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Proposal for a

COUNCIL REGULATION

imposing a definitive anti-dumping duty on imports of certain ring binder mechanisms originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version), repealing Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, ('the basic Regulation') in the expiry review proceeding concerning imports of certain ring binders mechanisms originating in the People's Republic of China ('PRC').

- General context

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- Existing provisions in the area of the proposal

Council Regulation (EC) No 2074/2004 of 29 November 2004 (OJ L 359, 4.12.2004).

- Consistency with other policies and objectives of the Union

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- Consultation of interested parties

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- Collection and use of expertise

There was no need for external expertise.

- Impact assessment

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but the requirement that the measures should not be contrary to the "Union interest" means that the assessment of the wider impact of the measures forms an integral part of the investigation.

3) LEGAL ELEMENTS OF THE PROPOSAL

- Summary of the proposed action

On 5 December 2008, the Commission announced by a notice ('notice of initiation'), published in the Official Journal Of the European Union, the initiation of an expiry review of the anti-dumping measures in force on imports of certain ring binder mechanisms originating in the PRC.

The expiry review was initiated following a request lodged on 4 September 2008 by one Union producer representing a major proportion of the total Union production of ring binder mechanisms.

The measure currently in force is a definitive anti-dumping duty imposed by Council Regulation (EC) No 2074/2004 on the imports into the Community of certain ring binder mechanisms originating in the PRC.

The enclosed Commission proposal for a Council Regulation contains the expiry review conclusions regarding dumping, injury and Union interest.

Member States were consulted during the Anti-Dumping Committee of 13 January 2010.

It is proposed that the Council adopt the attached proposal for a Regulation which should be published in the Official Journal of the European Union by 4 March 2010 at the latest.

- Legal basis

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community.

- Subsidiarity principle

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

- Proportionality principle

The proposal complies with the proportionality principle for the following reason(s).

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the European Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable, but the basic Regulation limits the level of the duties that may be imposed to that necessary to redress the injury caused by the dumping found.

- Choice of instruments

Proposed instruments: Regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic Regulation does not foresee alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the budget of the European Union.

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imposing a definitive anti-dumping duty on imports of certain ring binder mechanisms originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version)¹, repealing Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (the 'basic Regulation')² and in particular Article 11(2) of Regulation (EC) 1225/2009,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) By Regulation (EC) No 119/97³, the Council imposed definitive anti-dumping duties ranging from 32,5 % to 39,4 % on imports of certain ring binder mechanisms ('RBMs') originating in the People's Republic of China (PRC). These rates of duty were applicable to RBMs other than those with 17 or 23 rings, while RBMs with 17 and 23 rings 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-Union-frontier not cleared through customs price whenever the latter was lower than the MIP).
- (2) By Regulation (EC) No 2100/2000⁴, the Council amended and increased the above mentioned duties for certain RBMs other than those with 17 or 23 rings, following a review investigation pursuant to Article 12 of the basic Regulation. The amended duties ranged from 51,2 % to 78,8 %.

¹ OJ L 343, 22.12.2009, p. 51.

² OJ L 56, 6.3.1996, p. 1.

³ OJ L 22, 24.1.1997, p. 1.

⁴ OJ L 250, 5.10.2000, p. 1.

- (3) Following a request by two Union producers an expiry review pursuant to Article 11(2) of the basic Regulation was initiated in January 2002⁵ and, by Regulation (EC) No 2074/2004⁶ the Council extended the existing anti-dumping measures for four years.
- (4) Following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, by Regulation (EC) No 1208/2004⁷, the Council extended the definitive anti-dumping measures to imports of certain RBMs consigned from Vietnam, whether declared as originating in Vietnam or not.
- (5) Following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, by Regulation (EC) No 33/2006⁸, the Council extended the definitive anti-dumping measures to imports of certain RBMs consigned from Lao People's Democratic Republic, whether declared as originating in Lao People's Democratic Republic or not.
- (6) Finally, in August 2008, by Regulation (EC) No 818/2008⁹, the Council extended the scope of the measures to certain slightly modified RBMs since it was established that measures were circumvented.

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 RBMs originating in the PRC¹⁰, the European Commission ('the Commission') received, on 4 September 2008, a request to review these measures pursuant to Article 11(2) of the basic Regulation.
- (8) The request was lodged by the Union producer Ring Alliance Ringbuchtechnik GmbH ('the applicant') representing a major proportion, in this case more than 50%, of the total Union production of ring binder mechanisms. The request was based on the grounds that the expiry of measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.
- (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 review¹¹.

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 Union producer and the other known Union producer of the initiation of the expiry

⁵ OJ C 21, 24.1.2002, p.25.

⁶ OJ L 359, 4.12.2004, p. 11.

⁷ OJ L 232, 1.7.2004, p. 1.

⁸ OJ L 7, 12.1.2006, p. 1.

⁹ OJ L 221, 19.8.2008, p. 1.

¹⁰ OJ C 146, 12.6.2008, p. 33.

¹¹ OJ C 310, 5.12.2008, p. 15.

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 Thailand (the envisaged analogue country) was contacted and received a questionnaire.
- (13) Replies to the questionnaires were received from one exporting producer in the PRC who did not export RBMs to the European Union ('EU') and its related company in Thailand, the applicant Union producer, three unrelated importers and one user related to the complainant. The other Union producer did not cooperate in this investigation and one unrelated importer only submitted comments.
- (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) The Commission's services sought and verified 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 EU interest. Verification visits were carried out at the premises of the following companies:

(i) Applicant Union producer

- Ring Alliance Ringbuchtechnik GmbH, Vienna, Austria.

(ii) Producer in the exporting country

- Wah Hing Stationery Manufactory Ltd (WHS), Guangzhou and its related company Wah Hing Stationery Manufactory Ltd ('WHS') in Hong Kong, PRC.

(iii) Unrelated importer in the EU

- Giardini S.r.l., Settimo Milanese, Italy.

(c) Investigation period

- (16) The investigation of continuation or recurrence of dumping covered the period from 1 October 2007 to 30 September 2008 ('review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2005 up to the end of the RIP ('period considered').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (17) The product concerned is the same as defined in Council Regulation (EC) No 2074/2004 as amended by Council Regulation (EC) No 818/2008 i.e. certain ring binder mechanisms consisting of two steel sheets or wires with at least four half-rings made of steel wire fixed on them and which are kept together by a steel cover. They can be opened either by pulling the half rings or with a small steel trigger mechanism fixed to the ring binder mechanism. The rings can have different shapes, the most common ones being round and D-shaped ('the product concerned'). RBMs are currently falling within CN code ex 83 05 10 00. Lever-arch mechanisms ('LAM') classified within the same CN code are not included in the scope of the product concerned.
- (18) RBMs are used to make paper, cardboard and plastic-coated office files, presentation and other bound files.
- (19) A large number of different types of RBMs were sold in the EU during the RIP. 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 RBMs constitute one single product for the purpose of the present proceeding.

2. Like product

- (20) It was also found that there was no difference in the basic physical and technical characteristics and uses between RBMs produced in the PRC and RBMs produced by the Union industry and sold on the EU market.
- (21) It was therefore concluded that RBMs originating in the PRC and RBMs produced and sold by the Union industry on the EU 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

- (22) 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

- (23) No Chinese producer exporting RBMs to the EU cooperated with the investigation. Of the four Chinese companies named in the request, only one cooperated, as well as its related company based in Thailand. The three other exporting companies did not reply to the questionnaire. The sole Chinese co-operating producer did not export the product concerned to the EU but performed exports of the product concerned to other third country markets. In the absence of cooperation of any Chinese exporting producer of the RBMs to the EU during the RIP, findings with regard to dumping had to be based on information available to the Commission from other sources in

accordance with the provisions of Article 18 of the basic Regulation. In this case it was considered that the most reasonable and appropriate information was the information given by Eurostat in relation to exports. Where practical and with due regard to the time limits of the investigation, this information was checked by reference to information from the sole Chinese producer that cooperated with the present investigation but did not export RBMs to the EU and to the Chinese export statistics. Nevertheless, account taken of the fact that no company specific data with respect to quantities and volumes exists from the Chinese exporting producers the Eurostat statistics are still considered the only available proxy of the Chinese exports to the EU, even if the absolute level of prices given by Eurostat seems quite high as compared to import prices reported by Chinese export statistics and Eurostat figures given for other third countries.

2. Continuation of dumping

(a) Analogue country

- (24) Since the PRC is an economy in transition and in accordance with the provisions of Article 2(7)(a) of the basic Regulation, normal value had to be determined on the basis of the price or constructed normal value obtained in an appropriate market economy third country (the ‘analogue country’), or the price from the analogue country to other countries, including the Union, or where those are not possible on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.
- (25) In the previous investigation, India was chosen as analogue country. In this respect it is noted that the Commission informed the sole Indian producer that co-operated in the previous investigation on the initiation of the current proceeding but the relevant party refused to co-operate. In the expiry review request, Thailand was suggested as analogue country for the purpose of establishing normal value. This choice was contested by certain parties involved with the proceeding who claimed that India should have been used as an appropriate analogue country.
- (26) With respect to Thailand one Thai producer agreed to co-operate. Therefore the Commission examined the possibility of using data obtained from Thailand for the purpose of establishing normal value for PRC. With this regard it should be noted that there were no domestic sales of the product concerned in Thailand. Therefore, any determination of normal value in Thailand would have to be made on the basis of Article 2(6)(c).
- (27) Moreover, the comparison of the level of the average export price of the product concerned when exported from Thailand and the average export price of the product concerned from PRC as provided by Eurostat showed that Chinese prices were higher than Thai prices. In this regard it should be noted that there is a significant range of different product types that are covered by the product concerned and prices can vary depending on the product type. Due to absence of cooperation by the PRC exporting producers, the exact composition of their export sales to the EU could not be established and compared to the product mix of the Thai exporting producers. Consequently, since there were no indications that the significant difference in export prices can be attributed to any other factor, it was concluded that there is a difference in product mix of RBMs exported to the EU by the Chinese and the Thai exporting

producers. In effect, based on the differences in export prices for Thailand and PRC to the European Union, it was concluded, using the best data available, that the exports from PRC cover rather more expensive, elaborated product types and that also for this reason it would not be appropriate to use data from Thailand for establishing normal value for PRC.

- (28) Furthermore, the Thai company was related to the sole co-operating Chinese RBMs producer. The Commission investigated whether the fact that the two companies were related could have an impact on the determination of normal value. In this respect it is recalled that previous investigations (namely two anti-circumvention investigations) have revealed that the Thai company was established as a business response of a Chinese producer to the imposition of anti-dumping measures to the product concerned. The same conclusion is confirmed by the present investigation as explained in detail under recital (38). Account taken of this well established link between the Chinese and the Thai producer it was considered appropriate not to use the information submitted by the sole company that co-operated in the proposed analogue country. Therefore, account taken of all the above factors and in accordance with Article 2(7)(a) of the basic Regulation, Thailand was not considered to be an appropriate analogue country for establishing normal value.
- (29) Account taken of the facts described above with respect to Thailand, the lack of any co-operation from the previously used analogue country (India) as well as the fact that no Chinese company that exported RBMs to the EU co-operated with the investigation, it was considered appropriate to base the normal value on any other reasonable basis, i.e. the prices actually paid or payable in the Union for the like product.

(b) Normal value

- (30) In view of the facts described above, it was decided to base the determination for normal value on the Union industry prices in line with the provisions of Article 2(7)(a) of the basic Regulation, i.e. on the basis of prices actually paid or payable in the Union for the like product. Normal value was thus calculated on the basis of data verified at the premises of the applicant Union producer. The domestic sales of this producer of the like product were found to be representative compared to the product concerned exported to the EU from PRC. As the sales prices of the Union industry were loss-making, they had to be duly adjusted to include a reasonable profit margin, as provided for under Article 2(7)(a) of the basic Regulation. In this respect a reasonable profit margin of 5% was used which is considered reasonable for this type of business activities.

(c) Export price

- (31) In accordance with Article 18 of the basic Regulation, and in the absence of cooperation from Chinese exporting producers, the export price was calculated by using Eurostat data.

(d) Comparison

- (32) The comparison between normal value and export price was made on ex-factory basis. For the purpose of ensuring fair comparison between normal value and export price,

due adjustments were made for differences affecting prices and price comparison in accordance with Article 2(10) of the basic Regulation. Adjustments were made where necessary, for differences in transport, insurance and other transport related costs.

(e) Dumping margin

- (33) Account taken of the above and of the absence of any other reliable information for China country-wide dumping margin, based on a weighted average-to-average comparison and expressed as a percentage of the CIF EU frontier price duty unpaid, was calculated and found to be 20,7 %.

(f) Conclusion on dumping

- (34) The investigation has established the existence of dumping during the RIP. This conclusion was based (i) on the one hand on export prices as established from Eurostat for the reasons explained under recital (23) and (ii) on the other hand on normal value determined on the basis of Union industry prices in line with the provisions of Article 2(7)(a) of the basic Regulation for the reasons explained under recitals (24) to (29).

3. Recurrence of dumping

- (35) Further to the analysis of the existence of dumping during the RIP, the likelihood of the recurrence of dumping was investigated. In the absence of cooperation from Chinese exporting producers except for one company that had exports only to non EU countries, and given the lack of publicly available information, the conclusions below rely mainly on the facts available in accordance with Article 18 of the basic Regulation, namely Eurostat data, data from the sole cooperating company, Chinese statistics and the review request.

- (36) In this respect, the following elements were analysed: (a) the spare capacity and behaviour in terms of volumes and prices of the exporting Chinese producers and (b) the EU market attractiveness for Chinese exporters in terms of prices and volume.

(a) Spare capacity and behaviour of the exporting Chinese producers

- (37) It is worth recalling that, in the absence of co-operation from exporting producers other than WHS, no information concerning production in the PRC, spare production capacity and sales on the Chinese market was available, except for the co-operating producer.

- (38) The sole Chinese co-operating producer had reduced its own production capacity from 2005 to the RIP significantly (the precise figure cannot be disclosed for reasons of confidentiality). However, this Chinese producer is able to expand again its production capacity. Indeed this reduced capacity production could be restored without delay and effort given that the producer still owns an empty industrial plant close to the operational one. In that site the Chinese producer could re-establish in a short time period, i.e. within six months, a production line for RBMs using existing equipment that currently cater other production needs but could be readapted in order to increase its overall RBMs production. In this respect it should be noted also that this Chinese producer has no domestic sales and no obvious plans to start domestic sales in the near future. Consequently, this producer might quickly increase production and direct it towards any export markets (including the EU market to which it does not currently

sell) if measures are allowed to expire. The company also confirmed that if the anti-dumping measures were repealed, they would close down the production site of their related Thai company and would repatriate all the production of RBMs to China. The co-operating company did not maintain a high level of investments something which is easily explained account taken of the existence of its related Thai company, the low level of investment generally needed for this type of manufacturing activity and of the short period of time needed to shift machinery into the production of RBMs.

- (39) With respect to the non-cooperating Chinese producers, it is concluded that there are still spare capacities in the PRC. This is based on the fact that overall Chinese exports have decreased and there is no information showing that capacity in the PRC has declined. Furthermore, it is noted that there is a short lead time in the adaptability of machinery and overall versatility of equipments in the RBMs industry so that capacities could be restored easily in order to follow developments in the RBMs market.
- (40) With regard to exports sales to third countries of the sole Chinese co-operating producer it only provided partial information suggesting that its sales increased by some 10% from 2006 to the RIP. During the same period its average export price to third countries increased by 0.7%.
- (41) With regard to the development of the overall Chinese exports to other countries the available Chinese statistics were consulted in order to establish volumes and prices of Chinese exports. These data confirms that there was a significant decrease in RBMs from China in the period between 2004 and the RIP. According to the Chinese statistics, the volume of RBMs exported in 2004 was 198 million pieces, which decreased to 89 million pieces during the RIP. The average selling price on the other hand, decreased sharply during the period 2004 to 2007, only to reach levels slightly less than the 2004 during the RIP. The fact that volumes of Chinese exports of RBMs represented during the RIP only 45% of their 2004 level while the average export price was during the RIP 7% lower than its 2004 level confirms that there is a strong incentive to all Chinese producers, either co-operating or not with the investigation, to return to their previously achieved export performances account taken of their available capacities and the tendency observed in the last years for an increase in the export prices. In these circumstances, it is reasonable to believe that if the anti-dumping measures were allowed to expire, the EU market would become a very attractive target for all Chinese producers, who would then aim to export to the EU market in considerable quantities.

(b) Attractiveness of the EU market

- (42) Before the imposition of anti-dumping duties, the EU was for PRC the second most significant export market for RBMs in terms of overall volume. PRC's market share has constantly decreased after anti-dumping measures were imposed, extended following two circumvention investigations and reviewed in 2008 to enlarge their scope. Market shares remained substantially stable during the period considered and only slightly decreased to 3,2% (-0,4%) during the RIP. However, the size of the EU market, second only to the USA, and the consequent demand makes the EU an important target when comparing it with other Chinese exporting markets. The past Chinese presence in the EU market and the importance of the market can be

considered as a clear indication that Chinese producers would in the future attempt to regain market shares in the EU.

- (43) Furthermore, there are clear indications that parties in China follow closely the present investigation and consider the possibility to start exporting to the EU. In this respect it is noted that following the initiation of the proceeding the Commission received queries from a Chinese producer, not mentioned in the request for the expiry review, stating that the company was established in 2005, that it produces RBMs and plans to export RBMs to the EU as from 2009. This company considered initially the possibility to co-operate with the proceeding but did not submit the relevant questionnaire reply. The above confirms that the EU remains for Chinese producers an attractive market even with the existing anti-dumping measures and thus if measures are allowed to expire their incentive to start, increase or recommence exporting to the EU would be significantly reinforced.
- (44) The historic importance and attractiveness of the EU as a RBMs market is also confirmed by the persistent past attempts to circumvent or absorb the current anti-dumping measures. Indeed, since anti-dumping measures were imposed against PRC, there have been continuous attempts to circumvent and absorb them by Chinese exporters in order to access the EU market. It is recalled that present measures have been increased in 2000 as a result of an anti-absorption procedure, extended to Vietnam and Laos in 2004 and 2006 respectively as a result of the existence of circumvention practices and amended in 2008 with respect to the definition of product concerned also as a result of circumvention practices by means of slight product modification.
- (45) As to prices, according to the Chinese statistics, the average Chinese export price to third country markets is higher than the average Chinese export price to the EU but still significantly below the average price of Indian and Thai prices on the EU market, i.e. their potential direct competitors. The relevant Chinese export data suggests that Chinese producers have an already well established position in most of the other markets contrary to their current EU performance. It is thus clear that the EU market would be a financially attractive option for the Chinese exporters because they could sell at higher prices in the EU without jeopardizing their sales to the rest of the world and still undercut their main competitors in the EU by selling at dumped prices.

(c) Trade defence measures applied by third countries

- (46) No third countries apply trade defence measures to imports of RBMs originating in the PRC.

4. Conclusion

- (47) The investigation has shown that both the co-operating exporting producer and most likely also the other Chinese exporting producers have considerable spare capacity in view of the significant decrease in their exports from 2004 to the RIP. It has also shown that there is a constant interest by Chinese parties to enter in the EU market. Moreover, the sole co-operating producer could easily shift its production capacity from Thailand back to China if anti-dumping measures were repealed.

- (48) In view of the spare capacities of the Chinese producers and the versatility of their machinery and equipment it is likely that imports from the PRC to the EU market could resume in significant quantities if the anti-dumping measures were allowed to expire. The EU market is currently the only one in the world where anti-dumping measures exist and the facts established suggest that Chinese exporters would certainly aim to regain at the soonest possible time their past market shares by taking advantage of the necessary capacity adaptability. The above conclusion is strengthened by the fact that they could afford to sell at prices that are lower than those of all their competitors in the EU market and have already demonstrated that they did so in the RIP.
- (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 is determined that, should the existing measures be repealed, the dumping from China will be likely to recur.

D. DEFINITION OF THE UNION INDUSTRY

- (50) During the RIP RBMs were manufactured in the EU by the following producers:
- Ring Alliance Ringbuchtechnik GmbH, Wien, Austria
 - Industria Meccanica Lombarda srl, Offanengo, Italy.
- (51) The first producer is the applicant and cooperated in the investigation. The other (smaller) Union producer did not cooperate. The investigation has established that the applicant represented more than 50% of the total Union production of RBM in the RIP. It is therefore considered that this producer represents the Union industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation. It is hereinafter referred to as the 'Union industry'. The applicant and its subsidiaries is not related to the Chinese exporting producers.
- (52) It should be noted that in the past, the Union industry was originally composed of two different producers (Koloman Handler – Austria and Robert Krause – Germany) that went bankrupt and taken over by an Austrian group. The companies were subject to a significant restructuring and the current structure 'Ring Alliance Ringbuchtechnik GmbH' was created in 2003, i.e. about two years before the period considered. The head offices are located in Austria while production takes place in Hungary.

E. SITUATION ON THE EU MARKET

1. Consumption on the EU market

- (53) The questionnaire replies of the co-operating Union producer were used to establish the Union industry's sales of RBM on the EU market. Other information available was also used to calculate the sales of the Union producer not included in the definition of the Union industry
- (54) Data concerning import volumes were obtained from Eurostat statistics, with the exception of imports from Thailand which were obtained from replies to questionnaire received in the framework of the parallel anti-dumping proceeding concerning that country.

- (55) On this basis, the EU consumption of RBMs declined by 4% over the period considered from around 170-180 million pieces in 2005 to 165-175 million pieces in the RIP.¹²

2. Imports from the country concerned

(a) Import volume and market share

	2005	2006	2007	RIP
Import volume	100	49	41	43
Market share(%)	7,0%	3,8%	3,2%	3,2%

- (56) In order to establish total import volumes of the product concerned from the PRC, it was considered appropriate to include imports from those countries to which the current anti-dumping measures had been extended pursuant to Article 13(3) of the basic Regulation, i.e. Vietnam and Laos (see recital 4 and 5 above). Indeed, it was considered that imports from these countries were in fact products originating in the PRC. On this basis, it was established that total imported volume of RBM from the PRC decreased by more than 50% during the period considered. The market share decreased to the same extent during this period. It should, however, be noted those figure include consigned imports from Laos only in 2005, and they represented half of the imports in that year. Note that the anti-circumvention investigation concerning imports of RBM consigned from Laos was opened in April 2005.
- (57) The PRC market share dropped form 7.0% to 3.8% in 2006 and has remained stable since then (around 3%). It is noted that, in the framework of the previous expiry review, the PRC's market shares decreased from 14.8% in 1998 to 1.9% in 2001, i.e. the market share of Chinese RBM is now higher than at the end of the period examined for the previous expiry review.

(b) Price of the imports of the product concerned / undercutting

- (58) Out of the three co-operating importers only one imported RBM from the PRC during the RIP. These imports were very small as compared to overall imports from PRC and consisted of mechanisms with 17 and 23 rings subject to a minimum import price. These could therefore not have been used as a representative basis. According to Eurostat statistics, import prices of RBM originating in the PRC decreased by 5% during the period considered and Chinese prices undercut the Union industry's prices by around 10% (not taking into account the anti-dumping duties). The absolute level of prices given by Eurostat, however, seems quite high as compared to import prices reported by Chinese export statistics and Eurostat figures given for other third countries. As pointed out above, it is likely that, should measures be repealed, Chinese export prices would have to align to their foreign competitors (Thailand, India) and on that basis the undercutting rate would be much more significant.

¹² Only ranges are given in order to protect confidentiality of sole Complainant.

(c) *Imports from other third countries*

	2005	2006	2007	RIP
India	52,9%	48,3%	44,9%	43,3%
Thailand	11,5%	12,2%	7,9%	13,0%
Hong Kong	0,2%	0,0%	5,1%	4,9%
Others	1,2%	2,7%	4,4%	1,7%

- (59) As to imports from other third countries, imports of RBMs originating in India are decreasing while imports of RBMs originating in Thailand have slightly increased during the RIP when they are higher as compared to previous years. As well as other countries, Hong Kong is exporting the RBMs to the EU but no representations were made in this respect and no further information is available.

3. Economic situation of the Union industry¹³

(a) *Production, production capacity and capacity utilisation*

	2005	2006	2007	RIP
Production	100	102	118	119
Production capacity	100	91	100	103
Capacity utilisation (%)	59%	66%	70%	68%

- (60) During the period considered the production increased by almost 20% while capacity remained relatively stable. As a result capacity utilisation followed a trend similar to production, increasing by 9 percentage points.
- (61) The level of the capacity utilisation during the RIP was however below the level it reached in 2001, i.e. the investigation period of the previous expiry review. The capacity utilisation rate then was between 70% and 75%.

(b) *Stocks*

	2005	2006	2007	RIP
Closing stock	100	95	119	143

- (62) In the period considered the Union industry's stocks increased overall by 43%. A significant part of the RBM production consists of standard products, and the Union industry therefore has to maintain a certain level of stock in order to be in a position to swiftly satisfy the demand of its customers. Any increase of the closing stock above the average level indicates difficulties to sell the products (domestically and on the export market). The seasonality of the sales should also be taken into account: sales are more important during the last quarter of the year, corresponding to the beginning of the school season.

¹³ Data is given in index numbers (1998 = 100) or in a range whenever it is necessary to preserve confidentiality.

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

	2005	2006	2007	RIP
Sales volume	100	113	118	123
Market shares	24,4%	30,2%	31,5%	31,1%

- (63) The Union industry's sales on the EU market increased by 23% over the period considered and market shares developed from 24.4% to 31.1%, i.e. a raise of almost 7 percentage points. This increase of market shares indicates that the Union industry's growth was above the development of the consumption.
- (64) The absolute level of market share remained however below its 2001 level, the previous investigation period, when it reached around 40%

(d) *Sales prices and costs*

	2005	2006	2007	RIP
Sales prices	100	88	88	88

- (65) The Union industry's weighted average selling price decreased by 12% during the period considered. It should be noted that in the last years the raw material prices (steel) followed an increasing trend worldwide, and that steel represents around 40% of the total unit cost. Sales prices were loss making from 2006 onwards.

(e) *Profitability, return on investments, cash-flow*

	2005	2006	2007	RIP
Profitability	100	-646	-62	-115
Return on net assets	100	-72	-103	-53
Cash-flow	100	56	42	-131

- (66) The Union industry was still profitable in 2005, but the situation seriously deteriorated the next year due to circumvention practices which lead to an extension of measures in 2006 and of the product definition in 2008. Although profitability however improved in 2007, the Union industry was still unable to reach break even point and was making losses during the RIP. During the RIP, losses were small.
- (67) The cash-flow and return on net assets largely followed the same trend. With such financial situation the applicant representing the Union industry would undoubtedly face difficulties to raise capital outside the group.

(f) *Investments and ability to raise capital*

	2005	2006	2007	RIP
Investments (€)	100	190	85	80

- (68) Even if investments followed a decreasing trend, i.e. 20% during the period considered, the Union industry however maintained a certain level of investments in order to remain competitive. Those investments consisted of new machinery in order to improve the production process and to increase competitiveness.

(69) As stated in recital (66), given the weak financial situation of Union industry it can be concluded that its ability to raise capital from independent sources was seriously affected.

(i) *Employment, productivity and wages*

	2005	2006	2007	RIP
Employment	100	94	105	104
Productivity	100	109	113	114
Overall wages	100	102	107	111
Wages	100	109	102	106

(70) During the period considered employment (full-time units) increased by 4% and productivity, measured in thousand of pieces produced per employee during the period, improved by 14%; overall labour costs increased by 11%, which is largely explained by the increase of the employment figures; the average wage increase per employee remained more limited.

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

(71) On the basis of the best facts available, the investigation has established the existence of dumping during the RIP of 20,7%, which is quite substantial.

4. Conclusion

(72) The Union industry has restructured and benefited to a certain extent from the imposition of measures against dumped imports. Its economic situation has indeed improved in the last years: production, sales, market share and employment show positive trends.

(73) Despite the above-mentioned positive development, the industry could however not fully recover from the injury previously suffered. This is mainly evidenced by the financial indicators: profitability, cash flow and return on net assets are still showing signs of injury. The industry could also not yet reach the level of sales and production it reached in the past. This should also be seen in the light of the fact that during part of the period examined, measures were also undermined by circumventing practices as described above.

(74) Even though there was an improvement of the economic situation of the Union industry, it thus remained in a precarious situation during the period considered.

F. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

(75) The Union industry restructured its activities and benefited from the anti-dumping measures. However, although those measures were imposed for the first time in 1997, they were only fully effective when the effects of absorption and circumvention practices were offset. Even though the situation of the Union industry improved, it remains fragile and vulnerable.

- (76) Under such circumstances it is appropriate to carry out an analysis of the likelihood of recurrence of material injury in order to examine whether - should the measures be repealed – projected developments in terms of volumes and prices of imports originating in the PRC would further deteriorate the situation of the industry and cause material injury.

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

- (77) It is recalled that there is significant spare capacity in China and that production of RBM could easily be increased to a large extent. This is based on the above findings that the sole co-operating Chinese producer could easily restore its currently reduced production capacity and even close down its production site in Thailand in order to repatriate production to China. Furthermore other non-cooperating Chinese producers have significant spare capacity or could easily restore such capacity given the short lead time in adaptability of machinery and the overall versatility of equipments necessary to produce RBM.

- (78) It was established that any increase of RBM production in PRC would more than likely be massively exported to the EU if measures were repealed. This is based on the fact that the EU market remains significant in terms of size and was historically an important market for Chinese exporters who would certainly try to regain their lost market shares. The attractiveness of the EU market for Chinese exporters was also clearly evidenced by the numerous attempts to avoid the anti-dumping measures in place. Measures were indeed absorbed, circumvented via third countries and even via slight modification of the products.

- (79) Finally, it is established that the conditions of any future increase of RBM imports in the EU would have serious negative consequences on the situation of the Union industry. As mentioned above, if measures were repealed, the import volume of RBM from PRC is expected to be important. Furthermore, those imports would most probably exert a significant price pressure on the EU market, thus on the Union industry, as suggested by the analysis of the level of prices on the EU and third country markets. Indeed, according to Eurostat, the current Chinese prices do undercut EU prices by around 10% (excluding anti-dumping duties), and they are currently much higher than the average price of China's potential competitors (India and Thailand) on the EU market. In case measures were repealed and Chinese producers would be in a position to export all types of RBM without any AD duties in the EU, it is more than likely that they would, at least to a certain extent, align their prices to their competitor's. This is also confirmed by the (low) level of the Chinese prices on third country market, according to China's export statistics. Without any measures, the EU market would thus become very attractive for Chinese exporters.

2. Conclusion on the likelihood of recurrence of injury

- (80) 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 imports into the EU at very low prices, and that this would depress the overall level of prices on the EU market. It should be noted that the bulk of the products on the RBM market is highly standardised and the price is thus the main decisive factor.

- (81) Given the already precarious situation of the Union industry, a substantial increase of imports from the PRC at dumped prices combined with a substantial price undercutting would undoubtedly have serious consequences on its situation. This would cause material injury and thus annihilate the efforts made by the industry to restructure.

G. UNION INTEREST

1. Introduction

- (82) It was examined whether compelling reasons existed that could lead to the conclusion that it is not in the Union 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.
- (83) 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. As already mentioned, only the co-operating Union producers and three unrelated importers replied to the questionnaire. One unrelated importer and one user also made comments, without replying to the questionnaire.

2. Interest of the Union industry

- (84) The Union industry consisted of two producers when the first anti-dumping complaint was lodged in 1995: Koloman Handler GmbH, an Austrian company, and Robert Krause GmbH & Co, a German company. Those two companies were present on the EU market for a long time but they were subject to significant financial difficulties, amongst other things because of unfair traded imports.
- (85) Their economic situation was so bad that they both had to file for bankruptcies. While Robert Krause GmbH filed for bankruptcy in 1998 and its successor company had to do the same in 2002, Koloman Hander became insolvent in 2001. Both companies were taken over by another company, SX Bürowaren Produktions- und Handels GmbH, which in turn was acquired by Ring Alliance Ringbuchtechnik GmbH, the Complainant in this review.
- (86) Since then the activity has been restructured in order to better compete worldwide, but especially on the core market of the Complainant, i.e. the EU market.
- (87) The acquisition of Bensons, a well-established trader of RBMs with companies located in the Netherlands, Singapore, the United Kingdom and the USA, clearly showed the will of the Union industry to enhance its access to the market on a world-wide basis and the seriousness of its restructuring efforts.
- (88) The efforts of the Complainant have been successful, at least partly, as can be seen from the analysis of the economic situation of the company. In the last years, production, sales volume and market share increased as well as employment.

- (89) The efforts undertaken by the industry in order to improve its situation have however been undermined given that the effects of the measures against unfair imports have been diluted by absorption and circumvention practices. As a consequence, despite significant improvement, the situation of the industry remains fragile, as it is evidenced by the development of the financial indicators.
- (90) Therefore, the industry is still vulnerable to the effects of any increased imports from the PRC at low and dumped prices. It is obvious that, should the measures be repealed, the industry would again face serious difficulties which may lead to its definitive disappearance. Through its restructuring efforts the Union industry proved it is a viable industry which is still in a position to supply an important share of the EU market, but it needs additional and efficient protection against dumped imports in order to reach a solid and healthy situation.
- (91) On this basis it is concluded that it would be in the interest of the Union industry to maintain the measures for another five year period.

3. Interests of importers

- (92) Four unrelated importers participated to this investigation but only three of them provided a questionnaire reply. However, they did not import RBMs from PRC anymore, except for one which imported only mechanisms with 17 and 23 rings subject to a minimum import price. While two of them opposed the investigation and contested the 10 year long anti-dumping measures in force, the third one was rather neutral and stated that he was not affected by the current measures.
- (93) The importers mainly complained about the limited sources of supply on the EU market given the magnitude of the anti-dumping measures against imports from PRC and given the important market share of the Union industry as well as the fact that it also owns an important distributor of RBMs on the EU market which allegedly has some kind of exclusivity for RBM originating in India.
- (94) In this respect it should be noted that there are currently various sources of supply on the EU market, either from the Union industry, the other Union producer or from sources other than the PRC such as Thailand.
- (95) In addition, even though it is true that the level of the current measures is relatively high, it should be recalled that measures were increased as a result of an investigation that showed that measures were absorbed by Chinese exporters. The current level is therefore fully justified.
- (96) Since measures have been imposed and their level increased, the imports from the PRC have significantly dropped and only accounted for a minor portion of the EU market during the RIP. Importers have however adjusted to the situation and have changed sources of supply. Even if it is acknowledged that without measures they would have a wider source of supply, because importers currently do not import RBM originating in the PRC, the maintenance of the measures would not cause any adverse effect on the economic situation of those importers.
- (97) On this basis it is concluded that maintaining the measures in place would not materially affect importers.

4. Interests of users

- (98) The only user which replied to the questionnaire provided arguments in favour of the extension of measures, arguing that the EU produced RBMs are of a much better quality than those imported in the PRC.
- (99) Another user made some comments but did not provide any evidence to substantiate them. 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.

5. Interests of upstream industry

- (100) Suppliers of steel wire and steel strip sell a negligible percentage of their production to the Union 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

- (101) With respect to the effects of possible expiry of the measures on competition in the EU, 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 EU.

7. Conclusion on Union interest

- (102) 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. DISCLOSURE AND ANTI-DUMPING MEASURES

- (103) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments and claims subsequent to disclosure. Relevant representations submitted were analysed but have not lead to the alteration of the essential facts and considerations on the basis of which it was decided to maintain the current anti-dumping measures.
- (104) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain ring binder mechanisms originating in the People's Republic of China, imposed by Regulation (EC) No 2074/2004 of 29 November 2004, should be renewed.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of certain ring binder mechanisms currently falling within CN code ex 8305 10 00 originating in the People's Republic of China.

2. For the purpose of this Article, ring binder mechanisms shall consist of two steel sheets or wires with at least four half-rings made of steel wire fixed on them and which are kept together by a steel cover. They can be opened either by pulling the half rings or with a small steel trigger mechanism fixed to the ring binder mechanism.
3. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, shall be as follows:
 - (a) for mechanisms with 17 and 23 rings (TARIC codes 8305 10 00 11, 8305 10 00 13, 8305 10 00 19 and 8305 10 00 34), the amount of duty shall be equal to the difference between the minimum import price of EUR 325 per 1000 pieces and the net, free-at-Union-frontier price, before duty;
 - (b) for mechanisms other than those with 17 or 23 rings (TARIC codes 8305 10 00 21, 8305 10 00 23, 8305 10 00 29 and 8305 10 00 35)

	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

Article 2

1. A definitive anti-dumping duty is hereby imposed on imports of certain ring binder mechanisms currently falling within CN code ex 8305 10 00 consigned from Vietnam whether declared as originating in Vietnam or not (TARIC codes 8305 10 00 11 and 8305 10 00 21);
2. A definitive anti-dumping duty is hereby imposed on imports of certain ring binder mechanisms currently falling within CN code ex 8305 10 00 consigned from the Lao People's Democratic Republic whether declared as originating in the Lao People's Democratic Republic or not (TARIC codes 8305 10 00 13 and 8305 10 00 23).
3. For the purpose of this Article, 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.

4. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, shall be as follows:
- (a) for mechanisms with 17 and 23 rings (TARIC codes 8305 10 00 21, and 8305 10 00 23), the amount of duty shall be equal to the difference between the minimum import price of EUR 325 per 1000 pieces and the net, free-at-Union-frontier price, before duty;
 - (b) for mechanisms other than those with 17 or 23 rings (TARIC codes 8305 10 00 11, and 8305 10 00 13) the amount of duty shall be 78,8%.

Article 3

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

Article 4

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

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

Done at Brussels

For the Council
The President