Council Regulation (EC) No 768/2009 of 17 August 2009 amending Regulation (EC) No 1890/2005 imposing a definitive anti-dumping duty on imports of certain stainless steel fasteners and parts thereof originating, inter alia, in Vietnam

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Article 11(3) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) By Regulation (EC) No 1890/2005 of 14 November 2005 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam and terminating the proceeding on imports of certain stainless steel fasteners and parts thereof originating in Malaysia and the Philippines[(2)], the Council imposed a definitive anti-dumping duty on imports of certain stainless steel fasteners and parts thereof (SSF) originating, *inter alia*, in Vietnam. The Regulation will hereinafter be referred to as 'the original Regulation' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

2. **Request for a review**

(2) A request for a partial interim review (the present review) pursuant to Article 11(3) of the basic Regulation was lodged by Header Plan Co. Ltd, a Vietnamese exporting producer of SSF ('the applicant' or 'HPV'). The request was limited in scope to dumping and to the applicant company.

(3) The applicant provided *prima facie* evidence that the continued application of the measure at its current level was no longer necessary to offset dumping. In particular, the applicant provided *prima facie* evidence showing that it meets the criteria for market

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 768/2009. (See end of Document for details)*

economy treatment (MET) and individual treatment (IT). Furthermore, in the absence of domestic sales, a comparison of its costs of production and export prices to the Community indicated that the dumping margin appeared to be substantially lower than the current level of the measure.

3. **Investigation**

(4) Having determined, after consulting the Advisory Committee, that the request contained sufficient *prima facie* evidence, the Commission announced on 13 August 2008 the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation by a notice of initiation published in the *Official Journal of the European Union*[3].

(5) The review was limited in scope to the examination of dumping in respect of the applicant. The investigation of dumping covered the period from 1 July 2007 to 30 June 2008 ('the review investigation period' or 'RIP').

(6) The Commission officially informed the applicant, the representatives of the exporting country and the association of Community producers about the initiation of the review. 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 notice of initiation.

(7) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(8) In order to obtain the information deemed necessary for its investigation, the Commission sent an MET and IT claim form and a questionnaire to the applicant and received replies within the deadlines set for that purpose.

(9) The Commission sought and verified all information deemed necessary for the determination of dumping. The Commission carried out verification visits at the premises of the applicant and its related company:

— Header Plan Co. Ltd (Header Plan), Binh Hoa County, Vietnam,

— Header Plan Inc., Taipei, Taiwan.

(10) In view of the possible need to establish some elements (SG&A cost and profit rate) of the normal value as explained in recitals 22 to 25, verification visits to establish these rates on the basis of data from another country, in this case Taiwan, took place at the premises of the following companies:

— Jin Shing Stainless Ind. Co. Ltd, Taoyuan,

— Yi Tai Shen Co. Ltd, Tainan.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(11) The product concerned by the present review is the same as that in the original investigation, that is to say certain SSF (the product concerned). It is currently classifiable within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15

61 and 7318 15 70. There are many types of SSF (the most common ones are bolts and screws), each one being defined by its specific physical and technical characteristics and by the grade of stainless steel from which it is made.

2. **Like product**

(12) The investigation revealed that the applicant did not sell the product concerned on the Vietnamese domestic market. It also showed that SSF produced and sold on the Taiwanese domestic market and those exported to the Community from Vietnam have the same physical, chemical and technical characteristics and uses. It is therefore concluded that all are like products within the meaning of Article 1(4) of the basic Regulation. Since the present review was limited to the determination of dumping as far as the applicant is concerned, no conclusions were reached with regard to the product produced and sold by the Community industry on the Community market.

C. **RESULTS OF THE INVESTIGATION**

1. **Market economy treatment (MET)**

(13) In anti-dumping investigations concerning imports originating in Vietnam, normal value shall be determined in accordance with paragraphs 1 to 6 of Article 2 of the basic Regulation for those producers which were found to meet the criteria laid down in Article 2(7)(c) thereof.

(14) Briefly, and for ease of reference only, the criteria in Article 2(7)(c) of the basic Regulation, fulfilment of which the applicant companies have to demonstrate, are set out in summarised form below:

— business decisions and costs are made in response to market conditions, and without significant State interference,

— accounting records are independently audited in line with international accounting standards and applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— legal certainty and stability are provided by bankruptcy and property laws,

— currency exchanges are carried out at the market rate.

(15) The applicant requested MET pursuant to Article 2(7)(b) of the basic Regulation and submitted a claim form for exporting producers. The Commission sought and verified at the premises of the applicant all information submitted in the company's request and deemed necessary.

(16) The present investigation revealed that the situation of the applicant changed since the original investigation. It was found that the applicant now meets all five MET criteria. In particular, the reasons why MET was denied in the original investigation were found to be no longer applicable and no other circumstances were found which could lead to a rejection of the MET claim. Therefore, after consulting the Advisory Committee, the applicant was granted MET.

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(17) Both the applicant and the Community industry were given an opportunity to comment on the above findings.

(18) The Community industry objected to the above findings by claiming that there would be a risk of circumvention by channelling exports from Taiwan via Vietnam.

(19) It should first be noted that there is no link between granting MET to the applicant and any potential circumvention from Taiwan, since this may even be possible in case no MET is granted to the applicant. Secondly, the Community industry did not come forward with any underlying evidence supporting the allegations made. Finally, it is underlined that the Community industry did not object to the above findings, that is to say that the applicant fulfilled the criteria listed in Article 2(7)(c) of the basic Regulation, which are the only relevant criteria to assess whether the company fulfilled the conditions to be granted MET. The claims of the Community industry had therefore to be rejected.

2. Dumping

2.1. *Normal value*

(20) The applicant had no domestic sales in Vietnam of the product concerned. Whenever domestic prices cannot be used in order to establish normal value, another method has to be applied. In accordance with Article 2(3) of the basic Regulation the Commission instead calculated a constructed normal value, as follows.

(21) Normal value was constructed by adding to the applicant's manufacturing costs a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit.

(22) Since the applicant had no domestic sales of the product concerned or of the same general category of product, and because the investigation was limited to one company, SG&A costs and profits could not be established pursuant to the methods set out in Article 2(6)(a) and Article 2(6)(b) of the basic Regulation. Instead, another reasonable method had to be found based on Article 2(6)(c) of the basic Regulation.

(23) In the event that the applicant would be granted MET, it was foreseen in point 5(d) of the notice of initiation, to also use findings concerning the normal value established in an appropriate market economy country, e.g. for the purpose of replacing any unreliable cost or price elements in Vietnam which are needed in establishing the normal value, if reliable required data are not available in Vietnam. It was found reasonable to use the SG&A costs and profit rates of exporting producers of the like product in another country, in this case Taiwan, according to Article 2(6)(c) of the basic Regulation.

(24) The domestic sales of the Taiwanese producers were found to have been made in the ordinary course of trade. Consequently, the SG&A costs and profit rates were calculated on their proportion to the total turnover for each product type.