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

COUNCIL IMPLEMENTING REGULATION (EU) No 205/2013

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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 from the European Commission,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) By Implementing Regulation (EU) No 2/2012[(2)] the Council imposed a definitive anti-dumping duty of 24,7 % on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China ('the PRC') for all other companies than the ones mentioned in Article 1(2) of that Regulation, following the expiry review of the measures imposed by Council Regulation (EC) No 1890/2005[(3)] ('the original Regulation'). These measures will hereinafter be referred to as 'the measures in force' or 'original measures' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

1.2. Initiation

(2) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Articles 13(3) and 14(5) of the basic Regulation, the European Commission ('the Commission') has decided, to investigate on its own initiative the possible circumvention of the anti-dumping measures imposed on imports of certain stainless steel fasteners and parts thereof originating in the PRC and to make imports of certain stainless steel fasteners and parts thereof consigned from Malaysia, Thailand and the Philippines, whether declared as originating in Malaysia, Thailand and the Philippines or not, subject to registration.

(3) The investigation was initiated on 15 June 2012 by Commission Regulation (EU) No 502/2012[(4)] ('the initiating Regulation').

(4) The prima facie evidence at the Commission's disposal was that following the imposition of the measures established in the original investigation a significant change in the pattern of trade involving exports from the PRC, Malaysia, Thailand and the Philippines to the Union occurred, for which there was no sufficient due cause or justification other than the imposition of the measures established in the original investigation. This change stemmed allegedly from the transhipment of certain stainless steel fasteners and parts thereof originating in the PRC via Malaysia, Thailand and the Philippines to the Union.

(5) 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, Thailand and the Philippines were made at prices below the non-injurious price established in the original investigation, adjusted for the increase in the costs of the raw material.

(6) Finally, there was evidence that the prices of certain stainless steel fasteners and parts thereof consigned from Malaysia, Thailand and the Philippines were dumped in relation to the normal value previously established during the original investigation, adjusted for the increase in the costs of the raw material.

1.3. **Investigation**

(7) The Commission officially advised the authorities of the PRC, Malaysia, Thailand and the Philippines, the exporting producers in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation.

(8) Exemption forms were sent to the producers/exporters in Malaysia, Thailand and the Philippines known to the Commission or through the Missions of the countries concerned to the European Union. Questionnaires were sent to the producers/exporters in the PRC known to the Commission or through the Mission of the PRC to the European Union. Questionnaires were also sent to the known importers in the Union.

(9) 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.

All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.

(10) Seven Malaysian, six Thai and three Filipino producers/exporters and their related companies in the PRC, where applicable, have submitted replies to the exemption forms. Submissions of two Malaysian, one Thai and one Filipino companies were rejected due to formal reasons as the companies in question were either found not to be producers of the product under investigation or they failed to cooperate after the submission of the exemption form or the exemption form was submitted in a very late stage of the investigation.

(11) The questionnaire replies were submitted by two Chinese exporters and four Union importers/groups of importers.

(12) The Commission carried out the verification visits at the premises of the following companies:

— MCP Precision Sdn. Bhd. (Malaysia)
— Sofasco Industries (M) Sdn. Bhd. (Malaysia)
— Tigges Fastener Technology Sdn. Bhd. (Malaysia) and its related trading company Tigges Fastener Trading Sdn. Bhd. (Malaysia)
— Tong Heer Fasteners Co. Sdn. Bhd. (Malaysia)
— Well Union Metal Sdn. Bhd. (Malaysia) and its related companies in Taiwan: Linkwell Industry and Linkfast Industry
— A.B.P. Stainless Steel Fastener Co., Ltd (Thailand)
— Dura Fasteners Co., Ltd (Thailand)
— Taiyo Fasteners Co., Ltd (Thailand)
— Tong Heer Fasteners Co., Ltd (Thailand)
— TPC Stainless & Steel Fasteners Co., Ltd (Thailand) and its related companies TPC Fasteners Co. Ltd, Thai Phaisarn Fastening Co. Ltd and Phaisarn Fastening Ltd Part. (Thailand)
— Multi-Tek Fasteners Inc. (the Philippines) and its related company in Taiwan Multi-Tek Fasteners & Parts Manufacturer Inc.
— Phil Shin Works Corporation (the Philippines)
— Rosario Fasteners Corporation (the Philippines) and its related company in Taiwan Lu Chu Shin Yee Works Co., Ltd

1.4. Reporting period and investigation period

(13) The reporting period ('RP'), i.e. the period for which value added tests and dumping/underselling calculations were done, covered 12 months from 1 April 2011 to 31 March 2012. The investigation period ('IP'), i.e. the period for which analysis of changes in trade patterns were done and possible circumvention practices were examined, covered the period from the imposition of the original measures until the end of the RP.

2. RESULTS OF THE INVESTIGATION

2.1. **General considerations**

(14) 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 the PRC, the three countries concerned 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 product under investigation; and whether there was evidence of dumping in relation to the normal values previously established in the original investigation, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2.2. **Product concerned and product under investigation**

(15) The product concerned by the possible circumvention is certain stainless steel fasteners and parts thereof, originating in the PRC, currently falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 (‘the product concerned’).

(16) The product under investigation is the same as the product concerned, but consigned from Malaysia, Thailand and the Philippines, whether declared as originating in Malaysia, Thailand and the Philippines or not, currently falling within the same CN codes as the product concerned (‘the product under investigation’).

(17) The investigation showed that stainless steel fasteners and parts thereof, as defined above, exported from the PRC to the Union and those consigned from Malaysia, Thailand and the Philippines 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. **Findings with regard to the Philippines**

2.3.1. *Level of cooperation*

(18) As stated in recital 10 above, only three Filipino companies (one of them later found not to be a producer or exporter of the product under investigation) submitted an exemption form reply. Thus, the cooperating companies were representing 10 % of the Filipino exports of the product under investigation to the Union in the RP.

(19) A questionnaire reply was also submitted by two Chinese producers/exporters; however, none of them was involved in export to the Philippines in the IP.

(20) Taking into account the relatively low level of cooperation of the Filipino and Chinese companies the findings in respect of imports of certain stainless steel fasteners and parts thereof from the Philippines into the Union and exports of the product concerned from the PRC to the Philippines had to be made on the basis of facts available in accordance with Article 18(1) of the basic Regulation. In this case Eurostat data was used to determine overall import volumes from the Philippines to the Union

and Chinese export statistics were used for the determination of the overall exports from the PRC to the Philippines.

(21) With regard to the Chinese export statistics it should be noted that statistics of trade flows between the PRC and the Philippines cover whole HS codes that is a larger product group then the product concerned and the product under investigation. However, taking into account the very clear trend that existed, these data can be used to establish a change in pattern of trade.

(22) Finally, as an additional source of information the data provided by the Filipino authorities were used. Although these data were not complete and detailed enough to be a sole basis for the analysis they were suitable to cross-check findings with regard to the pattern of trade.

2.3.2. *Change in the pattern of trade*

(23) After the imposition of the original measures on the imports from the PRC, imports into the Union of the product under investigation from the Philippines increased suddenly and markedly. From the minimal level of below 100 MT yearly in 2004-05 it rose to more than 12 000 MT in the RP.

	2004	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**RP**
Volume (MT)	69	23	1 369	6 048	7 046	5 406	15 580	14 528	12 075

Source: Eurostat

(24) At the same time exports from the PRC to the Philippines were increasing sharply in the years 2004-RP from 1 100 MT to more than 15 000 MT.

	2004	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**RP**
Volume (MT)	1 104	2 022	2 107	3 727	3 856	7 513	11 262	15 553	15 632

Source: Chinese export statistics (Global Trade Atlas Database)

(25) The data clearly show that imports from the Philippines into the Union were negligible in 2004 and 2005. However, in 2006, following the imposition of the measures on the PRC, the imports surged suddenly and partly replaced the exports from the PRC to the Union market in terms of volume. Moreover, since the imposition of the measures in force, the decrease of the exports from the PRC to the Union has been significant (70 %). Furthermore, it is noted that the data received from the Filipino authorities confirm that only a small percentage of imports from the PRC was released for trade in the Filipino custom territory. Most of the import was directed to the special economic zones.

2.3.3. *Nature of the circumvention practice*

(26) 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