Council Implementing Regulation (EU) No 723/2011 of 18 July 2011 extending the definitive anti-dumping duty imposed by 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

COUNCIL IMPLEMENTING REGULATION (EU) No 723/2011

of 18 July 2011

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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 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 companies other than the ones mentioned in Article 1(2) and in Annex 1 to 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 PRC ('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 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 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,

— 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 recital 12, 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 cooperation and determination of the trade volumes**

(15) As stated in recital 9, 19 exporting producers in Malaysia and three exporting producers in China cooperated 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 cooperation 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 cooperating 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**	**1.10.2009-30.9.2010**
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 Union 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.