Commission Implementing Regulation (EU) 2016/278 of 26 February 2016 repealing the definitive anti-dumping duty imposed on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not

COMMISSION IMPLEMENTING REGULATION (EU) 2016/278

of 26 February 2016

repealing the definitive anti-dumping duty imposed on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2015/476 of the European Parliament and of the Council of 11 March 2015 on the measures that the Union may take following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters[(1)] ('the WTO enabling Regulation'), and in particular Article 1(1)(a) thereof,

Whereas:

A. **MEASURES IN FORCE**

(1) The Council by Regulation (EC) No 91/2009[(2)] imposed a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China ('China').

(2) On 28 July 2011, the Dispute Settlement Body ('DSB') of the World Trade Organisation ('WTO') adopted the Appellate Body Report and the Panel Report as modified by the Appellate Body Report in the dispute 'European Communities — Definitive anti-dumping measures on certain iron or steel fasteners from China'[(3)] ('original reports'). Following a review to implement the original reports, the Council adopted Implementing Regulation (EU) No 924/2012[(4)] which amended Regulation (EC) No 91/2009.

(3) By Implementing Regulation (EU) 2015/519[(5)] the European Commission ('Commission'), following an expiry review conducted under Article 11(2) of Council Regulation (EC) No 1225/2009[(6)], maintained the measures as amended by Implementing Regulation (EU) No 924/2012.

(4) The measures maintained by Implementing Regulation (EU) 2015/519 took the form of an *ad valorem* duty established for individual sampled Chinese exporting producers at the level of 0,0 % to 69,7 %. At the same time the anti-dumping duty for the cooperating, non-sampled Chinese exporting producers was set at a level of 54,1

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/278. (See end of Document for details)*

% while residual duty for non-cooperating Chinese exporting producers amounted to 74,1 %.

(5) By Council Implementing Regulation (EU) No 723/2011[7], as last amended by Implementing Regulation (EU) No 693/2012[8], the measures were extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not.

B. COMPLIANCE REPORTS OF THE DSB OF THE WTO

(6) As referred to in recital 2 the Council implemented the original reports by Implementing Regulation (EU) No 924/2012.

(7) China, however, considered that the measure taken by the European Union through the Implementing Regulation (EU) No 924/2012 to implement the original reports was inconsistent with various provisions of the Anti-Dumping Agreement ('ADA') and the GATT 1994. On 30 October 2013, China requested consultations with the European Union pursuant to Articles 4 and 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ('DSU') of the WTO. On 5 December 2013, China requested the establishment of a panel under Article 21.5 of the DSU ('compliance panel'). On 27 March 2014, the Director-General of the WTO composed the compliance panel.

(8) On 7 August 2015, the compliance panel report[9] was circulated to Members of the WTO. On 9 September 2015, the European Union notified the DSB pursuant to Articles 16.4 and 17 of the DSU of its decision to appeal to the Appellate Body certain issues of law covered in the compliance panel report and certain legal interpretations developed by the panel. On 14 September 2015, China notified the DSB of its decision to cross-appeal.

(9) On 18 January 2016, the compliance Appellate Body report[10] was circulated to Members of the WTO. The compliance panel report circulated on 7 August 2015 and the compliance Appellate Body report circulated on 18 January 2016 are referred to as 'compliance reports'.

(10) In the compliance reports, it was found, inter alia, that the EU acted inconsistently with:

— Article 2.4 of the ADA with respect to the treatment of certain information regarding the characteristics of the analogue country producer's products that were used in determining normal values, with respect to differences in taxation, and with respect to differences relating to access to raw materials, use of self-generated electricity, efficiency in raw material consumption, efficiency in electricity consumption and productivity per employee,

— Article 2.4.2 of the ADA with respect to export transactions for which there was no match in the analogue country producer's sales,

— Articles 4.1 and 3.1 of the ADA with respect to the definition of domestic industry and injury,

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— Article 6.1.2 of the ADA with respect to whether the analogue country producer should have been treated as an interested party and with respect to the disclosure to the Chinese producers of information provided by the analogue country producer concerning the list and characteristics of its products,

— Articles 6.4, 6.2 and Articles 6.5 and 6.5.1 of the ADA with regard to the treatment of certain information relating to the product characteristics of the analogue country producer.

(11) In the compliance Appellate Body report, the Appellate Body recommended that the DSB request the European Union to bring its measures found to be inconsistent with the ADA into conformity with its obligations under the ADA.

(12) On 12 February 2016, the DSB adopted the compliance reports.

(13) In view of the findings referred to in recital (10) the Commission considers that in accordance with Article 1(1)(a) of the WTO enabling Regulation it is appropriate to repeal the anti-dumping duties imposed by Regulation (EC) No 91/2009, as amended by Implementing Regulation (EU) No 924/2012 and maintained by Implementing Regulation (EU) 2015/519 (‘the disputed measures’).

(14) The repeal of the disputed measures should take effect from the date of its entry into force and, therefore, does not provide any basis for the reimbursement of the duties collected prior to that date.

(15) The Committee established by Article 15(1) of Regulation (EC) No 1225/2009 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

The definitive anti-dumping duties 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, 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 (TARIC codes 7318 15 90 21, 7318 15 90 29, 7318 15 90 71, 7318 15 90 79, 7318 15 90 91, 7318 15 90 98, 7318 21 00 31, 7318 21 00 39, 7318 21 00 95, 7318 21 00 98, 7318 22 00 31, 7318 22 00 39, 7318 22 00 95 and 7318 22 00 98) and originating in the People's Republic of China, as extended to imports consigned from Malaysia, whether declared as originating in Malaysia or not, are hereby repealed and the proceeding concerning these imports is terminated.

Article 2

The repeal of the anti-dumping duties referred to in Article 1 shall take effect from the date of the entry into force of this Regulation as provided for in Article 3 and shall not serve as a basis for the reimbursement of the duties collected prior to that date.