

**COUNCIL REGULATION (EC) No 2074/2004**

**of 29 November 2004**

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

THE COUNCIL OF THE EUROPEAN UNION,

upwards by Council Regulation (EC) No 2100/2000 <sup>(3)</sup> to 51,2% for WWS and to 78,8% for all other companies in the PRC.

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 <sup>(1)</sup> (the 'basic Regulation'), and in particular Article 11(2) thereof,

- (3) Anti-dumping and countervailing measures are in force since June 2002 on imports of RBM originating in Indonesia. These measures, which are not subject to the current review, were imposed by Council Regulation (EC) No 976/2002 and Council Regulation (EC) No 977/2002 of 4 June 2002 <sup>(4)</sup>, respectively.

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

- (4) Following an investigation concerning the alleged circumvention of anti-dumping measures imposed by Council Regulation (EC) No 119/97 by imports of RBM consigned from Vietnam, the measures were extended to imports consigned from Vietnam by Council Regulation (EC) No 1208/2004 <sup>(5)</sup>.

Whereas:

**A. PROCEDURE**

**1. Measures in force**

- (1) In January 1997, Council Regulation (EC) No 119/97 <sup>(2)</sup> imposed a definitive anti-dumping duty on imports of certain ring binder mechanisms ('RBM') originating, *inter alia*, in the People's Republic of China ('PRC' or 'country concerned'). The rate of the definitive duty applicable to the net, free-at-Community-frontier price, before duty, was 32,5% for World Wide Stationery Mfg ('WWS'), a company which was granted individual treatment and 39,4% for all other companies in the PRC. These rates of duty were applicable to RBM other than those with 17 or 23 rings (TARIC codes 8305 10 00 11, 8305 10 00 12 and 8305 10 00 19), while RBM with 17 and 23 rings (TARIC codes 8305 10 00 21, 8305 10 00 22 and 8305 10 00 29) were subject to a duty equal to the difference between the minimum import price ('MIP') of EUR 325 per 1 000 pieces and the free-at-Community-frontier price, before duty, whenever the latter was lower than the MIP.

- (5) An investigation concerning the alleged circumvention of anti-dumping measures imposed by Council Regulation (EC) No 119/97 by imports of RBM consigned from Thailand, whether declared as originating in Thailand or not, was initiated in April 2004 <sup>(6)</sup>.
- (6) Both investigations mentioned in the previous two recitals were independent of the results of the present investigation.

- (2) In September 2000, following a request for an anti-absorption review of the abovementioned measures, lodged pursuant to Article 12 of the basic Regulation, the rates of duty applicable to RBM other than those with 17 or 23 rings (TARIC codes 8305 10 00 11, 8305 10 00 12 and 8305 10 00 19) were revised

**2. Request for a review**

- (7) Following the publication of a notice of impending expiry of the anti-dumping measures in force on imports of certain RBM originating in the PRC <sup>(7)</sup>, the Commission received, on 23 October 2001, a request to review these measures pursuant to Article 11(2) of the basic Regulation.

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

<sup>(2)</sup> OJ L 22, 24.1.1997, p. 1.

<sup>(3)</sup> OJ L 250, 5.10.2000, p. 1.

<sup>(4)</sup> OJ L 150, 8.6.2002, p. 1 and p. 17.

<sup>(5)</sup> OJ L 232, 1.7.2004, p. 1.

<sup>(6)</sup> OJ L 127, 29.4.2004, p. 67.

<sup>(7)</sup> OJ C 122, 25.4.2001, p. 2.

- (8) The request was lodged by two Community producers, Koloman Handler AG and Krause Ringbuchtechnik GmbH ('the applicants'), representing a major proportion of the total Community production of RBM. The request was based on the grounds that the expiry of the measures would be likely to result in higher volumes of injurious dumped imports originating in the PRC.
- (9) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review pursuant to Article 11(2) of the basic Regulation, the Commission initiated a review<sup>(1)</sup>.

### 3. Investigation

#### (a) Procedure

- (10) The Commission officially advised the exporting producers, importers and users known to be concerned, the representatives of the exporting country, the applicant Community producers and the other known Community producer of the initiation of the expiry 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.
- (11) All parties who so requested within the above time limit and who demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.
- (12) Questionnaires were sent to all the parties that were officially advised of the initiation of the review and to those who requested a questionnaire within the time limit set out in the notice of initiation. In addition, one producer in India (analogue country) was contacted and received a questionnaire.
- (13) Replies to the questionnaires were received from the two applicant Community producers and one exporting producer in the country concerned, as well as from one producer in the analogue country and two unrelated importers in the Community.
- (14) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were granted a period within which to make representations subsequent to disclosure. The comments of the parties were considered and where appropriate, the findings have been modified accordingly.

#### (b) Interested parties and verification visits

- (15) All the information deemed necessary for the purpose of determination of the likelihood of a continuation or recurrence of dumping and injury and of the

Community interest was sought and verified. Verification visits were carried out at the premises of the following companies:

#### (i) Applicant Community producers

- Krause Ringbuchtechnik GmbH, Espelkamp, Germany
- SX Bürowaren Produktions- und Handels GmbH (until November 2001 RBM had been manufactured by Koloman Handler AG), Vienna, Austria (see recital (50)),

#### (ii) Producer in the exporting country

- World Wide Stationery Mfg, Hong Kong, PRC

#### (iii) Producer in the analogue country

- Tocheunglee Stationery Manufacturing Co, Chennai, India

#### (iv) Unrelated importer in the Community

- Bensons International Systems B.V., Utrecht, the Netherlands

#### (c) Investigation period

- (16) The investigation on the likelihood of a continuation or recurrence of dumping covered the period from 1 January 2001 to 31 December 2001 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 1998 up to the end of the IP ('period considered').

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. Product concerned

- (17) The product concerned is the same as in the original investigation, i.e. certain ring binder mechanisms made of two rectangular steel sheets or wires with at least four half-rings made of steel wire fixed on them and which are kept together by a steel cover. They can be opened either by pulling the half-rings or with a small steel-made trigger mechanism fixed to the RBM. The rings can have different shapes, the most common ones being round and D-shaped. RBM are currently classified within CN code ex 8305 10 00 (TARIC codes 8305 10 00 11, 8305 10 00 12 and 8305 10 00 19 for mechanisms other than those with 17 or 23 rings and TARIC codes 8305 10 00 21, 8305 10 00 22 and 8305 10 00 29 for mechanisms with 17 and 23 rings). Lever-arch mechanisms ('LAM') classified within the same CN code are not included in the scope of this investigation.

<sup>(1)</sup> OJ C 21, 24.1.2002, p. 25.

(18) RBM are used to make paper, cardboard and plastic-coated office files, presentation and other bound files.

(19) A large number of different types of RBM were sold in the Community during the IP. The differences between these types were determined by the width of the base, the type of mechanism, the number of rings, the opening system, the nominal paper holding capacity, the ring diameter, the shape of the rings, the length and the ring spacing. Given the fact that all types have the same basic physical and technical characteristics and within certain ranges, are interchangeable, it was established that all RBM constitute one single product for the purpose of the present proceeding.

## 2. Like product

(20) It was found that RBM produced and sold on the domestic market in the analogue country (India) and those exported to the Community from the PRC had the same basic physical and technical characteristics and uses.

(21) It was also found that there was no difference in the basic physical and technical characteristics and uses between RBM imported into the Community originating in the PRC and RBM produced by the Community industry and sold on the Community market.

(22) It was therefore concluded that RBM produced and sold on the domestic market in the analogue country, RBM originating in the PRC exported to the Community and RBM produced and sold by the Community industry on the Community market were all like products within the meaning of Article 1(4) of the basic Regulation.

## C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

(23) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

### 1. Preliminary remarks

(24) Of the three Chinese exporting producers named in the complaint, only WWS, which was granted individual treatment in both the original and the anti-absorption investigations, cooperated. The two other exporting companies stated that they had not exported the product concerned to the Community during the IP.

However, one of these companies appears to be involved in circumvention practices via Thailand, which has been investigated by the European Anti-Fraud Office (OLAF) (see recitals (42) and (43)).

## 2. Continuation of dumping

(25) The volume of export sales of the sole cooperating company represented all imports originating in the PRC during the IP, according to Eurostat. This volume represents 1,9% of the total Community consumption during the IP of the current investigation, compared with 45% of the total Community consumption during the IP of the original investigation, i.e. from 1 October 1994 to 30 September 1995.

### (a) Methodology

(26) Compared with the original investigation, only the choice of analogue country has changed, otherwise the methodology for calculating the dumping margin has remained the same.

### (b) Analogue country

(27) Since the PRC is an economy in transition, normal value was determined on the basis of information obtained in an appropriate market economy third country (the 'analogue country') selected in accordance with Article 2(7)(a) of the basic Regulation.

(28) In the original investigation Malaysia was chosen as analogue country. In view of the fact that production in Malaysia has ceased and been transferred, *inter alia*, to India, another representative country had to be chosen. In the expiry review request, India was suggested as analogue country for the purpose of establishing normal value. This choice was not contested. It was also found that the reasons for selecting India, i.e. the size of its domestic market, the openness of its market and its degree of access to basic materials, ensured normal conditions of competition. The Indian producer contacted agreed to cooperate and had representative domestic sales. This company was related to the cooperating Chinese exporting producer, but no reasons were found to consider that this could have an impact on the determination of normal value. Therefore, in accordance with Article 2(7)(a) of the basic Regulation, India was considered to be an appropriate analogue country for establishing normal value.

(c) *Normal value*

- (29) Domestic sales of the like product in the analogue country were found to be profitable and representative during the IP. Therefore, the normal value was based on the price paid or payable in the ordinary course of trade by independent customers in the analogue country, i.e. India.

(d) *Export price*

- (30) Since the product concerned was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of the export price actually paid or payable.

(e) *Comparison*

- (31) For the purposes of a fair comparison, and in accordance with Article 2(10) of the basic Regulation, due allowance, in the form of adjustments, was made for differences in respect of inland freight, discounts and deferred rebates, handling and loading, transport and credit costs, commissions and insurance which affected prices and price comparability.
- (32) In this respect it should, however, be noted that following the imposition of anti-dumping measures, the volume and the variety of the types of RBM exported to the Community fell sharply. Therefore, the types of the like product sold on the domestic market of the analogue country during the IP were comparable with only 10 % of the types directly exported from the PRC by the sole cooperating exporting producer. Whereas, in the original investigation the comparison was based on 75 % of total sales volume. Indeed, most of the direct exports from the PRC during the IP of the current investigation covered 'niche segments' such as 17 and 23 ring mechanisms subject to the MIP.

(f) *Dumping margin*

- (33) In accordance with Article 2(11) of the basic Regulation, the weighted average normal value was compared with the weighted average export price, at the same level of trade. The comparison showed an absence of dumping.

(g) *Conclusion on dumping*

- (34) With regard to dumping practices, no dumping was found for WWS, the cooperating Chinese exporting producer. However, the volume of export sales of WWS direct to the Community during the IP of the current investigation was significantly smaller than that identified in the original investigation. The exports direct from the PRC by WWS were also centred on the top end of the range of RBM, in particular 17 and 23 ring models

subject to a duty in the form of a MIP (see recital (32) above). This means, in effect, that hardly any anti-dumping duties were paid on these imports. This result cannot be compared to the dumping margin calculated in the original investigation because it was not possible to calculate a dumping margin for the models of RBM subject to the anti-dumping duty, which were the models sold most on the Community market and which were not exported direct from the PRC during the IP of the current investigation. Also, in terms of sales volume, a comparison could only be made between the sales of the like product sold on the domestic market of the analogue country and the models that formed 10 % of the sales from the PRC to the Community. In the light of the above, it was considered that a clear conclusion on the continuation of dumping cannot be reached.

### 3. Recurrence of dumping

- (35) In the absence of a clear conclusion of continuation of dumping, the question of likelihood of a recurrence of dumping was investigated.
- (36) In this respect, the following elements were analysed: (a) the spare capacity and investments of the exporting Chinese producers; (b) the behaviour of the cooperating Chinese exporting producer on third country markets; (c) the structure in volume and prices of the exports of the product concerned to third countries by the non-cooperating companies.
- (a) *Spare capacity and investments*
- (37) It is worth recalling that, in the absence of cooperation from exporting producers other than WWS, no information concerning production in the PRC, spare production capacity and sales on the Chinese market was available, except for the cooperating producer.

- (38) The production capacity of the cooperating company remained stable from 1999 to the IP. However, since the production of the product concerned fell by 28 % between 1999 and the IP, it is likely that the cooperating exporting producer has a significant unused production capacity, i.e. one third of its total capacity. Consequently, this producer might quickly increase production and direct it towards any export market, including the Community market, if measures are allowed to expire. It should also be noted that the unused production capacity of the sole cooperating exporting producer is able to meet roughly half of the Community consumption. It can also be reasonably assumed that the other Chinese producers also have significant spare capacities, as overall Chinese exports have decreased and there is no information showing that capacity in the PRC has declined.

(39) It is noted that the cooperating company maintained a high level of investment in machinery and equipment from 1999 to the IP, although to a gradually decreasing extent.

*(b) Behaviour of the cooperating Chinese exporting producer on third country markets*

(40) Export sales to third countries (excluding the Community) by the cooperating company decreased by 8% in volume from 2000 to the IP. Its average export price to third countries decreased by 12% during the same period.

*(c) Behaviour of non-cooperating Chinese companies (volume and prices)*

(41) With regard to the companies which did not cooperate in the present investigation, findings had to be based on facts available in accordance with Article 18 of the basic Regulation. In the absence of any cooperation, US and Chinese statistics were consulted in order to establish volumes and prices of Chinese exports to other countries. Even if the absolute volume of the Chinese exports differs according to the source of information, both statistics confirm that there was a significant decrease in RBM exports from China in the period between 1999 and the IP all over the world. According to Chinese statistics, the volume of RBM exported in 1999 to the world market was around 662 million pieces, which decreased to 523 million pieces during the IP. The average export price, although covering various product types with widely differing prices, remained more or less stable during the same period. As mentioned in recital (38), in the absence of information on a hypothetical decrease in production capacity of the non cooperating Chinese exporting producers, it is likely that they still have significant unused capacities. In these circumstances, it is reasonable to consider that if the anti-dumping measures were allowed to expire, the Community market would become a very attractive target for these Chinese exporters, who would then resume their exports to the Community market in considerable quantities.

(42) Furthermore, it is important to note that OLAF carried out an investigation to determine whether imported RBM declared as originating in Thailand did actually originate in that country or, as it is alleged, were actually of PRC origin.

(43) Investigations by OLAF and the Member States concerned have concluded that the RBM were not of

Thai origin. The investigations further established that a substantial part of that traffic was of Chinese non-preferential origin and thus liable to anti-dumping duties.

(44) In this respect, it should be noted that the product types exported via Thailand included the models of RBM sold most on the Community market during the IP, rather than the 17 and 23 ring models sold directly from the PRC. This allowed a comparison to be made using the models sold most on the Community market. As such, a comparison was made between RBM exported from Thailand to the Community and a number of comparable product types sold on the domestic market of the analogue country. The result should be viewed with caution, since in the absence of a full investigation on imports of RBM from Thailand, the calculation could only be based on a FOB Bangkok price offer provided by the Community industry for product types exported from Thailand to the Community during and after the IP. However, the calculation appeared to show that the export prices of the RBM exported from Thailand were lower than the prices on the Indian domestic market, and therefore it cannot be excluded that these RBM were sold to the Community at dumped prices.

*(d) Anti-absorption investigation*

(45) In addition, it should be recalled that in October 2000, following the original investigation which imposed a duty of 32,5% for WWS and 39,4% for all other Chinese companies, an anti-absorption investigation led to an increase in the level of duty to 51,2% for WWS and 78,8% for all other companies.

*(e) Trade defence measures applied by third countries*

(46) No third countries apply trade defence measures to imports of RBM from the PRC.

#### 4. Conclusion

(47) The investigation has shown that both the cooperating exporting producer and most likely also the other two Chinese exporting producers have considerable spare capacity in view of the significant decrease in their exports from 1999 to the IP. Moreover, the unused production capacity of the sole cooperating exporting producer is able to meet roughly half of the Community consumption.

(48) The apparent Community consumption in the IP was around 270 million pieces, of which only 5 million pieces were declared as originating in the PRC. In the IP of the original investigation (1 October 1994 to 30 September 1995) Chinese exporting producers exported 126 million pieces to the Community. Therefore, and in view of the spare capacity of the Chinese exporting producers, it is likely that imports from the PRC to the Community market could resume in significant quantities if the anti-dumping measures were allowed to expire. In addition to the pressure on the Chinese companies to export in the light of their huge spare capacity, these exports will most likely be at dumped prices. Indeed, although the comparison for the cooperating company did not show dumping, this was based on a small sample not comparable with the calculation of dumping in the original investigation. On the other hand, one of the Chinese companies that did not cooperate in this investigation exported RBM to the Community market via a related company located in Thailand. Calculations have shown the possibility that these sales were at dumped prices. Therefore it cannot be excluded that only one year after an anti-absorption investigation the dumping practices have continued.

(49) Based on all these findings and events, it is likely that in the event of resumption of exports by Chinese exporters to the EU, these exports would be priced below the normal value. Consequently, it must be expected that, in the absence of the present duties, the dumping from China would recur.

#### D. DEFINITION OF THE COMMUNITY INDUSTRY

(50) During the IP RBM were manufactured in the Community by the following producers:

— Krause Ringbuchtechnik GmbH, Espelkamp, Germany

— SX Bürowaren Produktions- und Handels GmbH (until November 2001 RBM had been manufactured by Koloman Handler AG), Vienna, Austria

— Industria Meccanica Lombarda srl, Offanengo, Italy.

(51) The first two producers are the applicants and cooperated in the investigation. The cooperating Community producers represented more than 90% of the total Community production of RBM in the IP. It was therefore considered that these producers represent the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation. They are hereinafter referred to as the 'Community industry'. After the IP, these two companies became part of the same company group, but their production was maintained

in the Community. This company group is unrelated to the Chinese exporting producers.

#### E. SITUATION ON THE COMMUNITY MARKET

##### 1. Consumption on the Community market

(52) The questionnaire replies of the cooperating Community producers were used to establish the Community industry's sales of RBM on the Community market. Other information available was also used to calculate the sales of the Community producer not included in the definition of the Community industry.

(53) For imports originating in the PRC and imports declared as originating in Thailand, Eurostat figures were used with the exception of the figures regarding imports declared as originating in the PRC in the IP, for which the information provided by the cooperating Chinese exporting producer was used.

(54) As to the imports originating in other third countries, the figures on imports originating in India and Indonesia, with the exception of those related to the IP, have been obtained from the anti-dumping proceeding concerning these two countries. Eurostat information was used to calculate the volume of imports not available in the questionnaire replies or in previous proceedings. For imports originating in Hungary, the questionnaire reply of one cooperating Community producer was used. For third countries other than Hungary and the countries referred to in this recital, Eurostat information was used. It should also be noted that Eurostat figures had to be converted from tonnes into pieces.

(55) On this basis, the apparent Community consumption decreased by 9% during the period considered, from 297 million pieces (figures rounded to the million) in 1998 to 270 million pieces in the IP. The figures for 1999 and 2000 were 306 million pieces and 316 million pieces, respectively.

##### 2. Imports from the country concerned

###### (a) Import volume and market share

(56) The imports declared as originating in the PRC decreased sharply, from 44 million pieces in 1998 to 24 million pieces in 1999, to 10 million pieces in 2000 and to 5 million pieces in the IP. The market share of the imports declared as originating in the PRC fell in each year of the period considered, from 14,8% in 1998 to 7,8% in 1999, to 3% in 2000 and to 1,9% in the IP.

*(b) Price evolution of the imports of the product concerned*

- (57) The average price of the imports declared as originating in the PRC increased by 96 % between 1998 (EUR 141) and the IP (EUR 278). The upward trend of the prices of imports declared as originating in the PRC reflects the growing weight of more expensive product types subject to an MIP (RBM with 17 and 23 rings) rather than a genuine price increase.

**3. Imports declared as originating in Thailand**

- (58) It was mentioned above, based on the findings of the OLAF investigation, that a substantial part of imports declared as originating in Thailand was in fact of Chinese origin. Imports declared as originating in Thailand increased from one million pieces in 1998 to 16 million pieces in 1999, to 17 million pieces in 2000 and to 20 million pieces in the IP. The market share of the imports declared as originating in Thailand increased in each year of the period considered, from 0,3 % in 1998 to 5,2 % in 1999, to 5,3 % in 2000 and to 7,4 % in the IP. The average price of the imports declared as originating in Thailand fell by 9 % in the same period, from EUR 100 to EUR 91. More detailed price information available for imports declared as originating in Thailand concern resale prices of a European distributor of RBM exported via Thailand. It was found that these resale prices were on average around 12 % below the sales prices of the Community industry.

**4. Economic situation of the Community industry<sup>(1)</sup>***(a) Production, production capacity and capacity utilisation*

- (59) The production of the Community industry decreased by 17 % over the period considered from 100 (index number) in 1998 to 91 in 1999, to 89 in 2000 and to 83 in the IP. Koloman Handler AG's decision to transfer part of its production to Hungary in 2000 accounts for the decrease of production in that year. In the IP, Koloman Handler AG filed for bankruptcy and its production decreased significantly in the second half of 2001.
- (60) The production capacity of the Community industry decreased by 7 % in the period considered. It increased in 1999 to 107 (index number) and then fell to 93 in 2000 as a result of Koloman Handler AG's decision to transfer part of its production to Hungary. Production capacity stabilised in the IP.
- (61) Capacity utilisation fell from above 80 % in 1998 to 70-75 % in 1999, then increased to 76-80 % in 2000 and decreased again to 70-75 % in the IP.

<sup>(1)</sup> Data is given in index numbers (1998 = 100) or in a range whenever it is necessary to preserve confidentiality.

*(b) Stocks*

- (62) The Community industry's closing stocks fell by 37 % in the period considered, having fallen in each year of that period. The main factor contributing to this decrease was the slowdown of Koloman Handler AG's production after filing for bankruptcy. The period during which stocks were kept before being sold was reduced by 10 days in the period considered.

*(c) Sales volume, market share and growth*

- (63) The Community industry's sales on the Community market decreased by 8 % over the period considered, from 119 million pieces in 1998 to 109 million pieces in the IP. Sales had also fallen in 1999 to 115 million pieces and remained almost at the same level in 2000.
- (64) The market share held by the Community industry grew slightly during the period considered, from 40,1 % in 1998 to 40,4 % in the IP, although it had fallen significantly in 1999 and 2000 to 37,6 % and 36,2 %, respectively.
- (65) While the Community consumption decreased by 9 % in the period considered, the sales volume of the Community industry decreased by 8 %. On the other hand, the aggregated volume of imports declared as originating in the PRC and in Thailand fell by 44 % in the period considered. The Community industry thus slightly increased its market share, whereas the imports declared as originating in the PRC lost market share and the imports declared as originating in Thailand increased their market share.

*(d) Sales prices and costs*

- (66) The weighted average selling price of RBM sold by the Community industry on the Community market to unrelated customers decreased in each year of the period considered, from EUR 206 per thousand pieces in 1998 to EUR 190 in 1999, to EUR 177 in 2000 and to EUR 174 in the IP, i.e. by 16 % in the period considered. Anti-dumping measures against imports from Indonesia were only taken in June 2002, i.e. it cannot be excluded that dumped RBM from Indonesia could have an impact on the price development over the period considered.
- (67) The selling price of the main raw materials (steel strip and steel wire) did not follow the downward trend. On the other hand, unit labour costs, which account for more than two-fifths of the total unit cost, decreased significantly over the period considered.

(e) *Profitability*

- (68) As the impact of certain items that do not reflect the regular performance of the business (especially depreciation for goodwill following an acquisition) was significant, the operating profit margin before depreciation for goodwill was considered to be a better indicator than the pre-tax profit margin to assess the profitability of the Community industry. The Community industry has consistently registered a poor operating profit margin on its sales to unrelated customers in the Community. Profitability improved from 0-3 % in 1998 to 3,1 %-6 % in 1999 and then fell abruptly to between 0 % and -3 % in 2000 and it was lower than -3 % in the IP. This negative performance certainly contributed to the fact that the two companies concerned went into bankruptcy: Koloman Handler AG in July 2001 and Krause Ringbuchtechnik GmbH in April 2002 (i.e. soon after the end of the IP).

(f) *Investments and ability to raise capital*

- (69) The analysis of investment focussed on investment in plant and machinery, representing more than 90 % of total investment in the IP. The investment in goodwill was not taken into consideration since it does not reflect the regular performance of the Community industry over several years, as that investment was the result of an acquisition which was a one-off event. Investment in plant and machinery decreased by 65 % in the period considered. It fell to 52 (index number) in 1999, to 48 in 2000 and to 35 in the IP.

- (70) The ability of the Community industry to raise capital was dented by its consistently poor profitability.

(g) *Return on investment*

- (71) As equity became negative in 2000 and both Community producers subsequently filed for bankruptcy, the return on total assets ('ROTA') was used to measure the return on investment. ROTA was stable in 1998 and 1999 at between 0 and 3 %, then fell abruptly to between 0 % and -5 % in 2000 and it was lower than -10 % in the IP.

(h) *Cash flow*

- (72) An analysis of a simplified net operating cash flow, i.e. operating profit plus depreciation (excluding depreciation of goodwill), shows that the trend is similar to that of the operating profit margin. Cash flow increased from 100

(index number) in 1998 to 126 in 1999, and then decreased sharply to 62 in 2000 and to -65 in the IP.

(i) *Employment, productivity and wages*

- (73) Employment (full-time units) fell in each year of the period considered, from 100 (index number) in 1998 to 86 in 1999, to 82 in 2000 and to 77 in the IP.
- (74) Productivity, measured in thousand pieces per employee, improved by 8 % over the period considered, while labour costs per unit of output, measured in EUR per kg, decreased by 12 % in the same period.

(j) *Magnitude of the actual margin of dumping*

- (75) There is no finding of actual dumping during the IP for imports declared as originating in the PRC as the findings for these imports relate to a small and not representative range of RBM. Furthermore, no full determination on dumping for imports declared as originating in Thailand could be made due to a lack of investigation on dumping (the OLAF investigation concerned the determination of origin and did not relate to the issue of dumping). Therefore, no conclusion could be reached on the magnitude of the actual margin of dumping.

## 5. Conclusion

- (76) The Community industry continued to be in a precarious situation during the period considered. This is illustrated by its declining profitability (or, in other words, by its growing losses after 1999) on lower sales volumes at decreasing unit prices.

- (77) The precarious situation of the Community industry in the IP resulted from various past events such as: (i) dumping of imports originating in the PRC until the imposition of measures in January 1997; (ii) absorption of these measures as determined in October 2000; (iii) dumping of imports originating in Indonesia until the imposition of anti-dumping measures in June 2002; (iv) circumvention through Thailand (OLAF investigation). In addition, following an investigation into circumvention, the anti-dumping measures imposed by Council Regulation (EC) No 119/97 were extended to imports consigned from Vietnam (see recital (4)). This shows that during the period considered the Community industry always suffered from dumping and had no opportunity to recover. The decrease in consumption on the Community market was limited and cannot, therefore, explain in itself the precarious situation of the Community industry.

## F. LIKELIHOOD OF RECURRENCE OF INJURY

### 1. Impact of the projected increase in dumped imports on the Community industry

(78) In the IP of the original investigation (i.e. in the period between 1 October 1994 and 30 September 1995), the Chinese exporting producers sold 126 million pieces on the Community market (WWS's sales accounting for more than two-fifths of this volume). In 2001, the IP of the current investigation, they sold 5 million pieces declared as originating in the PRC. The facts that there is significant spare capacity in the PRC (while Chinese exports to third countries are decreasing in volume) and that the behaviour of Chinese exporting producers has consistently shown that they are willing to sell at dumped and injurious prices to gain market share, clearly indicate that there is a likelihood of recurrence of injurious dumping through imports originating in the PRC if the anti-dumping measures expired.

(79) The Community is the only market where Chinese exporting producers could still increase market share, as the other markets are already supplied by Chinese producers or producers in third countries controlled by Chinese producers. The Community industry's presence is not significant in the most important markets outside the Community where almost all of the RBM sold are manufactured in the PRC or by companies controlled by the Chinese exporting producers. The price pressure exerted by the imports concerned would most probably significantly increase, as suggested by the analysis of the anti-absorption investigation, if the existing measures were allowed to expire. If WWS was able to absorb a significant part of its 32,5% anti-dumping duty and the other Chinese companies did the same of their 39,4% duty, then it is most likely that in the absence of anti-dumping measures they would be in a position to increase their strong downward pressure on the prices of RBM sold in the Community.

(80) It is recalled that the average price of RBM declared as originating in Thailand fell by 9% over the period considered and a comparison between average selling price of a European distributor of RBM declared as originating in Thailand and the Community industry's weighted average selling price showed that the former was around 12% lower than the latter.

(81) As to imports from other third countries, Hungary is part of the Community since 1 May 2004 onwards. As

concerns India and Indonesia, exporting producers in both of these countries are controlled by Chinese exporting producers. If the measures on imports originating in the PRC expire, the incentive to export RBM from India and Indonesia to the Community would be reduced, as it is likely that in this case there would be a sharp increase in dumped imports coming directly from the PRC.

(82) Given the already precarious situation of the Community industry, the aforementioned substantial increase of imports from the PRC at dumped prices combined with substantial price undercutting would undoubtedly have serious consequences for the Community industry. Indeed, and also in view of the experience concerning past anti-dumping and anti-subsidy investigations with regard to RBM, the expiry of the measures concerning RBM imports originating in the PRC would in all likelihood lead to a further and material deterioration of the situation of the Community industry.

### 2. Conclusion on the likelihood of recurrence of injury

(83) On the basis of the above, it is likely that the expiry of the anti-dumping measures on imports of RBM originating in the PRC would result in a sharp increase in the volume of these imports into the Community, combined with a significant decline in selling prices. It should be noted that the bulk of the products on the RBM market is highly standardised and competition takes place to a great extent in terms of prices.

(84) In this context, given the findings regarding the situation on the Community market, it is thus likely that an increase in the volume of imports at low, dumped prices will depress the prices of the Community industry. This will in turn lead to a further deterioration of the financial situation of the Community industry. The consequence for the Community industry would most probably be bankruptcy and the closure of its remaining plant.

(85) The expiry of the measures would remove the most important barrier to impede the Chinese exporting producers to sell at injurious dumped prices on the Community market.

(86) Therefore, it is concluded that there is a likelihood of a recurrence of injury caused by dumped imports originating in the PRC.

## G. COMMUNITY INTEREST

### 1. Introduction

(87) It was examined whether compelling reasons existed that could lead to the conclusion that it is not in the Community interest to renew the anti-dumping measures in force. For this purpose, and in accordance with Article 21 of the basic Regulation, the impact of the renewal of the measures on all parties involved in this proceeding and the consequences of the expiry of the measures were considered on the basis of all evidence submitted.

(88) In order to assess the impact of the possible maintenance of measures, all interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation. Only the cooperating Community producers and two unrelated importers replied to the questionnaire. Three users made some comments, but they neither replied to the questionnaire nor provided any evidence to substantiate their comments.

(89) Article 21(7) of the basic Regulation establishes that information shall only be taken into account where it is supported by actual evidence which substantiates its validity. In this context, no conclusion could be drawn from the comments made by users suggesting that it was not in the Community interest to maintain the anti-dumping measures, as they were not substantiated.

(90) As to the effect of the anti-dumping measures previously imposed, there was a sharp decline in imports declared as originating in the PRC, especially after the increase in the measures following the findings on absorption, combined with a sharp increase in imports originating or declared as originating in other third countries.

### 2. Interests of the Community industry

(91) The company group to which the applicants belong is the only Community producer of RBM with a significant production. They are facing a difficult environment in which low-priced, often dumped and subsidised injurious imports from third countries remain a threat.

They restructured their operation after having filed for bankruptcy, but this was not enough to avoid the further bankruptcy procedures in the last quarter of 2003. The Community industry is making an effort to build a sound business able to compete with Chinese exporting producers on a world-wide basis. The expiry of the anti-dumping measures on imports originating in the PRC could seriously undermine that strategy, as Chinese exporting producers have shown in the past that they would push prices down to dumped levels in order to gain market share. Bearing in mind that the effects of the measures in place have been partially undermined by absorption practices and by dumped or subsidised RBM imports from Indonesia, the possible expiry of such measures would most likely make the current restructuring efforts of the Community industry impossible.

(92) The Community industry has a long tradition, but it is very likely that it would cease to exist if the current restructuring efforts fail. Robert Krause GmbH & Co. KG filed for bankruptcy in January 1998. Its successor, Krause Ringbuchtechnik GmbH, owned by Wilhelm vom Hoffe Drahtwerke GmbH since June 1998, filed for bankruptcy in April 2002. After having acquired the assets and taken over the personnel of the latter, Ringbuchtechnik Produktionsgesellschaft GmbH will probably not resume production after its application for the opening of bankruptcy procedures. SX Bürowaren Produktions- und Handels GmbH continues the tradition of Koloman Handler AG. Another bankruptcy would likely be the end of the Community industry. Once the Community industry stops manufacturing RBM, the skills accumulated during more than a century and the jobs left would be lost.

(93) The renewal of the measures would most probably enable the Community industry to increase its market share, to decrease its unit manufacturing costs and to increase profitability. Prices would probably not change significantly, but sales volumes could grow substantially. The restructuring of the Community industry is intended to boost its competitive position, allowing for better planning of the RBM types to be produced, increasing its negotiating power vis-à-vis its suppliers, and streamlining its sales operations. All these measures would contribute to a reduction in costs. The Community industry is viable, as even after several bankruptcies it is still in a position to supply an important part of the Community market, in particular, in conjunction with the production site located in Hungary, which became part of the Community production on 1 May 2004.

- (94) SX Bürowaren Produktions- und Handels GmbH's acquisition of Bensons, a long time trader of RBM with companies located in the Netherlands, Singapore, the United Kingdom and the USA, clearly shows the will of the Community industry to enhance its access to the market on a world-wide basis and the seriousness of its restructuring efforts.
- (95) There were two main issues raised after disclosure. Firstly, a possible abuse of a dominant position by the Community industry. In this respect, the Commission is not aware of any anti-trust procedure concerning the companies concerned.
- (96) Secondly, it was alleged that the Community industry is now related to a Chinese exporter and that Bensons, the importer that is now part of the Community industry group, is an exclusive distributor of products sold by WWS, a Chinese exporter that also controls the production in India.
- (97) It was found that there is a supply agreement between Bensons and WWS that initially foresaw the transfer of Intellectual Property Rights from WWS to Bensons and the transfer of some of Benson's shares to WWS. These transfers have, however, not taken place. The supply agreement foresees no exclusivity between Bensons and WWS, but stipulates that Bensons is given priority to be the exclusive distributor if a given supplier ceases its activity. Therefore, the alleged relationship cannot be confirmed.

### 3. Interests of importers

- (98) The only two cooperating unrelated importers were acquired by SX Bürowaren Produktions- und Handels GmbH in August 2002, thus becoming related to the Community industry after the IP. Normally, events after the IP are not taken into account. However, since this acquisition is a significant and lasting event, it should, in this particular case, be taken into account. The interests of these importers are now the same as those of the Community industry as they are all related companies.
- (99) No other unrelated importer cooperated in the investigation. This suggests that, although measures have been in place, the other unrelated importers were not significantly affected by these measures.

### 4. Interests of users

- (100) No user cooperated in the investigation. This suggests that, although measures have been in place, users were not significantly affected by these measures. The situation of users is thus unlikely to deteriorate as a result of the maintenance of anti-dumping measures.

- (101) In the period considered, some binder manufacturers reduced their production or closed their plants in the Community. In certain cases, they moved or expanded their production capacity outside the Community, mainly in Eastern European countries. The reasons behind the decisions of these users were mainly motivated by lower labour costs and the proximity of those countries to the Community market, combined with the perspective that these countries will become members of the European Union on 1 May 2004. The prices of RBM sold by the Community industry have followed a downward trend and imports of low-priced RBM, shipped from India, Indonesia, and Thailand not subject to anti-dumping duties have been available during the period considered.

- (102) It should be stressed that should the Community industry cease to exist, users would become almost totally dependent on imports originating in the PRC and/or on imports from Chinese subsidiaries in other countries. At that moment, Chinese exporting producers would have an incentive to substantially increase prices in markets outside the PRC, which could seriously endanger the competitiveness of user industries. The Community industry has no interest in having a price policy that would contribute to the closure of Community binder manufacturers, as it would be in a much weaker position when competing outside the Community with Chinese exporting producers and their subsidiaries.

- (103) Should measures be renewed, there will be alternative sources of supply. It is worth noting that the current anti-dumping measures on imports originating in the PRC did not entail any shortage of imported RBM on the Community market.

### 5. Interests of upstream industry

- (104) Suppliers of steel wire and steel strip sell a negligible percentage of their production to the Community industry and as such, are not affected by the outcome of this proceeding. None of them made itself known as an interested party.

### 6. Competition and trade distorting effects

- (105) With respect to the effects of possible expiry of the measures on competition in the Community, it should be noted that there are only a few producers of RBM world-wide, which are mostly Chinese or controlled by Chinese exporting producers. The disappearance of the remaining few producers not controlled by Chinese companies would thus have negative effects on competition in the Community.

## 7. Conclusion on Community interest

- (106) Taking into account the above factors and considerations, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

### H. ANTI-DUMPING MEASURES

- (107) In the light of the foregoing, it is considered that, as provided for by Articles 11(2) and 11(6) of the basic Regulation, the anti-dumping measures on imports of RBM originating in the PRC imposed by Council Regulation (EC) No 119/97, as last amended by Council Regulation (EC) No 2100/2000, should be maintained.
- (108) Because of the long duration of the investigation, it is considered appropriate that the measures be limited to four years,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of certain ring binder mechanisms currently classifiable within CN code ex 8305 10 00 originating in 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.

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

Done at Brussels, 29 November 2004.

2. The rate of the definitive anti-dumping 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 codes 8305 10 00 21, 8305 10 00 22 and 8305 10 00 29), the amount of duty shall be equal to the difference between the minimum import price of EUR 325 per 1 000 pieces and the net, free-at-Community-frontier price, before duty;
- (b) for mechanisms other than those with 17 or 23 rings (TARIC codes 8305 10 00 11, 8305 10 00 12 and 8305 10 00 19)

	Rate of duty	TARIC additional code
People's Republic of China:		
— World Wide Stationery Mfg, Hong Kong, People's Republic of China	51,2%	8934
— all other companies	78,8%	8900

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

#### Article 2

This anti-dumping duty shall be imposed for a period of four years from the date of entry into force of this Regulation.

#### Article 3

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

For the Council

The President

L. J. BRINKHORST