Council Implementing Regulation (EU) No 924/2012 of 4 October 2012 amending 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

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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 1515/2001 of 23 July 2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters[(1)] ('the WTO enabling Regulation'), in particular Article 1 thereof,

Having regard to the proposal submitted by the European Commission after consultation of the Advisory Committee,

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 ('the definitive Regulation').

B. **REPORTS ADOPTED BY THE DISPUTE SETTLEMENT BODY OF THE WTO**

(2) On 28 July 2011, the Dispute Settlement Body ('DSB') of the World Trade Organization ('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)] ('Reports'). In these Reports, it was found, inter alia, that the EU acted inconsistently with:

— Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement with respect to Article 9(5) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(4)] ('the basic Regulation') as applied in the investigation on the imports of certain iron or steel fasteners originating in the People's Republic of China ('the fasteners investigation'),

— Articles 6.4, 6.2 and 2.4 of the WTO Anti-Dumping Agreement with respect to certain aspects of the dumping determination in the fasteners investigation,

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 924/2012. (See end of Document for details)*

— Article 4.1 of the WTO Anti-Dumping Agreement with respect to the definition of the Union industry in the fasteners investigation,

— Articles 3.1 and 3.2 of the WTO Anti-Dumping Agreement with respect to the consideration of the volume of dumped imports in the fasteners investigation,

— Articles 3.1 and 3.5 of the WTO Anti-Dumping Agreement with respect to the causation analysis in the fasteners investigation, and

— Articles 6.5 and 6.5.1 of the WTO Anti-Dumping Agreement with respect to the treatment of confidential information in the fasteners investigation.

C. PROCEDURE

(3) On 6 March 2012, pursuant to the WTO enabling Regulation, a review was initiated by the publication of a Notice[5] in the *Official Journal of the European Union* ('the Notice of Initiation'). The European Commission informed parties to the investigation which led to Regulation (EC) No 91/2009 ('the original investigation') of the review and of the manner in which the findings of the Reports in regard to the definitive Regulation was intended to be taken into account.

D. PRODUCT CONCERNED

(4) The product concerned is 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 (referred to as 'fasteners' or 'product concerned').

(5) The product concerned is 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.

(6) The Reports do not affect the findings set out in recitals 40 to 57 of the definitive Regulation concerning the product concerned and the like product.

E. REVISED FINDINGS BASED ON THE REPORTS

(7) As indicated in the Notice of Initiation, the Commission reassessed the definitive findings of the original investigation by taking account of the recommendations and rulings of the DSB. This reassessment was based on information collected in the original investigation and information collected after the publication of the Notice.

(8) The original investigation of dumping and injury covered the period from 1 October 2006 to 30 September 2007 ('investigation period' or 'IP'). With respect to the parameters relevant in the context of the injury assessment, data covering the period from 1 January 2003 to the end of the investigation period were analysed ('period considered').

(9) This Regulation seeks to correct the aspects of the definitive Regulation found to be inconsistent by the DSB in the Reports it adopted and bring into conformity the definitive Regulation with the DSB recommendations and rulings.

1. **Individual Treatment: application of Article 9(5) in the definitive Regulation**

(10) This section sets out the reassessed findings of the original investigation regarding the following recommendations and rulings of the Reports that the EU acted inconsistently with Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement with respect to Article 9(5) of the basic Regulation as applied in the fasteners original investigation.

(11) As mentioned in recitals 81 and 84 of the definitive Regulation, all of the five sampled exporting producers as well as three individually examined exporting producers which claimed individual treatment ('IT') were found to meet all the requirements to be granted IT in accordance with Article 9(5) of the basic Regulation. As stated in recitals 62 and 78 of the definitive Regulation, four exporting producers originally part of the sample, as well as one company granted individual examination were considered as non-cooperating companies, since they submitted information not consistent with the evidence in the course of the investigation.

(12) In the light of the recommendations regarding Article 9(5) of the basic Regulation contained in the Reports, the Commission invited exporting producers in the People's Republic of China to come forward and provide the necessary information to review their current situation if their exports to the European Union are currently subject to the anti-dumping measures in force on imports of certain iron or steel fasteners originating in the People's Republic of China; and they considered themselves to have been discouraged from cooperating and requesting IT in the original investigation because of the administrative burden entailed by, or because they considered that they did not meet all the criteria in, Article 9(5) of the basic Regulation.

(13) The Commission invited those producers to declare whether they considered themselves to have been discouraged from cooperating and requesting IT in the original investigation because of the administrative burden entailed by, or because they considered that they did not meet all the criteria in Article 9(5) of the basic Regulation. Those interested parties were invited to come forward within 30 days following the publication of the Notice of Initiation and to provide the following two elements of information:

— whether they considered themselves to have been discouraged from cooperating and requesting IT at the time of the initiation of the initial investigation, and

— provide information on export quantities to the European Union and export prices covering the IP used in the original investigation.

(14) Some exporting producers in the PRC expressed concerns regarding the implementing procedure of the DSB Reports laid down in the Notice of Initiation.

They underlined in particular that they considered the deadlines published to be too short. They claimed that an undue administrative burden had been placed on exporting producers, having a dissuasive effect and preventing them from receiving individual treatment.

(15) The concern expressed by those exporting producers was considered to be not founded. The Commission considered this deadline appropriate in view of the administrative burden and the small amount of information requested. The Notice of Initiation explained that a review of the current situation of an exporting producer would be considered once an application was received including the following information:

— a simple statement that the exporting producer considers to have been discouraged and therefore had not cooperated and requested IT, and

— very basic figures showing that it exported the product concerned to the EU during the original investigation period.

(16) The sole purpose of requesting this information was to allow the Commission to identify those exporting producers that would have been in a position to cooperate and request IT during the original investigation but considered themselves to have been discouraged from doing so. A deadline of 30 days was considered to be appropriate to reply to a request for a simple statement and very basic figures and cannot be regarded as imposing a disproportionate administrative burden. The Chinese Chamber of Commerce and a Chinese exporting producer argued that by requesting the information mentioned in recital 15 above, the Commission imposed conditions on Chinese exporting producers, although IT should be granted as rule pursuant to Articles 6.10 and 9.3 of the WTO Anti-Dumping Agreement. This approach was contrary to the recommendations of the DSB reports and these parties invited the Commission to contact Chinese exporting producers *ex officio* and indicate they will be granted IT. In this respect, the Commission considers that, by publishing the Notice of Initiation which was sent to all known Chinese exporting producers and their trade association and national authorities, the Commission has contacted all Chinese exporting producers inviting them to come forward within 30 days, should they have exported during the original investigation period and not made themselves known during the original investigation. This latter question should not be considered as a 'condition' in the sense of a 'test' as presented by the said parties, but rather as a statement of fact showing that they were actually concerned by the original investigation. Finally, it should be noted that questions related to exported products are requested for the purpose of verifying whether the sample originally chosen needed to be amended and are not related to the issue of IT. This claim was therefore rejected.

(17) Of the 15 companies that came forward following the publication of the Notice of Initiation and made enquiries within the deadline:

— Ten companies were exporting producers that had already come forward and cooperated with the original investigation. This showed that they had not been discouraged from cooperating and requesting IT in the original investigation and their situation could therefore not be re-examined in the context of the current review; one of these 10 companies which requested a review of its

current duties was invited to submit a review request to the Commission pursuant to Article 11(3) of the basic Regulation.

— One company was a new exporting producer (i.e. it had not exported to the EU during the original investigation). This company was therefore not in a position to cooperate and request IT in the original investigation for that reason. It was informed of the procedures for claiming New Exporting Producer Treatment pursuant to Article 2 of the definitive Regulation.

— Two were considered not to be exporting producers but trading companies so they were informed that they were not concerned by this review.

— Two exporting producers stated that they complied with the criteria and requested that their situation be examined. However, one of these companies subsequently withdrew its application.

(18) The companies having made enquiries were given the opportunity to comment on the information provided to them.

(19) The exporting producer stating that it complied with the criteria and requesting that its situation be examined was found to fall within the criteria laid down in point 1 of the Notice of Initiation. This exporting producer also requested individual examination under Article 17(3) of the basic Regulation claiming that if it would not have been discouraged from cooperating during the original investigation it would have requested such treatment. Taking into account that during the original investigation, all of the exporting producers who had made such a request were individually examined, for reasons of equal treatment, its request was accepted.

(20) A Notice was published on 6 June 2012[6] announcing the review of the current situation for this exporting producer, Bulten Fasteners (China) Co., Ltd ('BFC'). The exported quantities of this exporting producer during the IP amounted to less than 0,4 % of the total exports from the PRC during the IP. In view of this, the Commission considered that there was no need to modify the original sample of exporting producers. A questionnaire was sent to the exporting producer in the PRC and its related companies in the EU involved in the resale of the product concerned during the original IP.

(21) The Commission sought and verified all the information deemed necessary for a determination of dumping and carried out verifications at the premises of the following related companies:

— Bulten Sweden AB, Göteborg, Sweden,

— Bulten GmbH, Bergkamen, Germany.

(22) The Commission concluded that BFC should be granted IT in accordance with the recommendations concerning Article 9(5) of the basic Regulation in the DSB reports.

2. **Certain aspect of the dumping determination in the fasteners investigations**