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Proposal for a

COUNCIL REGULATION

extending the definitive anti-dumping duty imposed by Council Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') in the investigation of possible circumvention of the anti-dumping measures imposed by Council Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China ('the PRC') by imports consigned from Malaysia.

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 and in particular Article 13 thereof.

Existing provisions in the area of the proposal

The measures currently in force were imposed by Council Regulation (EC) No 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China.

Consistency with the 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 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 provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

On 28 October 2010 the Commission, by Regulation (EU) No 966/2010, initiated *ex officio* an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the PRC by imports consigned from Malaysia, whether declared as originating in Malaysia or not.

The investigation was initiated as the Commission had at its disposal *prima facie* evidence that the anti-dumping measures on imports of certain iron or steel fasteners were being circumvented by means of transhipment via Malaysia.

The attached proposal for a Council Regulation is based on the findings of the investigation, which has confirmed that transhipment of certain Chinese-origin iron or steel fasteners is taking place via Malaysia and that all other criteria for the establishment of circumvention as set out in Article 13(1) of the basic Regulation are met.

It is therefore proposed to extend the anti-dumping measures in force on certain iron or steel fasteners originating in the PRC to imports of the same product consigned from Malaysia. The duty corresponds to the country-wide duty on imports of certain iron or steel fasteners from the PRC (85%). The duty shall be levied from the date of initiation of the investigation.

Several cooperating producers in Malaysia requested exemption from the possible extended measures. For the companies which did not fully cooperate or were found to be engaged in circumvention practises, it is proposed to deny exemptions. For the companies which cooperated fully and were found not to be circumventing the measures, it is proposed to grant exemptions.

The relevant Council Regulation should be published in the *Official Journal of the European Union* no later than 26 July 2011.

Legal basis

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community and in particular Article 13 thereof.

Subsidiarity principle

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

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

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

Indication of how the financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

Choice of instruments

Proposed instruments: Regulation.

Other means would not be adequate for the following reason: The above-mentioned basic Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[1] (the 'basic Regulation'), and in particular Article 13 thereof,

Having regard to the proposal submitted by the European Commission ('the Commission') after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) By Regulation (EC) No 91/2009[2], ('the original Regulation'), the Council imposed a definitive anti-dumping duty of 85% on imports of certain iron or steel fasteners originating in the People's Republic of China ('the PRC' or 'China') for all other companies than the ones mentioned in Article 1(2) and Annex 1 of that Regulation. These measures will hereinafter be referred to as 'the measures in force' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

1.2. Ex-officio initiation

(2) Following the original investigation, evidence at the disposal of the Commission indicated that the anti-dumping measures on imports of certain iron or steel fasteners originating in the People's Republic of China (the product concerned) are being circumvented by means of transhipment via Malaysia.

(3) Prima facie evidence at the Commission's disposal showed that, following the imposition of the measures in force, a significant change in the pattern of trade

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1 OJ L 343, 22.12.2009, p. 51.
2 OJ L 29, 31.1.2009, p. 1.

involving exports from the PRC and Malaysia to the Union occurred, which seemed to be caused by the imposition of the measures in force. There was insufficient due cause or justification other than the imposition of the measures in force for such a change.

(4) Furthermore, the evidence pointed to the fact that the remedial effects of the measures in force were being undermined both in terms of quantity and price. The evidence showed that these increased imports from Malaysia were made at prices below the non-injurious price established in the original investigation.

(5) Finally, there was evidence that prices of certain iron or steel fasteners consigned from Malaysia were dumped in relation to the normal value established for the like product during the original investigation.

(6) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission, on an ex-officio basis, initiated an investigation by Commission Regulation (EU) No 966/2010[3] ('the initiating Regulation'). Pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of certain iron or steel fasteners consigned from Malaysia.

1.3. Investigation

(7) The Commission officially advised the authorities of the PRC and Malaysia, the exporting producers and traders in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation. Questionnaires were sent to the producers/exporters in the PRC and Malaysia known to the Commission or which made themselves known within the deadlines specified in recital 19 of the initiating Regulation. Questionnaires were also sent to importers in the Union. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation.

(8) Nineteen exporting producers in Malaysia, three groups of exporting producers in China and three unrelated importers in the Union made themselves known. Several other companies contacted the Commission but claimed that they were not involved in the production or export of the product under investigation.

(9) The following companies submitted replies to the questionnaires and verification visits were subsequently carried out at their premises, with the exception of Menara Kerjaya Fasteners Sdn. Bhd, TR Formac Sdn. Bhd. and Excel Fastener Manufacturing Sdn. Bhd:

Exporting producers in Malaysia:

– Sofasco Industries (M) Sdn. Bhd, Penang,

– Tigges Fastener Technology (M) Sdn. Bhd, Ipoh,

– MCP Precision Sdn. Bhd, Penang,

[3] OJ L 282, 28.10.2010, p. 29.

– HBS Fasteners Sdn. Bhd, Klang,

– TZ Fasteners (M) Sdn. Bhd, Klang,

– Menara Kerjaya Fasteners Sdn. Bhd, Penang,

– Chin Well Fasteners Company Sdn. Bhd, Penang,

– Acku Metal Industries (M) Sdn. Bhd, Penang,

– Grand Fasteners Sdn. Bhd, Klang,

– Jinfast Industries Sdn. Bhd, Penang,

– Andfast Malaysia Sdn. Bhd, Ipoh,

– ATC Metal Industrial Sdn. Bhd, Klang,

– Pertama Metal Industries Sdn. Bhd, Shah Alam,

– Excel Fastener Manufacturing Sdn. Bhd, Ipoh,

– TI Metal Forgings Sdn. Bhd, Ipoh,

– TR Formac (Malaysia) Sdn. Bhd, Klang,

– United Bolt and Nut Sdn. Bhd, Seremban,

– Power Steel and Electro Plating Sdn. Bhd, Klang,

– KKC Fastener Industry Sdn. Bhd, Melaka.

1.4. Investigation period

(10) The investigation period covered the period from 1 January 2008 to 30 September 2010 (the 'IP'). Data was collected for the IP to investigate inter alia the alleged change in the pattern of trade. For the period 1 October 2009 to 30 September 2010 more detailed data were collected in order to examine the possible undermining of the remedial effect of the measures in force and existence of dumping.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

(11) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was made by analysing successively whether there was a change in the pattern of trade between third countries and the Union; if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty; if there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the like product; and whether there was evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2.2. Product concerned and the like product

(12) The product concerned is as defined in the original investigation: Certain iron or steel fasteners, other than of stainless steel, i.e. wood screws (excluding coach screws), self-tapping screws, other screws and bolts with heads (whether or not with their nuts or washers, but excluding screws turned from bars, rods, profiles or wire, of solid section, of a shank thickness not exceeding 6 mm and excluding screws and bolts for fixing railway track construction material), and washers, originating in the PRC, currently falling within CN codes 7318 12 90, 7318 14 91, 7318 14 99, 7318 15 59, 7318 15 69, 7318 15 81, 7318 15 89, ex 7318 15 90, ex 7318 21 00 and ex 7318 22 00.

(13) The product under investigation is the same as that defined in the previous recital, but consigned from Malaysia, whether declared as originating in Malaysia or not.

(14) The investigation showed that iron or steel fasteners, as defined above, exported to the Union from the PRC and those consigned from Malaysia to the Union have the same basic physical and technical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Degree of co-operation and determination of the trade volumes

(15) As stated in recital (9), nineteen exporting producers in Malaysia and three exporting producers in China co-operated by submitting questionnaire replies.

Malaysia

(16) After the submission of its questionnaire reply, one Malaysian company notified the Commission that it had ceased its activities and therefore it withdrew its cooperation.

(17) In the case of several other Malaysian companies the application of Article 18(1) of the basic Regulation was found to be warranted for the reasons explained below in recitals (32) to (60).

(18) The cooperating Malaysian exporting producers covered 55% of the total Malaysian exports of the product under investigation to the Union in the IP as reported in COMEXT. The overall export volumes were based on COMEXT.

People's Republic of China

(19) There was a low level of co-operation by producers/exporters in the PRC, with only three exporters/producers submitting a questionnaire reply. Moreover, none of these companies exported the product concerned to the Union or to Malaysia. Therefore, on the basis of the information submitted by the co-operating parties no reasonable determination could be made as to export volumes of the product concerned from the PRC.

(20) Given the above, findings in respect of imports of certain iron or steel fasteners into the Union and exports of the product concerned from the PRC to Malaysia had to be made partially on the basis of facts available in accordance with Article 18 of the basic Regulation. COMEXT data were used to determine overall import volumes from the PRC to the Union. Chinese and Malaysian national statistics were used for the

determination of the overall exports to Malaysia from the PRC. Data were also cross-checked with detailed import- and export data that were provided by the customs authorities of Malaysia.

(21) The import volume recorded in Malaysian and Chinese statistics covered a larger product group than the product concerned or the product under investigation. However, in view of COMEXT data and verified data regarding Chinese and Malaysian fastener producers, it could be established that a significant part of this import volume covered the product concerned. Accordingly, these data could be used to establish any change in the pattern of trade and they could be cross-checked with other data such as the data provided by the cooperating exporting producers and importers.

2.4. Change in the pattern of trade

Imports of certain iron or steel fasteners into the Union

(22) Imports of the product concerned from China to the Union dropped dramatically subsequent to the imposition of the original measures in January 2009.

(23) On the other hand, total imports of the product under investigation from Malaysia to the Union increased significantly in 2009 and 2010. Both COMEXT data and the export data provided by the cooperating companies show that exports from Malaysia to the Union increased in those years whereas they were stable in previous years.

(24) Table 1 shows import quantities of certain iron or steel fasteners from the PRC and Malaysia into the Union since the imposition of the measures in 2009:

Table 1: Evolution of imports of certain iron or steel fasteners to the Union since the imposition of the measures

Import volumes given in tonnes.	**2008**	**2009**	**1.10.2009-30.09.2010**
PRC	432.049	64.609	27.000
Share of total imports	82.2%	38.0%	15.4%
Malaysia	8.791	31.050	89.000
Share of total imports	1.7%	18.3%	50.9%

Source: COMEXT, Malaysian, Chinese statistics

(25) The data above clearly show that since 2009 Malaysian exporters have significantly outsold and to some extent replaced the Chinese exporters on the Union market in terms of volume. Since the imposition of the measures, the decrease of Chinese imports into the EU has been significant (94%).

Chinese exports to Malaysia

(26) A dramatic increase of exports of fasteners can also be observed from the PRC to Malaysia within the same period: from a relatively small amount in 2008 (8.829 tonnes) they increased to 89.471 tonnes in the IP.

Table 2: Import of fasteners from China into Malaysia from 2008

	2008	2009	1.10.2009-30.09.2010
Import (MT)	8.829	61.973	89.471
Yearly change (%)		*600%*	*45%*
Index (2008=100)	*100*	*700*	*1013*

Source: Malaysian customs statistics

(27) To establish the trend of the China to Malaysia trade flow of certain iron or steel fasteners, both Malaysian and Chinese statistics were considered. Both of these data are only available at a higher product group level than the product concerned. However, in view of COMEXT data and verified data regarding Chinese and Malaysian fastener producers, it was established that a significant part covered the product concerned, so these data could be taken into account.

Production volumes in Malaysia

(28) The evolution of the total production volume of cooperating producers in Malaysia had remained relatively stable prior to the imposition of measures in 2009. Malaysian producers however have increased their output since then considerably.

Table 3: Production of the product under investigation of the cooperating companies in Malaysia

	2008	2009	1.10.2009-30.09.2010
Production volume (MT)	38.763	33.758	61.262

Source: Information provided by the cooperating producers

2.5. Conclusion on the change in the pattern of trade

(29) The overall decrease of Chinese exports to the Union as from 2009 and the parallel increase of exports from Malaysia and of exports from the PRC to Malaysia after the imposition of the original measures constituted a change in the pattern of trade between the above mentioned countries on the one hand and the Union on the other hand.

2.6. Nature of the circumvention practice

(30) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes, *inter alia*, the consignment of the product subject to measures via third countries and the assembly of parts by an assembly operation in the Union or a third country. For this purpose the existence of assembly operations is determined in accordance with Article 13(2) of the basic Regulation.

Transhipment

(31) The investigation revealed that some importers in the Union had sourced Chinese origin fasteners from Malaysian exporters who had not co-operated with the present investigation. This information was cross-checked with Malaysian trade databases which showed that at least some of the fasteners exported by these non-cooperating companies were indeed produced in the PRC.

(32) In addition, as set out in detail in recitals (52) to (58) below, it was found that a number of the co-operating Malaysian producers provided misleading information, in particular regarding the relationship to Chinese manufacturers, imports of finished goods from China and the origin of exports of the product under investigation to the Union. Some of them were found to export Chinese origin iron or steel fasteners to the Union. This is also confirmed by the findings with regard to the change in the pattern of trade as described above in recital (29).

(33) In 2009 the European Anti-fraud Office (OLAF) started an investigation into alleged transhipment of the same product through Malaysia. Moreover, the investigation revealed that the Malaysian authorities have carried out investigations into alleged circumvention practices at the same time and concluded that several companies, mainly traders, committed fraud by falsifying the origin of certain iron or steel fasteners imported from the PRC to Malaysia when re-exporting the product.

(34) The existence of transhipment of Chinese-origin products via Malaysia was therefore confirmed.

Assembly and/or completion operations

(35) One company inspected was not manufacturing fasteners from raw material (i.e. wire rod) but was completing fasteners from semi-finished blanks, (i.e. wire rod that had been cut and headed, but not yet threaded, heat treated or plated). However, this company did not export during the IP. Another company was manufacturing fasteners mainly from wire rod, but also some from semi-finished blanks. For this company, it was established that no circumvention took place in the light of the provisions set out in Article 13(2) of the basic Regulation, as set out in more detail in recitals (62) and (63) below.

2.7. Insufficient due cause or economic justification other than the imposition of the anti-dumping duty

(36) The investigation did not bring to light any other due cause or economic justification for the transhipment than the avoidance of the measures in force on certain iron or steel fasteners originating in the PRC. No elements were found, other than the duty, which could be considered as a compensation for the costs of transhipment, in particular regarding transport and reloading, of the product concerned from the PRC via Malaysia.

2.8. Undermining of the remedial effect of the anti-dumping duty

(37) To assess whether the imported products had, in terms of quantities and prices, undermined the remedial effects of the measures in force on imports of certain iron or steel fasteners originating in the PRC, verified data from the cooperating exporting

producers and COMEXT data were used as the best data available concerning quantities and prices of exports by non-cooperating companies. The prices so determined were compared to the injury elimination level established for Union producers in recital (226) of the original Regulation.

(38) The increase of imports from Malaysia was considered to be significant in terms of quantities. The estimated Union consumption in the IP gives a similar indication about the significance of these imports. The comparison of the injury elimination level as established in the original Regulation and the weighted average export price showed significant underselling. It was therefore concluded that the remedial effects of the measures in force are being undermined both in terms of quantities and prices.

2.9. Evidence of dumping

(39) Finally, in accordance with Article 13(1) and (2) of the basic Regulation it was examined whether there was evidence of dumping in relation to the normal value previously established for the like products.

(40) In the original Regulation the normal value was established on the basis of prices in India, which in that investigation was found to be an appropriate market economy analogue country for the PRC. It was considered appropriate to use the normal value as previously established in line with Article 13(1) of the basic Regulation.

(41) A significant part of Malaysian exports were covered by non-cooperating exporters or by cooperating exporters that had provided misleading information. For this reason, for establishing the export prices from Malaysia, it was decided to base them on facts available, i.e. on the average export price of certain iron or steel fasteners during the IP as reported in COMEXT.

(42) For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made for differences in indirect taxes, transport and insurance costs based on the average costs of the cooperating Malaysian producers/exporters in the IP.

(43) In accordance with Articles 2(11) and 2(12) of the basic Regulation, dumping was calculated by comparing the weighted average normal value as established in the original Regulation and the weighted average export prices during this investigation's IP, expressed as a percentage of the CIF price at the Union frontier duty unpaid.

(44) The comparison of the weighted average normal value and the weighted average export prices so established showed dumping.

3. MEASURES

(45) Given the above, it was concluded that the definitive anti-dumping duty imposed on imports of certain iron or steel fasteners originating in the PRC was circumvented by transhipment from Malaysia pursuant to Article 13(1) of the basic Regulation.

(46) In accordance with the first sentence of Article 13(1) of the basic Regulation, the measures in force on imports of the product concerned originating in the PRC, should

be extended to imports of the same product consigned from Malaysia, whether declared as originating in Malaysia or not.

(47) In particular in the light of the low level of co-operation from Chinese exporting producers, the measure to be extended should be the one established in Article 1(2) of Regulation (EC) No 91/2009 for "all other companies", which is a definitive anti-dumping duty of 85% applicable to the net, free-at-Union-frontier price, before duty.

(48) In accordance with Articles 13(3) and 14(5) of the basic Regulation, which provides that any extended measure should apply to imports which entered the Union under registration imposed by the initiating Regulation, duties should be collected on those registered imports of certain iron or steel fasteners consigned from Malaysia.

4. REQUESTS FOR EXEMPTION

(49) The nineteen companies in Malaysia submitting a questionnaire reply requested an exemption from the possible extended measures in accordance with Article 13(4) of the basic Regulation.

(50) As explained in recital (16), one of these companies subsequently ceased co-operation and withdrew its request for an exemption.

(51) Two companies were found not to export the product during the IP and no conclusions could be drawn as to the nature of their operations. Therefore, an exemption to these companies can not be granted at this stage. However, should it appear, after extension of the anti-dumping measures in force, that the conditions in Article 11(4) and 13(4) of the basic Regulation are fulfilled, both companies may request a review of their situation.

(52) One of these companies questioned, since there had not been a request from the Union industry for registration, whether Article 14(5) second sentence of the basic Regulation had been respected when the registration of the imports was instructed in the initiating Regulation. However, this was an anti-circumvention investigation initiated by the Commission *ex officio* on the basis of Article 13(3) in combination with the first sentence of Article 14(5) of the basic Regulation. The second sentence of Article 14(5) of the basic Regulation is therefore not relevant for this case. Any other interpretation would remove the *effet utile* of the fact that Article 13(3) of the basic Regulation provides that the Commission can *ex officio* investigate possible circumvention.

(53) The same company also alleged that consultation of the Advisory Committee, as set out in the first sentence of Article 14(5) of the basic Regulation, would not have taken place. However, in accordance with Article 13(3) and Article 14(5) of the basic Regulation, the initiation was instigated by the Commission after consultation of the Advisory Committee, even though this was not explicitly mentioned in the initiating Regulation.

(54) Seven companies were found to have provided false or misleading information. In accordance with Article 18(4) of the basic Regulation, these companies were informed of the intention to disregard the information submitted by them and were granted a time-limit to provide further explanations.

(55) Further explanations by these companies were not such that this would lead to change the conclusion that these companies have misled the investigation. Therefore in accordance with Article 18(1) of the basic Regulation, findings with regard to these companies were based on facts available.

(56) Two of these seven companies were found to have hidden imports of finished goods from the PRC. One of these companies had also falsified invoices. Another company in Malaysia manufacturing and exporting fasteners that requested an exemption appeared to be related to this company.

(57) Two other companies were found to have hidden their relationship to a Chinese manufacturer of certain iron or steel fasteners.

(58) Finally, two other companies were found to have hidden their relationship to each other, not having the production capacity to produce what they export and impeded the investigation by not providing necessary information.

(59) In view of the findings with regard to the change in the pattern of trade and transhipment practises, as set out in recitals (22) to (34) above, and taking into account the nature of the misleading information as set out in recitals (56) to (58) above, the exemptions as requested by these seven companies could, in accordance with Article 13(4) of the basic Regulation, not be granted.

(60) One company could not show any fastener production facility and refused access to its accounts. Furthermore, evidence of transhipment practices during the IP was found. Therefore the exemption could, in accordance with Article 13(4) of the basic Regulation, not be granted.

(61) The remaining eight Malaysian exporting producers were found not to be engaged in circumvention practices and therefore exemptions to these companies can be granted.

(62) One of these eight companies was established after the imposition of the measures in force by its Chinese parent company, which is subject to these measures. The Chinese parent company has gradually transferred part of its machinery to Malaysia for the purpose of serving the EU market through Malaysia. In the start-up phase the company produced some fasteners from semi-finished products that were shipped from its Chinese parent company for completion. At a later stage, but still in the IP, when more machinery was transferred, fasteners were mainly produced from the raw material steel wire rod, also shipped from its Chinese parent company.

(63) Initially it was considered that an exemption to this company should be denied. However, in view of the comments received after disclosure, in particular with regard to the value added to the product in Malaysia, it was concluded that the company was not engaged in circumvention practices. Accordingly, an exemption to this company can be granted.

(64) Another of these eight companies is also related to a company in the PRC that is subject to the original measures. However this Malaysian company was established in 1998 by its Taiwanese owners who only at a later stage, but still before the measures against the PRC came into force, established the subsidiary in the PRC. There is no evidence that this relationship was established or used to circumvent the measures in

place on imports originating in the PRC in the sense of Article 13(4) of the basic Regulation.

(65) It is considered that special measures are needed in this case in order to ensure the proper application of such exemptions. These special measures are the requirement of the presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the extended anti-dumping duty.

(66) Other producers which did not come forward in this proceeding and did not export the product under investigation during the IP, which intend to lodge a request for an exemption from the extended anti-dumping duty pursuant to Articles 11(4) and 13(4) of the basic Regulation will be required to complete a questionnaire in order to enable the Commission to assess such a request. The Commission would normally also carry out an on-spot verification visit. Provided that the conditions set in Articles 11(4) and 13(4) of the basic Regulation are met, an exemption may be warranted.

(67) Where an exemption is warranted, the Commission will, after consultation of the Advisory Committee, propose the amendment of this Regulation accordingly. Subsequently, any exemption granted will be monitored to ensure compliance with the conditions set therein.

5. DISCLOSURE

(68) All interested parties were informed of the essential facts and considerations leading to the above conclusions and were invited to comment. The oral and written comments submitted by the parties were considered. With the exception of the comments received from a company as set out in recitals (62) and (63) above, none of the arguments presented gave rise to a modification of the definitive findings,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty applicable to 'all other companies' imposed by Article 1(2) of Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners, other than of stainless steel, i.e. wood screws (excluding coach screws), self-tapping screws, other screws and bolts with heads (whether or not with their nuts or washers, but excluding screws turned from bars, rods, profiles or wire, of solid section, of a shank thickness not exceeding 6 mm and excluding screws and bolts for fixing railway track construction material), and washers, originating in the People's Republic of China, is hereby extended to imports of certain iron or steel fasteners, other than of stainless steel, i.e. wood screws (excluding coach screws), self-tapping screws, other screws and bolts with heads (whether or not with their nuts or washers, but excluding screws turned from bars, rods, profiles or wire, of solid section, of a shank thickness not exceeding 6 mm and excluding screws and bolts for fixing railway track construction material), and washers, consigned from Malaysia whether declared as originating in Malaysia or not, currently falling within CN codes ex 7318 12 90, ex 7318 14 91, ex 7318 14 99, ex 7318 15 59, ex 7318 15 69, ex 7318 15 81, ex 7318 15 89, ex 7318 15 90, ex 7318 21 00 and ex 7318 22 00 (TARIC codes 7318 12 90 11, 7318 12 90 91, 7318 14 91 11, 7318 14 91 91, 7318 14 99 11, 7318 14 99 91, 7318 15 59 11, 7318 15 59 61, 7318 15 59 81, 7318

15 69 11, 7318 15 69 61, 7318 15 69 81, 7318 15 81 11, 7318 15 81 61, 7318 15 81 81, 7318 15 89 11, 7318 15 89 61, 7318 15 89 81, 7318 15 90 21, 7318, 15 90 71, 7318 15 90 91, 7318 21 00 31, 7318 21 00 95, 7318 22 00 31 and 7318 22 00 95), with the exception of those produced by the companies listed below:

Company	**TARIC additional code**
Acku Metal Industries (M) Sdn. Bhd	**B123**
Chin Well Fasteners Company Sdn. Bhd	**B124**
Jinfast Industries Sdn. Bhd	**B125**
Power Steel and Electroplating Sdn. Bhd	**B126**
Sofasco Industries (M) Sdn. Bhd	**B127**
Tigges Fastener Technology (M) Sdn. Bhd	**B128**
TI Metal Forgings Sdn. Bhd	**B129**
United Bolt and Nut Sdn. Bhd	**B130**

2. The application of exemptions granted to the companies specifically mentioned in paragraph 1 of this Article or authorised by the Commission in accordance with Article 2(2) shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the anti-dumping duty as imposed by paragraph 1 of this Article shall apply.

3. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Malaysia, whether declared as originating in Malaysia or not, registered in accordance with Article 2 of Regulation (EU) No 966/2010 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009, with the exception of those produced by the companies listed in paragraph 1.

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

Article 2

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate H
Office: N-105 04/92
1049 Brussels
Belgium
Fax (32 2) 295 65 05.

2. In accordance with Article 13(4) of Regulation (EC) No 1225/2009, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Regulation (EC) No 91/2009, from the duty extended by Article 1.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EU) No 966/2010.

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

Annex

A declaration signed by an official of the entity issuing the commercial invoice, in the following format**,** must appear on the valid commercial invoice referred to in Article 1(2):

(1) The name and function of the official of the entity issuing the commercial invoice.

(2) The following declaration: "I, the undersigned, certify that the (volume) of [product concerned] sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct."

(3) Date and signature