Commission Regulation (EU) No 966/2010 of 27 October 2010 initiating 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 People's Republic of China by imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not, and making such imports subject to registration

COMMISSION REGULATION (EU) No 966/2010

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THE EUROPEAN COMMISSION,

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 Articles 13(3), 14(3) and 14(5) thereof,

Whereas:

(1) The Commission has decided, pursuant to Article 13(3) of the basic Regulation, to investigate on its own initiative the possible circumvention of the anti-dumping measures imposed on imports of certain iron or steel fasteners originating in the People's Republic of China.

A. PRODUCT

(2) The product concerned by the possible circumvention 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, 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.

(3) The product under investigation is the same as that defined in the previous recital, but consigned from Malaysia, whether originating in Malaysia or not, currently falling within the same CN codes as the product concerned.

B. EXISTING MEASURES

Changes to legislation: *Commission Regulation (EU) No 966/2010 is up to date with all changes known to be in force on or before 03 March 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) The measures currently in force and possibly being circumvented are anti-dumping measures imposed by Council Regulation (EC) No 91/2009[(2)].

C. **GROUNDS**

(5) The Commission has at its disposal sufficient *prima facie* evidence that the anti-dumping measures on imports of the product concerned are being circumvented by means of the transhipment via Malaysia.

(6) The *prima facie* evidence at the Commission's disposal is as follows:

(7) There is a significant change in the pattern of trade involving exports from the People's Republic of China and Malaysia to the Union which has taken place following the imposition of measures on the product concerned, without sufficient due cause or justification other than the imposition of the duty for such a change.

(8) This change in the pattern of trade appears to stem from the transhipment of certain iron or steel fasteners originating in the People's Republic of China via Malaysia.

(9) Furthermore, the evidence points to the fact that the remedial effects of the existing anti-dumping measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of the product under investigation appear to have replaced imports of the product concerned. In addition, there is sufficient evidence that this increased volume of imports is made at prices well below the non-injurious price established in the investigation that led to the existing measures.

(10) Finally, the Commission has sufficient *prima facie* evidence at its disposal that the prices of the product under investigation are dumped in relation to the normal value previously established for the product concerned.

(11) Should circumvention practices via Malaysia covered by Article 13 of the basic Regulation, other than transhipment, be identified in the course of the investigation, the investigation may also cover these practices.

D. **PROCEDURE**

(12) In the light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13 of the basic Regulation and to make imports of the product under investigation, whether declared as originating in Malaysia or not, subject to registration, in accordance with Article 14(5) of the basic Regulation.

(a) *Questionnaires*

(13) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the known exporters/producers and to the known associations of exporters/producers in Malaysia, to the known exporters/producers and to the known associations of exporters/producers in the People's Republic of China, to the known importers and to the known associations of importers

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in the Union and to the authorities of the People's Republic of China and Malaysia. Information, as appropriate, may also be sought from the Union industry.

(14) In any event, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 of this Regulation, and request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.

(15) The authorities of the People's Republic of China and Malaysia will be notified of the initiation of the investigation.

(b) *Collection of information and holding of hearings*

(16) In accordance with Article 13(4) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if the importation does not constitute circumvention.

(17) Since the possible circumvention takes place outside the Union, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to producers in Malaysia of certain iron or steel fasteners that can show that they are not related[(3)] to any producer subject to the measures[(4)] and that are found not to be engaged in circumvention practices as defined in Article 13(1) and 13(2) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3(3) of this Regulation.

E. **REGISTRATION**

(18) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied retroactively from the date of registration of such imports consigned from Malaysia.

F. **TIME LIMITS**

(19) In the interests of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— producers in Malaysia may request exemption from registration of imports or measures,

— interested parties may make a written request to be heard by the Commission.

(20) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits mentioned in Article 3 of this Regulation.

G. **NON-COOPERATION**

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(21) In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(22) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of the facts available. If an interested party does not cooperate or cooperates only partially and findings are therefore based on the facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

H. SCHEDULE OF THE INVESTIGATION

(23) The investigation will be concluded, according to Article 13(3) of the basic Regulation, within nine months of the date of the publication of this notice in the *Official Journal of the European Union*.

I. PROCESSING OF PERSONAL DATA

(24) It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(5)].

J. HEARING OFFICER

(25) It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of Directorate-General for Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to the file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details, interested parties may consult the Hearing Officer's web pages on the website of Directorate-General for Trade (http://ec.europa.eu/trade),

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 13(3) of Regulation (EC) No 1225/2009, in order to determine if imports into the European Union 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