Council 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

COUNCIL REGULATION (EC) No 1890/2005

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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 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 771/2005[(2)] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of certain stainless steel fasteners and parts thereof, falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 originating in the People's Republic of China (PRC), Indonesia, Taiwan, Thailand and Vietnam.

(2) It is recalled that the investigation of dumping and injury covered the period from 1 July 2003 to 30 June 2004 (IP). The examination of trends relevant for the injury analysis covered the period from 1 January 2001 to 30 June 2004 (period considered).

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of the provisional anti-dumping measures, certain interested parties submitted comments in writing.

(4) Those parties who so requested were granted an opportunity to be heard by the Commission.

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(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(6) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of the provisional duty. They were also granted a period within which to make representations subsequent to this disclosure.

(7) The oral and written comments were considered and, where deemed appropriate, taken into account in the definitive findings.

(8) Following the imposition of provisional measures, one importer and its association questioned the representativeness of the Community industry, as set out under recital 113 of the provisional Regulation, within the meaning of Article 5(4) of the basic Regulation. However, no evidence was produced to substantiate this claim. The investigation has confirmed that the Community industry accounted for approximately 54 % of the Community production during the IP and has standing within the meaning of Article 5(4) of the basic Regulation.

(9) The cooperating Thai exporting producers contended upon disclosure that the non-confidential questionnaire replies of the Community producers were not sufficiently detailed and not filed in accordance with Article 19 of the basic Regulation. It was alleged that a lack of information in the non-confidential questionnaire replies denied cooperating exporters an effective opportunity to defend their interests and allegedly put them at a disadvantage as compared with other parties, namely the Community industry, in this procedure. However, the injury information as set out in Section E of the provisional Regulation provides all interested parties with verified data on an aggregated basis. Thus, they all have a sufficiently precise picture of the facts with regard to the injury and causality situation to enable them to defend their interests. All parties are treated in the same way and there is no imbalance between the different interested parties with regard to disclosure. Furthermore, the non-confidential questionnaire replies together with the information contained in the provisional Regulation ensured respect for the rights of defence of all parties. The argument was therefore rejected.

C. PRODUCT CONCERNED AND LIKE PRODUCT

(10) It is recalled that, in the course of the provisional investigation, doubts arose as to whether nuts could be regarded as a single product with other stainless steel fasteners and parts thereof (SSF). In this respect, a number of aspects needed to be explored further, e.g. whether and to what extent bolts and nuts are marketed together as a system, to what extent these types are developed together, etc. Further examination was also needed as to what extent the producers in the Community are able to offer these systems. For the purpose of the preliminary findings, it was therefore provisionally decided not to include nuts normally declared within CN code 7318 16 30 in the product definition.

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(11) Following the imposition of provisional measures, Community producers as well as importers, provided evidence that nuts and bolts are neither developed nor produced and marketed together. While nuts are typically used in conjunction with bolts, they are not typically sold as a set. Also, bolts can be used as fastening devices without nuts, which shows that there can be different end–uses between bolts and nuts. This is borne out by the imports from some of those producers in the countries concerned, which produce and sell either nuts or bolts, as well as by the fact that the sampled Community producers manufacture screws and bolts but not nuts. This is particularly apparent in the case of the Philippines, from where virtually all imports consisted of nuts without any corresponding imports of bolts. Furthermore, as stated above, bolts are not necessarily combined with nuts and washers. This is also obvious from the description of the HS-code 7318 15: 'other screws or bolts whether or not with their nuts or washers'. Furthermore, it is pertinent to note that the Community industry does not keep the necessary machinery to produce nuts and did not manifest any intention to produce nuts in the future.

(12) Therefore, the findings set out in recital 13 of the provisional Regulation to exclude nuts, not imported as part of a set with their screws and bolts, from the product scope are confirmed. Consequently, in line with the conclusions drawn in recitals 14 and 105 of the provisional Regulation, the proceeding should be terminated as regards the Philippines.

(13) Following the imposition of provisional measures, the cooperating Thai exporting producers alleged that nuts and bolts are normally marketed and developed together and, therefore, if nuts were to be excluded from the product scope, bolts should be excluded from the scope of the proceeding as well. However, they did not substantiate this allegation. Consequently, and in light of the findings set out in recitals 11 and 12 that nuts are not marketed and developed together with bolts, the claim was rejected and only nuts were excluded from the scope of the proceeding.

(14) Furthermore, several importers and their association reiterated their claim to further limit the investigation to two CN codes, namely 7318 15 61 (hexagon socket head screws of stainless steel) and 7318 15 70 (hexagon bolts of stainless steel). To this end, they referred to an alleged lack of production by the Community industry of all other fasteners being subject to this investigation, i.e. SSF normally declared within CN codes 7318 12 10 (other wood screws of stainless steel), 7318 14 10 (self tapping screws of stainless steel), 7318 15 30 (screws and bolts without heads of stainless steel) and 7318 15 51 (slotted and cross-recessed screws of stainless steel). In this respect, they provided as evidence some orders which some Community producers could not deliver. Furthermore it was claimed that bolts and screws are manufactured on different machines.

(15) It should be recalled, as stated in recital 15 of the provisional Regulation, that the investigation confirmed that types of SSF falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30 and 7318 15 51 are produced in the Community. Consequently, the sampled Community producers (i) have the machinery to produce these other types of

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SSF; and (ii) face competition for these types from the dumped product concerned. The information with regard to some orders which could not be supplied by the Community industry relates to a period outside the IP which, normally, shall not be taken into account according to Article 6(1) of the basic Regulation. In any event, this fact does not show that these products are not produced by the Community industry. In addition, the investigation established that, in the absence of unfair dumped competition from the countries concerned, the Community industry is able to increase production in order to meet demand of such items. In this context, it should be considered that the Community industry has significant spare capacity (see table before recital 127 in the provisional Regulation). Consequently, the claim of the importers could not be accepted.

(16) The cooperating Thai exporting producers asked to limit the product scope to the CN codes 7318 12 10 (other wood screws of stainless steel), 7318 15 30 (screws and bolts without heads of stainless steel) and 7318 15 61 (hexagon socket head screws of stainless steel). To this end, they argued that neither bolts (CN code 7318 15 70), nor self-tapping, slotted and cross-recessed screws of stainless steel (CN codes 7318 14 10 and 7318 15 51) should be considered as one single product category with the other fasteners under investigation because of alleged (i) different physical properties, nature and quality of these fasteners, (ii) different end-uses, (iii) different consumers' tastes and habits and (iv) different CN codes, which in their view would show that bolts and screws do not constitute one single category of product.

(17) In the case at hand, the investigation has shown that all types of fasteners under consideration share, from a user's perspective, similar basic physical and technical characteristic and uses, i.e. they are threaded stainless steel metal pins, used to join things, by means of rotation of the fastening devices. Thus, all these fasteners fall under the same four digit heading of the Combined Nomenclature. Consequently, the claim to further limit the product scope has to be rejected.

(18) Since no other comments were submitted, the findings concerning the product concerned and the like product as set out in recitals 10 to 18 of the provisional Regulation are hereby confirmed.

D. SAMPLING

(19) No comments concerning sampling of exporting producers in Taiwan, Community producers and importers have been submitted following the imposition of provisional measures. The findings set out in recitals 19 to 32 of the provisional Regulation are hereby confirmed.

E. DUMPING

1. Market economy treatment (MET)

(20) No new comments concerning MET were submitted following the imposition of provisional measures. The findings set out in recitals 33 to 54 of the provisional Regulation are hereby confirmed.

2. Individual treatment (IT)

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(21) One cooperating exporting producer in Vietnam expressed its disappointment at the rejection of its claim for IT, despite its cooperation with the investigation. It also said that the rejection of its claim for IT, as well as those of two other Vietnamese exporters, lead to the imposition of the same provisional anti-dumping duty on imports from all exporting producers in Vietnam.

As set out in recital 60 of the provisional Regulation, the company in question was not able to demonstrate that it met the conditions of Article 9(5) of the basic Regulation for being granted IT. Furthermore, no argument or evidence was submitted which could alter this finding and, therefore, Article 2(7)(a) of the basic Regulation had to apply to Vietnam, as a whole. This means that the same measure applies to all exporting producers in Vietnam.

(22) In the absence of any other comments, the findings set out in recitals 55 to 61 of the provisional Regulation concerning individual treatment are hereby confirmed.

3. Normal value

3.1. Analogue country

(23) Taiwan had provisionally been chosen as the analogue market economy third country for the purpose of establishing normal value for exporting producers not granted MET. Following the imposition of provisional measures, no party raised any comments concerning the determination of the normal value in the analogue country. Thus, the findings set out in recitals 62 to 64 of the provisional Regulation are hereby confirmed.

3.2. Methodology applied for the determination of normal value

(24) Four Thai exporting producers argued that the selling, general and administrative (SG&A) expenses and the profit realised on domestic sales in another country, in this case Taiwan, cannot be used for constructing their normal value. However, as set out in recital 80 of the provisional Regulation, these exporting producers had no representative sales of the like product, or other products in the same general category, in the ordinary course of trade. It was therefore, necessary to rely on another reasonable method for the calculation of SG&A expenses and profit as provided for by Article 2(6)(c) of the basic Regulation. In this respect, the use of Taiwanese SG&A expenses and profit was considered the most reasonable method because of (i) the representative domestic market, in terms of volumes and competition in terms of prices, for the like product in Taiwan; and (ii) the fact that the Taiwanese SSF industry controls the majority of SSF producers in all the countries under investigation, including some in Thailand (see recital 71 of the provisional Regulation). No information was provided to show that the profit so used would exceed the profit normally realised by other exporters or producers on sales of the same general category of products in Thailand.

(25) No other comments were raised concerning the methodology applied for the determination of normal value and thus the methodology set out in recitals 65 to 72 of the provisional Regulation is hereby confirmed.