/96 [2] (hereinafter referred to as the provisional duty Regulation) provisional anti-dumping duties were imposed on imports into the Community of certain ring binder mechanisms falling within CN code ex 8305 10 00 and originating in Malaysia and the People's Republic of China.

II. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping measures, certain interested parties submitted comments in writing.

(3) Those parties who so requested were granted an opportunity to be heard by the Commission.

(4) The Commission continued to seek and verify all information deemed necessary for its definitive findings.

(5) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the interested parties were considered, and, where deemed appropriate, taken into account in the Commission's definitive findings.

III. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(7) For the purpose of its preliminary findings, the Commission considered ring binder mechanisms (hereinafter referred to as 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 as 'like products', within the meaning of Article 1 (4) of Regulation (EC) No 384/96 (hereinafter referred to as the basic anti-dumping Regulation), because they are either identical or have characteristics closely resembling each other.

(8) One importer, also a producer of the downstream product (that is, manufacturer of ring binder files and other stationery products) reiterated arguments it had made previously, namely that mechanisms with 17 and 23 rings are not like products in relation to 'standard' two- to four-ring mechanisms and should, therefore, be excluded from the scope of the proceeding.

(9) In support of its claim, the importer argued that only mechanisms with two to four rings were mentioned in the complaint, leaving aside 17- and

[1] OJ No L 56, 6. 3. 1996, p. 1.
[2] OJ No L 187, 26. 7. 1996, p. 47.

23-ring mechanisms from the list of allegedly dumped products.

Although it is true that, in the calculations set out in the complaint as *prima facie* evidence of dumping and resulting injury, only models with two to four rings were used as examples, it should also be recalled that, in the product description outlined in the complaint, all ring mechanisms, with two rings or more, were included. In this respect, it should be noted that RBM with e.g. six, 13 or 16 rings are sold on the Community market.

(10) It has been argued that, in addition to the number of rings, 17- and 23-ring mechanisms have distinguishing physical characteristics, in particular higher base length and width, which make them more wear resistant than other mechanisms, and therefore significantly different.

Following an examination of this issue, it was found that variations, if any, could be considered comparable to the ones already existing among the different models of two- or four-ring mechanisms themselves. Therefore, it is considered that there is no other significant physical difference than the number of rings between 17- to 23-ring mechanisms, on the one hand, and other ring mechanisms, on the other hand.

(11) It has been further argued that the manufacturing methods used and the costs of production of 17- and 23-ring mechanisms differed significantly from those relating to other mechanisms.

It should be noted that the operations and the machinery necessary to manufacture the rings, fix them to the blades and assemble the blades into the mechanism's cover are essentially the same for all types of RBM. The higher content of raw materials and the ring fixing operation which has to be repeated in the case of 17- and 23-ring mechanisms cause a difference in production costs. However, this difference, although significant, is not out of proportion to those observed between small and large types of mechanisms with fewer rings. Therefore, the particular manufacturing operations, if any, and the resulting costs relating to 17- and 23-ring mechanisms are not such as to alter their similarity to other mechanisms. In any event, with regard to differences in the manufacturing process that may have been used, following consistent practice of the Community institutions, all such differences are irrelevant in the analysis of the like product.

(12) It has also been alleged that mechanisms with 17 or 23 rings were expensive enough for them to be considered as belonging to a separate market segment.

Although a significant price difference between mechanisms with 17 or 23 rings and similar mechanisms with fewer rings could be established, it is considered that given the similarity in use and customer, substitution effects could take place if the products were to experience sufficiently diverging price evolutions. It should therefore be concluded that the market segment for mechanisms with 17 or 23 rings does not possess sufficiently separate characteristics to be excluded altogether from the scope of the investigation.

(13) It was argued that differences also arose in the use of binders with different mechanisms. Whereas binders with 'standard' mechanisms are allegedly primarily aimed at paper where the customer himself punches holes, binders with 17- and 23-ring mechanisms are used to collect pre-punched paper due both to the price of the special hole puncher and the few pages it can punch at a time.

However, it should be noted that certain types of binders such as organizers or catalogues, using ring mechanisms with two to six rings covered by this proceeding, also use pre-punched paper already inserted in the finished product, or pre-punched additional pages, and that punchers for some of these are not necessarily available to the customer. In addition, pre-punched paper for two- to four-ring mechanisms is available and sold in significant quantities in the Community, in particular for school use (which is also the main market for the 17- and 23-ring mechanisms). It can therefore be concluded that 17- and 23-ring mechanisms have a similar use as other types of mechanisms.

(14) It was also argued that lever arch mechanisms which fall within the same CN code as RBM and are excluded from the scope of this proceeding, are more similar to two-ring mechanisms than 17- and 23-ring mechanisms.

In this respect, the physical characteristics and the market for lever arch mechanisms were found to be sufficiently distinct from those of ring mechanisms to justify these lever arch mechanisms being excluded from the complaint and from the scope of the proceeding.

(15) Following an examination of the arguments put forward, it is confirmed that 17- and 23-ring binder mechanisms have characteristics closely resembling those of other RBM, and are therefore like products to other RBM within the meaning of Article 1 (4) of the basic anti-dumping Regulation. Accordingly, the above claim is rejected.

IV. DUMPING

A. Market economy third country

(16) At the time of initiation, one importer had objected to the choice of Malaysia as analogue market for the establishment of normal value with respect to the People's Republic of China. As his arguments were not substantiated nor any alternative country was proposed, the Commission notified this interested party on 22 November 1995 that his objections had to be rejected. In a letter which reached the Commission on 27 November 1995, the same importer proposed to use cost of production of an Italian producer, which was not part of the Community industry, for the establishment of normal value in the People's Republic of China.

Since this letter was received 20 days beyond the deadline set out in the Notice of Initiation, the suggestion could not be taken into account. After having disclosed the essential facts and considerations underlying the imposition of provisional measures, the importer repeated his arguments. Although the request was made beyond any time limit applicable to the selection of a market economy third country, the Commission examined whether a change in methodology would have an impact on the level of the duty. For this purpose, and given the fact that the cost of production of one single producer could not be considered representative for the situation of other Community producers, the Commission interpreted the claim as a request to use the Community as analogue market for the establishment of normal value for the exports from the People's Republic of China. The Commission then compared the target prices established for the Community industry (its actual prices being below cost of production) of an average-to-average basis with the Chinese export prices. This dumping calculation showed that adopting this methodology would have no impact on the level of the duty finally proposed by the Commission since, under either method, the dumping margin found clearly exceeded the injury elimination level finally established.

Given the above considerations and taking into account that, in accordance with Article 2 (7) of the basic anti-dumping Regulation, if appropriate, a market economy country subject to the same investigation could be used, the Commission concluded that the selection of Malaysia was not unreasonable for the establishment of normal value and that there was no reason to change this choice of analogue country.

B. Malaysia

1. *Normal value*

(17) One importer argued that the Malaysian domestic sales, representing 5,8 % of quantities exported to the Community, were not sufficiently representative for the establishment of normal value. In this respect, the Commission applied Article 2 (2) of the basic anti-dumping Regulation, according to which a domestic sales volume of 5 % is considered as a sufficient quantity, for the representativeness of the domestic market.

(18) It was also argued by the same importer that there is only a limited competition on the Malaysian market and that consequently domestic prices are higher than they would be under normal competitive conditions. The Commission had already looked into that matter when selecting Malaysia as an appropriate analogue country and addressed the argument in recital 10 of the provisional duty Regulation. As no new argument nor evidence was put forward, the Commission confirmed that a certain degree of competition on the Malaysian market is warranted by the presence of RBM originating in the People's Republic of China. Therefore, it could be concluded that Malaysia is a reasonable choice for the establishment of normal value in the People's Republic of China.

2. *Dumping margin*

(19) No other arguments having been presented which could lead to a modification of the dumping determination, the Commission considers that the methodology of the dumping calculation and the provisional findings as described in recitals (18) to (26) of the provisional duty Regulation are to be confirmed. Consequently, the dumping margin for Malaysia is definitively established at 42,8 %.

C. People's Republic of China

1. *Normal value*

(20) Two Chinese exporters claimed an adjustment to normal value because of difference in the cost structure due to low labour costs in the People's Republic of China and differences in the technology of the production operations.

As far as labour costs are concerned, the Commission services note that the reason for using a third market economy country is the lack of reliable cost and price information in the non-market economy country concerned. Therefore, it is groundless to argue that certain costs are lower in the non-market economy country than in the analogue country and that adjustments to normal value should be made, when applying this normal value to the non-market economy country.

With respect to the different technology, the Commission services consider that the production process employed to manufacture a particular product is irrelevant as long as the physical characteristics and use of the product are similar. In this case, the alleged differences did not lead to any significant differences in the essential physical characteristics of the product concerned. Therefore, in accordance with Article 2 (10) (a) of the basic anti-dumping Regulation, the claim had to be rejected.

(21) Two interested parties argued that they were not able to comment on the Commission's calculation of normal value, as the absolute figures regarding the calculation of normal value established in the analogue country were not disclosed to the Chinese exporters, on the grounds of confidentiality. In its disclosure letter to these parties, the Commission had attached all calculation sheets relevant for these companies and set out in detail the methodology applied by the Commission for the establishment of normal value, due regard being given to the protection of confidential information, in accordance with Article 20 (4) of the basic anti-dumping Regulation. The disclosure of the detailed absolute figures would violate the legitimate right of an interested party to confidential treatment and was not necessary for the understanding of the calculation. Therefore, the argument could not be accepted.

2. *Export price*

(22) One exporter claimed that excessive amounts were deducted from the export price for deferred rebates found at the related importer's premises.

The Commission notes that this company, in replying to the Commission's questionnaire, had failed to report such rebates, which were found by the Commission's officials during the on-the-spot investigation. Therefore, the Commission had to determine the deductions on the basis of the data collected there. Moreover, the exporter's claim refers to an estimated figure of such rebates, whereas the amounts actually deducted by the Commission were those verified in the investigation.

(23) One exporter claimed that the margin of profit deducted by the Commission was too high, in comparison with the actual net profit realized by its related importer.

Due to the association agreement between the two companies, the Commission could not take into account for the construction of a reliable export price the profit margin shown in the related importer's accounts. In line with the Commission's practice, it was considered reasonable to use actual data of independent companies importing the product concerned into the Community. In determining the profit margin normally achieved by these companies, only the product concerned was taken into account. Thefore, the 7,8 % profit margin does not include any profit margins achievable on stationery products other than RBM. The determination of the profit margin was made on the basis of the independent importers' data which were verified at their premises, due account being taken of their different sale volumes.

3. *Comparison*

(24) Two interested parties enquired about and partly disputed the level of trade adjustment which the Commission took into account, to compare the Malaysian Normal Value and Chinese export prices. One party claimed that such allowance should have been more substantial.

The Commission notes that none of the exporters concerned had ever claimed such an allowance during the different phases of the investigation and that the Commission considered on its own initiative that, in view of a fair comparison, it was appropriate to grant it in this case. In the absence of any specific evidence provided by any of the exporters concerned, the Commission considered it appropriate, in order to determine the amount of such an allowance in a reasonable way, to base its calculation on its practice in similar situations.

4. *Individual treatment*

(25) World Wide Stationery (hereinafter referred to as WWS), which had at a very early stage applied for individual trestment, reiterated its request after the imposition of provisional measures.

After a further evaluation of the facts, the Commission services concluded, after verification in Hong Kong, that individual treatment could be granted to this company, in view of the substance and implementing modalities of the production agreement between WWS and the representatives of the local authorities in the People's Republic of China. According to this agreement, the company based in Hong Kong seemed to master the production operations in the People's Republic of China, since it only paid to the local Chinese authorities a transformation fee per ton for the products exported. The machinery used in the operations in the People's Republic of China was owned by WWS

and appeared as assets in its financial accounts. WWS also seemed to be in control of the supply of raw materials as well as of all sales of the product concerned. In these circumstances, it was considered appropriate to establish for WWS an individual dumping margin and to determine an individual anti-dumping duty.

(26) The related companies Champion Stationery Manufacturing CO., Ltd and Sun Kwong Metal Manufacturer CO., Ltd, considered by the Commission as one single company for the reason explained in recital 5 (b) of the provisional duty Regulation, did not reiterate their request of individual treatment and did not submit any further argument in this respect after the imposition of provisional measures. Therefore, the Commission confirms its provisional findings as reported in recitals (37) to (39) of the privisional duty Regulation, by which the request of individual treatment had been rejected.

(27) In its reply to the final disclosure, Bensons criticised in the name of Wah Hing Stationery (hereinafter referred to as WHS) Hong Kong that WWS alone should benefit from individual treatment. It alleged that WHS would have also fulfilled the conditions set by the Commission for individual treatment and would therefore also be eligible for this treatment. The Commission, however, notes that WHS did not ask for individual treatment within the specified time limits, and only raised the question of individual treatment at a very late stage of the investigation. Thus, the Commission was not in a position to verify, with regard to WHS, the substantive conditions applicable, in view of the statutory deadlines applicable to this proceeding. Consequently, the Commission was unable to propose individual treatment for WHS.

5. *Dumping margin*

(28) The Commission considers that the methodology of the dumping calculation and the provisional findings as described in recitals (27) to (36) of the provisional duty Regulation are to be confirmed.

WWS's individual dumping margin amounts to 96,6 %. The definitive dumping margin for the other exporters of the People's Republic of China as a whole amounts to 129,22 %.

V. COMMUNITY INDUSTRY

(29) As regards the Community industry, the treatment of imports from Hungary made by one EC producer, including the issue of the non-preferential rules of origin, has been questioned by several exporters and one importer, without, however, their claims in this respect being substantiated.

As explained in recital (43) of the provisional duty Regulation, the Commission accepts the fact that a majority of the products in question clearly originate in Hungary: this is the case, for instance, when all parts used come from Hungary and/or substantial processing takes place there. Accordingly, these products were excluded from the Community production, and, consequently, played no role in the definition of the Community industry. Sales of these products (which are, in fact, made in Hungary) have indeed not been taken into account amongst the sales of the Community industry when assessing the injury this industry suffered.

Conversely, products merely assembled in Hungary from Austrian parts were considered part of Community production, since the assembly operation which the products had undergone in Hungary did not confer Hungarian origin on the finished products. This determination was based on the non-preferential rules of origin applicable, as it is the Community institutions' practice to base in principle their conclusions in anti-dumping investigations on these rules. The use of the preferential rules of origin set out in Article 1 of protocol 4 to the EU-Hungary Association Agreement would be neither appropriate nor warranted in the context of an anti-dumping proceeding.

(30) In conclusion, the finding in the provisional duty Regulation that the two complainant Community producers constitute the Community industry in accordance with Article 4 (1) of the basic anti-dumping Regulation is confirmed.

VI. INJURY

A. Preliminary remark

(31) As regards the methodology used for the establishment of injury, set out in recital (46) of the provisional duty Regulation, it should be recalled that the Commission analysed data relating to the period 1992 to September 1995, and the geographical scope of the investigation over this period was the Community as composed at the time of the initiation i.e. including all fifteen Member States.

(32) Several exporters repeated the argument, which the Commission had already addressed in recital 46 of the provisional duty Regulation, that, for the purpose of determining injury, data relating to the Austrian industry can only be taken into account insofar as they relate to the period after 1 January 1995, when Austria became a Member of the Euro-

pean Union. One exporter argued that the combined provisions of Articles 3 (4) and 4 of the Agreement on Implementation of Article VI of GATT 1994 would exclude non-member countries from the definition of the domestic industry, and several exporters argued that neither Article VI of GATT 1994, nor the EEA Agreement, would justify the Commission's decision to establish injury relying, in part, on data concerning Austria and relating to the period between January 1992 and December 1994.

In addressing this argument, it should be noted that the Agreement on Implementation of Article VI of GATT 1994 requires that any imposition of measures on a given territory be based on a formal investigation into the effects of the alleged dumping within the same territory. Thus, the investigation carried out in this case covered all fifteen Member States. This was made possible in particular given the integration of the market subject to the analysis prior to the enlargement of the Community.

It is confirmed, therefore, that the Austrian producer has been rightly considered as part of the Community industry (as defined in accordance with Article 4 (1) of the basic anti-dumping Regulation) and as being entitled to act as complainant. For this reason, it is confirmed that, in order to assess the injury suffered, trends had to be established for the Community industry as defined at the time of initiation of this proceeding, over a number of years.

B. Community consumption

(33) On the basis of estimates for the annual per head consumption of binders, one importer argued that the consumption of RBM on the Community market was 400 million units and not 283 million units as stated in the provisional duty Regulation.

It should be recalled that the Commission based its provisional findings on the information received from the exporters, importers and Community producers. Due to the high level of cooperation in this case, the data for all major companies present on the market have been analysed, no party being able to give indications on a producer/importer which would have been overlooked during the investigation period and whose sales could explain the difference between the Commission's evaluation and the different alleged market size. It is therefore considered that the data obtained from the companies in this case offer a more accurate base for the calculation of the Community consumption than a mere estimate based on per-head consumption rates. Therefore, the findings set out in recital (47) of the provisional duty Regulation are confirmed.

C. Factors and considerations relating to the dumped imports

(34) One exporter submitted that a quality difference should be taken into account in order to ensure a fair comparison between its export sales of the like product in the Community and sales by the Community industry. The exporter claimed that it produces RBM with a narrower base which are allegedly some 12 to 17,5 % cheaper than the wide base mechanisms sold by the complainants. The exporter concerned claimed that this should be taken into account in the form of adjustments when calculating the degree of price undercutting.

Having examined the exporter's allegation, the Commission has verified that only models with similar width (within 1 mm difference) were compared, and found that, in any event, no consistent price differences could be established between mechanisms with different widths. For these reasons, the findings outlined in recitals (52) to (54) and the methodology described at recital (84) of the provisional duty Regulation are confirmed.

D. Situation of the Community industry

(35) One exporter argued that the Community industry's negative trends on production, sales and employment were caused by the progressive relocation of a former British producer to the Far East.

It should be noted that, as the producer in question ceased its manufacturing operations in the Community in 1991, it has not been included in the definition of the Community industry for the purpose of this proceeding, and the injury indicators established in this case do not rely on its data. Consequently, this argument was rejected.

(36) No additional substantiated arguments have been presented in relation to the findings set out in recitals (55) to (62) of the provisional duty Regulation.

E. Conclusion on injury

(37) In the light of the above and in the absence of other arguments, it is confirmed that the Community industry has suffered material injury within the meaning of Article 3 of the basic anti-dumping Regulation.

VII. CAUSATION

(38) One exporter argued that the injury suffered by the Community industry was due to the restructuring it had undergone.

As explained in the provisional duty Regulation, and in particular in its recitals 61 and 65, the actual situation shows rather that the Community industry has been prevented from benefiting from its restructuring since, in the face of the dumped imports, it could neither achieve positive financial results nor obtain stability of market share. It is therefore considered that the injury suffered has not been caused by the Community industry's restructuring, and this argument was, for this reason, rejected.

(39) The same exporter reiterated its argument that the injury suffered by the Community industry was caused by the partial shift to Hungary of one of the Community producer's operations.

As no new evidence substantiating this allegation has been submitted, the findings set out in recital (71) of the provisional duty Regulation are confirmed.

(40) The allegation that the injury suffered is resulting from past anti-competitive practices which had been put forward before the provisional duty Regulation, has been reiterated by a number of parties.

The parties making these allegations did not provide any evidence in this respect, and it should be recalled that no complaint has been lodged with any competition authority within the Community. For this reason such an allegation could not be taken into account.

(41) In conclusion, as no new aguments were received in connection with the findings in recitals (67) to (74) of the provisional duty Regulation, these findings are confirmed.

VIII. COMMUNITY INTEREST

A. General

(42) It should be recalled from recital 75, *et seq,* of the provisional duty Regulation that an appreciation of all the various interests, including the interests of the Community industry and users, was made, and that the Commission provisionally concluded that there were no compelling reasons not to take action against the imports in question. Subsequently, a further examination of matters deemed relevant in analysing the issue of Community interest took place.

B. Impact on users

1. *Introduction*

(43) Several interested parties reiterated their arguments, presented in recitals (77) to (80) of the provisional duty Regulation, that anti-dumping measures would affect the situation of EC binder manufacturers.

2. *Information collection*

(44) The conclusions set out below are based on submissions received from a variety of interested users, twenty seven companies overall, the quantitative data existing or being meaningful for nine of these which represented 17 % of the annual apparent Community consumption of RBM. The reliability of this data, where possible, was verified during company visits.

3. *Industrial impact of the downstream industry*

(45) In establishing the size of the downstream industry which could be affected by measures on RBM, the part of the stationery companies dealing with office products other than binders should be excluded. On the basis of the annual Community binder production and of the productivity ratios found in the submissions, it is considered that the employment in the Community binder industry amounts to 6 000 employees.

(46) As to the structure of the binder industry, the existence of two categories of products, standard and custom made, was established. On the basis of the productivity level for these two categories, and on the market shares of the users concerned, it is considered that the custom-made binder business represents one third of the Community binder industry in volume and 50 % of its total turnover.

(47) Some parties argued that anti-dumping measures on RBM would exclude the imported RBM from the Community market, so that the sources of supply would be reduced to the two Community producers. It has been further argued that, due to the large size of one of the two Community producers, the supply market could become a monopoly in the near future. It should be noted, however, that the difference in size of the two Community producers is limited and not such as to lead to the disappearance of one of them being likely. Moreover, no new evidence in respect of the first part of this argument was received. The findings set out in recital (78) of the provisional duty Regulation are therefore confirmed.

4. *Direct financial impact on the downstream industry*

(48) First, it has been alleged that for certain particular types of binders, the RBM was the source of up to 30 % of the manufacturing cost of a binder.

In this respect, it was found that the mechanism is a major component of a finished binder, and that the number of rings and size have a strong influence on its porportion of the cost of the finished binder. Given this variety, it is considered that a meaningful analysis of the cost influence of the RBM could not be based on any particular model of binder, but should be done on a global basis for each company, taking into account the actual product mix of its sales.

It was therefore considered that the total cost for the RBM supply for a given company should be examined in the light of the total value of its binder sales. This resulted in a weighted average ratio of 10,8 % (cost ratio), which was fairly homogeneous for the companies examined. Although differences existed between companies dedicated to the production of standard binders in comparison with others dedicated to custom-made production, no company showed, on average, a ratio higher than 13 %.

(49) As far as the possible price impact of the RBM on standard made products is concerned, one submission received after the final disclosure refers to a 14,4 % cost ratio. This is allegedly derived from the fact that the price of a custom-made binder is twice as high as that of a standard made binder, and that the cost ratio for them should therefore be half of the one for standard made.

This approach totally neglects the fact that these two categories of binders are not necessarily manufactured with the same mechanisms. Special types of mechanisms, in small series, are expensive and used in custom-made binders. This means that both terms of the cost ratio are different, and that although the cost ratio for standard made binders is higher than the one for custom-made binders, it is not twice as high. As explained in recital (48) above, no higher cost ratio than 13 % could be found. Furthermore, some companies are exclusively dedicated to standard made products.

(50) Secondly, and partly on the basis of the abovementioned allegation on the cost ratio, it has been alleged that the imposition of anti-dumping measures would have a serious adverse impact on the financial situation of the binder manufacturers.

These allegations concerning the foreseeable impact of measures have been examined in detail. As far as selling prices for RBM are concerned, it is likely that the Community industry, with a 35 % market share, would not be able to increase its prices above a certain limited level, (which can be estimated below 10 %), without running the risk of strengthening its current downward trend in respect of market share. In addition, imports from countries not concerned by this proceeding represent 9 % of the RBM market, and it is expected that these producers will not be willing or able to command price increases. As for the imports from Malaysia, it should be recalled that the injury elimination level foreseen for this country is considerably lower than for the People's Republic of China. The market share of mechanisms with Chinese origin being 45 %, it was established that even if these mechanisms were to experience a 20 % price increase at resale level and those originating in countries other than the People's Republic of China the price increases assumed in this paragraph, the average price increase on the market as a whole would be an estimated 12 %.

Consequently, in view of the average cost ratio established in recital (48), it is considered that the overall impact on the turnover likely to be experienced by the binder industry following the imposition of measures would be 12 % of 10,8 %, i.e. 1,3 %. Even in the unlikely event of a full reflection of the highest anti-dumping duty proposed in the RBM resale price, i.e. 39,4 % on CIF or 29,9 % at RBM resale level, an impact of not more than 3,2 % on the binder producers' selling prices can be foreseen.

(51) It has also been argued that the increased costs for binders could not be reflected in price increases of the final product due to the binder offer exceeding the market demand, to the changes in the binder distribution and to the fear of reduction in demand.

In the light of the fact that the average binder price increase which would take place at a retail or business customer level would be below 1 % (see recital (50), where ex-factory price increase for binders is estimated at 1,3 %), it is considered that no significant contraction in demand is likely to be caused and that the impact, if any, on the situation of the consumers of the binders will be minimal. In addition, it should be noted that substitutes for binders which would be in such a competitive situation that they would replace them following the slightest price evolution do not appear to exist. Some companies in the binder business have even confirmed that no change of the pattern of consumption could be foreseen in the next five to 10 years.

It is concluded, therefore, that neither the relatively strong competition amongst binder producers nor the emergence of substitute products within the EC are likely to prevent the binder producers from increasing their prices in line with their costs, in consideration in particular of the limited size of the increase needed to reflect the impact of the anti-dumping duties of the magnitude proposed.

5. *Competition from third countries*

(52) Several interested parties reiterated their arguments, outlined in recital (79) of the provisional duty Regulation, that anti-dumping measures would affect EC binder manufacturers' competitive position *vis-à-vis* binder producers located in third countries. These exporters could benefit from lower mechanism costs and global supply policies of certain large standard binder distributors whose influence on the market is increasing. It was alleged that this could result in the Community downstream industry losing market share and thus being tempted to relocate its production in neighbouring countries. In addressing this allegation it should be recalled that the binder market can be divided into two segments, namely the custom-made and standard made binders.

(a) Custom-made products

(53) It should be stressed again that, for the part of the market which is business-to-business oriented, it is fundamental that producers are situated close to the customers, and have flexibility in production in order to meet the required demand and service. Moreover, for this type of product, the impact of the RBM on the final price can be lower than the calculated average established at recital 48. It should be stressed, therefore, that the issue of the competitive position for this segment of the market is mainly relevant in terms of the existence of imported standard products for later customization. In this context, there are imports of finished polypropylene presentation products from the Far East, including the smallest binder models. As to the substitutability which could exist between these products and the custom-made binders, however, it should be stressed that a custom-made binder is not simply a standard binder with a printed logo. Custom-made binders indeed rely on a variety of different raw materials and assembling techniques used to produce a small number of totally individualized products. For public relations purposes, a switch from this particular custom-built product to a standard binder after the mere addition of a logo would require such an important price difference that such evolution is not likely to be caused by the effect of anti-dumping measures.

(b) Standard made products

(54) As far as the standard binder manufacturers in the Community are concerned, it has been alleged that their market was driven by the influence of binder distribution. This distribution is increasingly marked by large chains of superstores running supply policies taking advantage of the world lowest purchase price for comparable products, these policies being only limited by the transportation costs. In this respect, it was established that road transport costs over a normal distance within one Member State or between a neighbouring non-EC country and the Community would not be below 5 % of the value of the product. Over a longer distance, between non-EC countries and the Community, if maritime transport had to be used, transport costs could reach 10 % of the product value.

(55) As a consequence of the maximum cost ratio referred to at recital (49), it is considered that the foreseeable price impact on the standard made binder industry would be limited to 13 % (standard made maximum cost ratio) times 12 % (average price increase), equal to 1,6 %.

On this basis, the analysis should distinguish between competition from Norway, the Central and Eastern European Countries (CEEC), and Far Eastern countries.

(b.1) **Competition from Norway**

(56) It has been alleged that imports from Norway constituted the greatest current threat to the EC binder industry, as imports from this country were already significant and increasing.

No complaint or substantiated evidence having been submitted in respect of unfair trading practices, it would seem reasonable to consider that the EC-binder industry has ex-factory costs which are identical or similar to those of their competitors in Norway. The Commission considers that the cost increase that the EC binder producers could experience would still allow them to be competitive, since the transport costs for the EC sales of their Norwegian competitors in this case would be at least three times higher (5 %) than this foreseeable cost increase (1,6 %).

(b.2) **Competition from the CEEC**

(57) The CEEC have been alleged to be in a competitive situation to build up a binder industry able to compete on the EC market.

In this respect, it should be noted that until now the size of the binder industry in these countries has remained small and the import statistics for office products show low imports. Nevertheless, neither the growth of this industry nor its comparative advantage in terms of labour costs can be denied. The reduction in the manufacturing cost which can be obtained in these countries in comparison to the Community outweighs the necessary transportation costs to the Community market.

However, it should be considered that the creation of an export-oriented binder industry in neighbouring countries would result from the relocation of EC producing operations. Although reference to business plans for a production shift to these countries has been made, the elements received by the Commission only consisted of the comparison of current labour costs and transportation costs. On this basis, even before the introduction of any anti-dumping measure on RBM, these comparisons would militate in favour of immediate relocation of the binder industry. This shows that, in taking a management decision to relocate production, a firm also weighs other important factors. In this context, the cost of shifting production facilities in themselves and, above all, the uncertainty linked with rapidly expanding countries have to be factored in.

It is considered that in such decisions to shift production to the CEEC, the possible impact of a price increase on RBM, due to its limited amount of 1,6 % on average, could play only a minor role, if any. Consequently, no compelling evidence has been received showing that the impostition of a duty on RBM would lead to the relocation of the binder industry in the CEEC and to an important surge of imports originating in these countries.

(b.3) **Competition from the Far East**

(58) One exporter submitted information according to which finished binders from the Far East could be imported below their Community cost of production.

Eurostat import statistics show that imports of plastic office products originating in these countries are relatively low and stable. Accordingly, nearly all binder manufacturers in the Community, small companies as well as important ones, minimize the competitive impact of these imports.

It is therefore considered that the competitive situation between Far Eastern and EC binder producers described above is unlikely to be altered by the imposition of measures on the Community imports of RBM.

(c) Conclusion on competition from third countries

(59) In conclusion, it could not be established that the imposition of anti-dumping measures on RBM would be such as to affect significantly the EC binder manufacturers' competitive situation *vis-à-vis* binder producers located outside the Community. This conclusion stands both in respect of custom-made and standard made binders.

C. Impact on the Community industry

(60) Concerning the consequences for the Community industry of an absence of anti-dumping measures, it was established at the provisional stage (recital 76 of the provisional duty Regulation) that this would lead to a further worsening of the Community industry's financial situation. The recurrent losses since 1992 would continue despite the far-reaching restructuring already carried out.

It should be added that the heavily depressed net equity situation and the amount of short-term debt would become unsustainable. From a commercial point of view, any reduction in the product range offered by the Community industry in reaction to depressed prices could be no solution. Indeed, should Community producers be tempted to do so, they would lose one of their competitive advantages and, because of a dispersed customer industry, would not be able to reach the high volumes in production and sales necessary in this type of industry. Industrially, the investments in automation have been both important and successful, resulting in a highly competitive industry at a world level. With the level of automation and integration reached, certain equipment such as metal treatment installations being unique in each company, it would not be sustainable to abandon certain product lines without worsening the situation of the remainder.

For these reasons, and as a consequence of the unfair competition from the dumped imports, production in the Community would, within a short period of time, no longer have viable prospects and would cease altogether.

D. Conclusion

(61) In the light of the above, the conclusions drawn by the Commission in the provisional duty Regulation concerning Community interest are confirmed. Indeed, having examined a wide variety of aspects and the various interests involved, no compelling reasons have come into light which would lead to the conclusion that adopting definitive measures would not be in the interest of the Community, in accordance with Article 21 of the basic anti-dumping Regulation.

IX. ANTI-DUMPING MEASURES

A. General

(62) It should be recalled that the detailed calculations used to establish the injury elimination level at the provisional stage were based on the price level, per category of models with the same specific characteristics, (based on a weighted average cost of production including profit) of the Community industry's best selling models (60 % by volume). This was then compared to the resale price of the imported products or, where appropriate, to the cif import price adjusted to customer delivered level, for each corresponding category. In order to ensure a fair comparison, only categories with the same basic characteristics were compared, and it was considered that for matching categories the duty should cover the difference between the calculated non-injurious price level and the acutal selling prices of the imports into the Community. The per-category price increase thus established was then expressed as a percentage of the free-at-Community frontier price of the imported goods for each category. A single injury elimination level for each country subject to the proceeding was then established by calculating the weighted average of the per-category injury elimination level.

(63) In this regard, one importer claimed that the Commission, by using for the comparison between the dumping margin and the injury elimination level an approach based on an average, failed to examine the different situations prevailing in the various market segments. It asked the Commission to compare, for each segment of the market (e.g. two-ring mechanisms), the injury elimination level found with the dumping margin, and to retain only the lesser margin per segment in the calculation of the final average of a single duty for all segments.

It has to be noted in this respect that the calculation method used in this case complies with the requirements of Article 9 (4) of the basic anti-dumping Regulation and with previous practice concerning the calculation of a duty lower than the dumping margin in cases where such a duty is adequate to remove the injury to the Community industry. This approach is justified by the fact that the present anti-dumping investigation covers sales of one like product within which various categories and models have been found to compete with each other.

(64) Under these conditions, the injury elimination level methodology as set out in recitals (82) to (84) of the provisional duty Regulation are confirmed.

B. Level and form of the duties

(65) Based on the above conclusions on dumping, injury, causal link and Community interest, an examination was carried out on what form and level the anti-dumping measures would have to take in order to remove the trade-distorting effects of injurious dumping and to restore fair competitive conditions on the Community RBM market.

(66) Since the level of prices at which the injurious effects of the imports would be removed was lower than the dumping margin of both exporting countries concerned, the injury elimination level was used in order the determine the level of measures.

(67) The granting of individual treatment to WWS was found to affect the provisional findings. The methodology described above has been applied to calculate the individual injury elimination level of this company, for which a 32,5 % injury elimination level was established.

(68) The reduced injury elimination level for WWS resulted in an increase, from 35,4 % to 39,4 %, of the injury elimination level for all other exporters from the People's Republic of China.

(69) On this basis, definitive anti-dumping duties, in the form of ad valorem duties, would be imposed as follows:

Rate of duty

- Malaysia: 10,5 %
- People's Republic of China:
  - WWS: 32,5 %
  - Residual duty for all other companies: 39,4 %.

C. Form of the duty for mechanisms with 17 and 23 rings

(70) It has however been submitted that the imposition of an ad valorem duty on 17 and 23 ring mechanisms, at the same rate as the one applicable to other mechanisms, was inappropriate in the light of the difference in price between these two categories.

In this context, it should be noted that the import price in respect of mechanisms with 17 or 23 rings is substantially higher than the average import price for all mechanisms. In these circumstances, in the light of the exclusive nature of some of the uses of these mechanisms and the ease with which these products can be identified, it is considered that, on balance, in calculating the injury elimination level, due consideration should be given to the particularly high price of mechanisms with 17 and 23 rings and to the intensity of competition between certain segments of the market by ensuring that it is not affected by disproportionate price discrepancies. This could be achieved by ensuring that 17 and 23 ring mechanisms are imported above a certain price level adequate, as for other RBM, to remove the injury caused by the dumped imports. In these circumstances, the setting up of measures in a form different from an ad valorem duty was considered appropriate. Based on the price comparisons which were carried out (see recital 62) it is considered that, by ensuring that the cif import price for mechanisms with 17 or 23 rings be raised at the minimum of ECU 325 per 1 000 pieces, the requirements mentioned above are fulfilled.

X. UNDERTAKING

(71) In accordance with Article 8 (2) of the basic anti-dumping Regulation, the deadline for the representations following the final disclosure was also applicable to possible undertaking offers. The Chinese exporter which had been ganted an individual treatment sent a letter shortly after this deadline indicating its willingness to offer an undertaking.

In this respect, it is considered that, due to the high number of RBM types exported by the company concerned, an undertaking in this case would be virtually impossible to set up and to monitor. No formal undertaking offer from the part of the exporter was finally received.

XI. COLLECTION OF THE PROVISIONAL DUTIES

(72) In view of the magnitude of the dumping margins found for the exporting producers and countries, and in light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duties for transactions involving the product concerned should be definitively collected at the level of the definitive duties.

(73) As regards WWS, the collection of provisional anti-dumping duties should be limited to the rate of duty definitively imposed, i.e. 32,5 %.

(74) Where it could be shown, to the satisfaction of customs authorities, that the securities were made in relation to 17- or 23-ring mechanisms, the collection of the amounts secured should be limited to the duty definitively imposed for these types of RBM, if lower than the one secured

HAS ADOPTED THIS REGULATION:

Article 1

1. Definitive anti-dumping duties are hereby imposed on imports of certain ring binder mechanisms falling within CN code ex 8305 10 00 originating in Malaysia and the People's Republic of China.

For the purpose of this Regulation, ring binder mechanisms shall 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 with a small steel-made trigger mechanism fixed to the ring binder mechanism.

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

(a) for mechanisms with 17 and 23 rings (Taric code: 8305 10 00*20) originating in the People's Republic of China and Malaysia, the amount of duty shall be equal to the difference between the minimum import price of ECU 325 per 1 000 pieces and the free-at-Community-frontier not cleared through customs price;

(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	32,5 %	8934
— all other companies	39,4 %	8900

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

Article 2

1. The amounts secured by way of provisional anti-dumping duty under Regulation (EC) No 1465/96 shall be definitively collected as follows:

(a) for the amounts secured for which it can be established, to the satisfaction of the customs authorities, that they related to imports mechanisms with 17 or 23 rings, the amount collected shall be equal to the one secured, but limited to an amount calculated in accordance with the provisions of Article 1 (2) (a), if lower than the one secured. If it can not be established that the amounts secured related to mechanisms with 17 or 23 rings, subparagraph (b) below shall apply;

(b) for the amounts secured in respect of mechanisms other than those with 17 and 23 rings, the collection shall be at the duty rate definitively imposed if lower or equal to the one secured. In the other case, the collection shall be limited to the one secured.

2. Amounts secured in excess of the definitive rate of anti-dumping duty shall be released.

Article 3

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, 20 January 1997.

For the Council

The President

H. VAN MIERLO