COMMISSION IMPLEMENTING REGULATION (EU) No 830/2014

of 30 July 2014

amending Council Regulation (EC) No 1890/2005, Council Implementing Regulation (EU) No 2/2012 and Council Implementing Regulation (EU) No 205/2013 as regards the product scope of the current anti-dumping measures concerning stainless steel fasteners and parts thereof, and as regards newcomer review requests, and providing for the possibility of repayment or remission of duties in certain cases

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ([1]), and in particular Articles 9(4) and 11(3), (5) and (6) thereof,

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Council Regulation (EC) No 1890/2005 ([2]) ('the original Regulation') the Council imposed a definitive anti-dumping duty ('the original measures') on imports of certain stainless steel fasteners and parts thereof ('SSF') originating in the People's Republic of China ('PRC'), Indonesia, Taiwan, Thailand and Vietnam.

(2) Following an expiry review ('the expiry review') based on Article 11(2) of Regulation (EC) No 1225/2009 ('the basic Regulation'), which was limited to the measures imposed on imports originating in the PRC and Taiwan, the original measures ranging from 11,4 % to 27,4 % for the PRC and 8,8 % to 23,6 % for Taiwan were prolonged by Council Implementing Regulation (EU) No 2/2012 ([3]) ('the expiry review Regulation').

(3) Following an anti-circumvention investigation based on Article 13(3) of the basic Regulation ('the anti-circumvention investigation') the definitive anti-dumping duty applicable to 'all other companies' from the PRC was extended on imports of SSF consigned from the Philippines, whether declared as originating in the Philippines or not, by Council Implementing Regulation (EU) No 205/2013 ([4]).

2. Initiation of interim review

(4) A Taiwanese exporting producer, Sheh Kai Precision Co., Ltd, ('the applicant'), lodged a request for a partial interim review pursuant to Article 11(3) of the basic Regulation. The applicant requested the exclusion of certain types of fasteners, namely bi-metal fasteners ('BMF'), from the scope of the current measures due to their allegedly different physical, chemical and technical characteristics.

([1]) OJ L 343, 22.12.2009, p. 51.

([2]) Council Regulation (EC) No 1890/2005 of 14 November 2005 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam and terminating the proceeding on imports of certain stainless steel fasteners and parts thereof originating in Malaysia and the Philippines (OJ L 302, 19.11.2005, p. 1).

([3]) Council Implementing Regulation (EU) No 2/2012 of 4 January 2012 imposing a definitive anti-dumping duty on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China and Taiwan following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 5, 7.1.2012, p. 1).

([4]) Council Implementing Regulation (EU) No 205/2013 of 7 March 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 2/2012 on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China to imports of certain stainless steel fasteners consigned from the Philippines, whether declared as originating in the Philippines or not and terminating the investigation concerning possible circumvention of anti-dumping measures imposed by that regulation by imports of certain stainless steel fasteners and parts thereof consigned from Malaysia and Thailand, whether declared as originating in Malaysia and Thailand or not (OJ L 68, 12.3.2013, p. 1).

(5) Having determined that sufficient evidence existed for the initiation of a partial interim review, and after consulting the Advisory Committee, on 6 June 2013 the European Commission ('the Commission') announced by a notice ('the Notice of Initiation') published in the *Official Journal of the European Union* ([1]), the initiation of a partial interim review of the anti-dumping measures applicable to imports of certain stainless steel fasteners and parts thereof originating in the PRC and Taiwan ([2]).

(6) The current review is limited to the examination of the product scope in order to clarify whether certain product types of stainless steel screws, in particular BMF, fall within the scope of the original measures, as prolonged and extended.

3. **Parties concerned by the investigation**

(7) The known Union producers and their associations, importers and users, the representatives of the exporting countries as well as all known producers in the PRC and Taiwan were advised by the Commission of the initiation of the review.

(8) The Commission requested information from all the abovementioned parties and from those other parties who made themselves known within the time limit set in the Notice of Initiation. The Commission also gave interested parties the opportunity to make their views known in writing and to request a hearing.

(9) Thirteen Taiwanese exporting producers, one Chinese exporting producer, one Union producer, seven importers and one user submitted a questionnaire reply.

(10) Additionally, the association representing the Union producers — complainants in the original investigation and in the expiry review — confirmed that none of the Union companies produce BMF and therefore have no opinion on the characteristics of BMF.

(11) None of the additional six European producer associations known from the original investigation came forward with any information.

(12) No hearings were requested during the investigation.

4. **Verification visits**

(13) The Commission sought and verified all the information it deemed necessary. Verification visits were carried out at the premises of the following companies:

Union producer

— Reisser Schraubentechnik GmbH, Ingelfingen-Criesbach, Germany

Union importer

— Till and Whitehead Ltd, Cheltenham, United Kingdom

Exporting producers in Taiwan

— Sheh Kai Precision Co., Ltd, Kaohsiung, Taiwan

— Metalink Precision Industries Co., Ltd, Kaohsiung, Taiwan

— Sun Through Industrial Co., Ltd, Hemei Township, Taiwan

B. **PRODUCT CONCERNED AND PRODUCT UNDER REVIEW**

(14) The product concerned, as defined in Article 1(1) of the expiry review Regulation is certain stainless steel fasteners and parts thereof, currently falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 originating in the PRC and Taiwan.

(15) In the review request the applicant requested the exclusion of certain stainless steel fasteners from the scope of the current anti-dumping measure. The product to be excluded in the review request was defined by the applicant as 'bi-metal self-tapping and self-drilling screws having a shank and head of stainless steel and a point of carbon steel which allows the screw to self-drill its own pilot hole and cut its own thread into hard steel metal, currently falling within CN code ex 7318 14 10'.

([1]) OJ C 160, 6.6.2013, p. 3.
([2]) The interim review was initiated *ex officio* for the PRC since the measures currently apply both to Taiwan and PRC.

(16) One of the cooperating importers claimed that the Commission should have made a distinction not between BMF and SSF but between self-drilling and self-tapping fasteners with the aim to exclude self-drilling fasteners from the product scope of the anti-dumping measures regardless whether they are BMF or SSF.

(17) The purpose of this review as indicated in the request submitted by the applicant and as specifically mentioned in the first paragraph of point 4 of the Notice of Initiation is to examine whether precisely bi-metal self-tapping and self-drilling screws should be excluded from the scope of the products which currently are subject to anti-dumping measures. The claim thus had to be rejected.

(18) At the same time, the Commission took into account the differences between self-drilling and self-tapping fasteners. This is reflected in the amendment of the definition provided by the applicant, quoted in recital 15, as indicated in recital 19.

(19) For the purpose of this review 'BMF' should be defined as: bi-metal self-drilling screws, having a shank and head of stainless steel and a point and leading threads of carbon steel, which are welded together allowing the screw to self-drill its own pilot hole and cut its own thread into hard steel metal; and bi-metal self-tapping screws, having a shank and head of stainless steel and leading threads of carbon steel which are welded together, allowing the screw to cut its own thread into hard steel metal; both currently falling within CN code ex 7318 14 10.

(20) BMF are a relatively new product on the market which was developed in order to combine in one fastener the most important features of the carbon and the stainless steel fasteners namely the hardness of the carbon steel and the corrosion resistance of the stainless steel. BMF are produced by welding a carbon steel part to a stainless steel part and as a consequence obtaining a self-drilling and/or self-tapping fastener which has a point and leading threads (in case of self-tapping fasteners only the leading threads as no point exists) made of carbon steel, while the shank with further threads and the head are composed of stainless steel.

(21) Such BMF are able to penetrate metal sheets of even up to 25 mm thickness without the necessity of pre-drilling whereas normal SSF can only penetrate metal sheets of a maximum of 3 mm thickness. At the same time BMF maintain their corrosion resistance and are therefore suitable for out-door applications, such as windows and roofs and in chemically aggressive environments, such as swimming-pools and certain factories.

C. **FINDINGS OF THE INVESTIGATION**

Methodology

(22) During both the original investigation and the expiry review investigation BMF were not distinguished from SSF. In other words, information was only collected on different types of stainless steel used as raw material for the fasteners but not on fasteners containing both stainless and carbon steel as raw material.

(23) After the final disclosure in the expiry review, one interested party claimed that bi-metal fasteners should not be included in the product scope due to significant differences in relation to stainless steel fasteners in terms of unit sales price, cost of production, basic physical and technical characteristics (its raw material), as well as applications ([1]). However, as explained in recital 21 of the expiry review Regulation, the product scope cannot be modified in the context of an expiry review.

(24) In order to assess whether BMF are covered by the original measures it was examined whether BMF and SSF shared the same basic physical, chemical and technical characteristics and end-uses. In this regard the interchangeability and competition between the two types of fasteners was also assessed.

Basic physical, chemical and technical characteristics

Physical characteristics

(25) The main physical difference between BMF and SSF is the fact that BMF are made of two different types of steel welded together while standard SSF are cut and formed from single stainless steel wire. In the case of BMF, three to four leading threads and the drill point are composed of carbon steel, while the head and shank are made of stainless steel.

([1]) Recital 22 of the expiry review Regulation.

(26) Unless special coating is applied, the stainless steel and the carbon steel part of the BMF can be visually distinguished. It has to be noted that in most cases the fasteners undergo a coating process further enhancing their corrosion resistance and therefore SSF and BMF might not be distinguishable by the naked eye.

(27) Nevertheless, BMF have magnetic properties in their carbon steel part, which is an important feature used to distinguish them from SSF.

Technical characteristics

(28) BMF have the capability to drill and tap into hard and thick metal sheets due to their carbon steel component. SSF do not have this ability due to characteristics of stainless steel.

Chemical characteristics

(29) Due to their carbon steel content, the chemical element composition of BMF is different compared to SSF which consist purely of stainless steel.

Conclusion

(30) Based on the above, it is concluded that even if BMF may look physically alike SSF (when coated), they have different basic physical, technical and chemical characteristics from those of SSF.

End use and interchangeability

(31) The Commission assessed whether the identified differences in physical, chemical and technical characteristics translated into different end use and market perception of BMF and SSF.

(32) It was established that BMF are primarily used in outdoor metal roofing, metal cladding, window cladding applications and in-door fixings in chemically aggressive environments such as swimming-pools and certain factories. All these applications usually require metal sheets of various thicknesses to be fastened together or fastened to other materials such as insulation layers of various compositions. In all these applications using fasteners which are corrosion resistant is very important from the client perspective and in some cases/countries it is even a legal requirement.

(33) BMF are specifically developed to fulfil the requirements of such applications by being able to drill through all types of surfaces including thick metal sheets (like carbon steel fasteners) and at the same time be corrosion resistant (like stainless steel fasteners).

(34) The sole cooperating Union producer claimed that the same result, that is to say fastening different surfaces together, can be achieved by both BMF and SSF. According to that company the only difference is the way the screw is inserted, that is with or without pre-drilling. Pre-drilling means that as an initial step holes are drilled with drills that vary with the material. The screws are then inserted as a separate step. Pre-drilling is necessary when SSF are applied and metal sheets are involved. For that reason the said company considers the choice between SSF and BMF to be simply an economic decision between accepting higher labour or higher material costs.

(35) However, the investigation revealed that in practice the pre-drilling method is not only time and labour consuming but in certain applications (notably in window cladding) not even feasible. The reason is that this method would require three or even more different surfaces to be pre-drilled, each with a different type of drill, and then lined perfectly together in order for the SSF to be inserted. Consequently, in such cases pure carbon steel fasteners are used as an alternative to BMF, rather than pure SSF. The pure carbon steel fastener solution does not fulfil the requirement of anti-corrosive resistance.

(36) Furthermore, when pre-drilling is done, in case of thicker metal surfaces, the SSF inserted will not be able to form their own inner threads and as a consequence the pulling strength will be lower than in case of BMF (or carbon steel fastener).

(37) On the basis of the above the claim set out in recital 34 should be rejected.

(38) It is concluded that the differences identified in the physical, technical and chemical characteristics have an impact on the end use of BMF. Contrary to SSF, BMF fulfil rather specific functions and their use is limited to well-defined market segments, such as outdoor metal constructions, window cladding and certain in-door fixings in chemically aggressive environments.

Differences in production process, costs and prices.

(39) The investigation showed that the production process of BMF differs significantly from that of SSF by involving a number of additional production steps, other machinery and know-how. Especially the welding and the induction heating can be considered as costly, unique and technologically sensitive production steps which are only relevant for BMF.

(40) It was also confirmed that these differences in production process result in significantly higher costs of manufacturing and prices of BMF. The difference in the cost of manufacturing for a similar type of BMF and SSF can vary between 40 % to 150 % depending on the production method and the type/length of the fastener, while price differences can exceed even 400 %.

(41) The considerable difference in prices (and costs) between the BMF and SSF implies that BMF will not be used where SSF can be used with the same result, notably in fastening surfaces different from those of thick metal. This supports the conclusion of recital 38 that the consumers are well aware of the differences between these two types of fasteners and perceive them as different products.

D. **CONCLUSION ON PRODUCT SCOPE**

(42) The above findings show that BMF have different physical, chemical and technical characteristics in comparison with SSF and that these differences are relevant for the end use and market perception of the BMF.

(43) Interchangeability between BMF and SSF is rather limited because in most cases SSF cannot be used with the same result as BMF. In the absence of BMF, users would rather turn to carbon steel fasteners. In addition, interchangeability between SSF and BMF is hampered by the substantial difference in the price of the two products.

(44) In view of the differences mentioned, it is concluded that BMF do not fall within the product scope of the original investigation and that the measures imposed by the original investigation should not have been applied to imports of BMF. Consequently the scope of application of the measures should be clarified retroactively by amendments to Regulation (EC) No 1890/2005, Implementing Regulation (EU) No 2/2012 and Implementing Regulation (EU) No 205/2013.

E. **NEWCOMER REVIEW**

(45) Pursuant to Article 11(4) of the basic Regulation provision should be made in the expiry review Regulation to accommodate newcomer review requests.

F. **RETROACTIVE APPLICATION**

(46) Since the present review investigation was limited to the clarification of the product scope and since BMF should not have been covered by the original measures, in order to prevent any consequent prejudice to importers of the product, it is considered appropriate that the finding be applied retroactively from the date of the entry into force of the original Regulation, including any imports subject to provisional duties between 22 May 2005 and 19 November 2005.

(47) In the Notice of Initiation the interested parties were explicitly invited to comment on a possible retroactive effect the conclusions might have. Two importers expressed their support for retroactive application and none of the interested parties expressed opposition to the retroactive application of the results of the review.

(48) Consequently, the provisional duties definitely collected and the definitive anti-dumping duties paid on imports of BMF into the Union pursuant to Regulation (EC) No 1890/2005, as well as definitive anti-dumping duties paid on imports of BMF into the Union pursuant to Implementing Regulation (EU) No 2/2012, as extended by Implementing Regulation (EU) No 205/2013 to imports of certain stainless steel fasteners consigned from the Philippines, whether declared as originating in the Philippines or not, should be repaid or remitted. The repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation.

(49) This review does not affect the date on which Regulation (EU) No 2/2012 will expire pursuant to Article 11(2) of the basic Regulation.

(50) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation.

G. **DISCLOSURE**

(51) All interested parties were informed of the essential facts and considerations leading to the above conclusions and were invited to comment. They were also granted a period to submit comments subsequent to the disclosure. No submission and comments were received,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Regulation (EC) No 1890/2005, paragraph 1 is replaced by the following:

'1. A definitive anti-dumping duty is hereby imposed on imports of certain stainless steel fasteners and parts thereof, currently falling within CN codes 7318 12 10, ex 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 and originating in the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam.

Bi-metal fasteners, defined as: bi-metal self-drilling screws, having a shank and head of stainless steel and a point and leading threads of carbon steel, which are welded together allowing the screw to self-drill its own pilot hole and cut its own thread into hard steel metal; and bi-metal self-tapping screws, having a shank and head of stainless steel and leading threads of carbon steel which are welded together, allowing the screw to cut its own thread into hard steel metal; both currently falling within CN code ex 7318 14 10, shall not be covered by the definitive anti-dumping duty.'

Article 2

In Implementing Regulation (EU) No 2/2012, Article 1 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. A definitive anti-dumping duty is hereby imposed on imports of certain stainless steel fasteners and parts thereof, currently falling within CN codes 7318 12 10, ex 7318 14 10 (TARIC codes from the day following the publication of Commission Implementing Regulation (EU) No 830/2014 (*): 7318 14 10 51, 7318 14 10 59, 7318 14 10 81 and 7318 14 10 89), 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 and originating in the People's Republic of China and Taiwan.

Bi-metal fasteners, defined as: bi-metal self-drilling screws, having a shank and head of stainless steel and a point and leading threads of carbon steel, which are welded together allowing the screw to self-drill its own pilot hole and cut its own thread into hard steel metal; and bi-metal self-tapping screws, having a shank and head of stainless steel and leading threads of carbon steel which are welded together, allowing the screw to cut its own thread into hard steel metal; both currently falling within CN code ex 7318 14 10, shall not be covered by the definitive anti-dumping duty.

(*) Commission Implementing Regulation (EU) No 830/2014 of 30 July 2014 amending Council Regulation (EC) No 1890/2005, Council Implementing Regulation (EU) No 2/2012 and Council Implementing Regulation (EU) No 205/2013 as regards the product scope of the current anti-dumping measures concerning stainless steel fasteners and parts thereof, and as regards newcomer review requests, and providing for the possibility of repayment or remission of duties in certain cases (OJ L 226, 31.7.2014, p. 16).';

(b) the following paragraph 4 is added:

'4. Where any exporting producer in Taiwan provides sufficient evidence to the Commission that:

(a) it did not export to the Union the product described in Article 1(1) during the investigation period (1 July 2003 to 30 June 2004);

(b) it is not related to any of the exporters or producers in Taiwan which are subject to the measures imposed by this Regulation; and

(c) it has actually exported to the Union the product concerned after the investigation period or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union;

the Annex may be amended by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of 15,8 %.'

Article 3

In Article 1 of Implementing Regulation (EU) No 205/2013, paragraph 1 is replaced by the following:

'1. The definitive anti-dumping duty applicable to "all other companies" from the PRC imposed by Article 1(2) of Regulation (EU) No 2/2012, as amended by Article 2 of Commission Implementing Regulation (EU) No 830/2014 (*) on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China, is hereby extended to imports of certain stainless steel fasteners and parts thereof consigned from the Philippines, whether declared as originating in the Philippines or not, currently falling under CN codes ex 7318 12 10, ex 7318 14 10, ex 7318 15 30, ex 7318 15 51, ex 7318 15 61 and ex 7318 15 70 (TARIC codes 7318 12 10 11, 7318 12 10 91, 7318 14 10 51, 7318 14 10 81, 7318 15 30 11, 7318 15 30 61, 7318 15 30 81, 7318 15 51 11, 7318 15 51 61, 7318 15 51 81, 7318 15 61 11, 7318 15 61 61, 7318 15 61 81, 7318 15 70 11, 7318 15 70 61 and 7318 15 70 81), with the exception of those produced by the companies listed below:

Company	Additional TARIC Code
Multi-Tek Fasteners Inc., Clark Freeport Zone, Pampanga, Philippines	B355
Rosario Fasteners Corporation, Cavite Economic Area, Philippines	B356

(*) Commission Implementing Regulation (EU) No 830/2014 of 30 July 2014 amending Council Regulation (EC) No 1890/2005, Council Implementing Regulation (EU) No 2/2012 and Council Implementing Regulation (EU) No 205/2013 as regards the product scope of the current anti-dumping measures concerning stainless steel fasteners and parts thereof, and as regards newcomer review requests, and providing for the possibility of repayment or remission of duties in certain cases (OJ L 226, 31.7.2014, p. 16).'

Article 4

For goods not covered by Article 1(1) of Regulation (EC) No 1890/2005 and Article 1(1) of Implementing Regulation (EU) No 2/2012 as extended by Implementing Regulation (EU) No 205/2013 and amended by this Regulation, the definitive anti-dumping duties paid or entered into the accounts pursuant to Article 1(1) and Article 2 of Regulation (EC) No 1890/2005 and Article 1(1) of Implementing Regulation (EU) No 2/2012 as extended by Implementing Regulation (EU) No 205/2013 prior to the amendment by this Regulation shall be repaid or remitted.

Repayment and remission shall be requested from national customs authorities in accordance with applicable customs legislation. In cases where the time limits provided for in Article 236(2) of Council Regulation (EEC) No 2913/92 ([1]) have expired before or on the date of publication of this Regulation, or if they expire within six months after that date, they are hereby extended so as to expire six months after date of entry into force of this Regulation.

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

Article 5

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

It shall apply retroactively from 20 November 2005.

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

Done at Brussels, 30 July 2014.

For the Commission
The President
José Manuel BARROSO