Council Implementing Regulation (EU) No 2/2012 of 4 January 2012 imposing a definitive anti-dumping duty on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China and Taiwan following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 2/2012

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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 11(2) thereof,

Having regard to the proposal submitted by the European Commission ('Commission') after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Regulation (EC) No 1890/2005[(2)] the Council imposed a definitive anti-dumping duty and collected definitively the provisional duties imposed on imports of certain stainless steel fasteners and parts thereof ('SSF') originating in the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam. At the same time, the proceeding on imports of SSF originating in Malaysia and the Philippines was terminated.

(2) On 25 August 2009, following a review initiated on the basis of Article 11(3) of the basic Regulation, the Council, by Regulation (EC) No 768/2009[(3)] amended the abovementioned measures as far as one exporting producer in Vietnam is concerned.

(3) The Regulation which led to the imposition of the definitive anti-dumping duty on imports of certain SSF originating, inter alia, in the People's Republic of China ('PRC') and Taiwan, will hereinafter be referred to as 'the original Regulation'. The investigation that led to the measures imposed by the original Regulation on the countries concerned will be hereinafter referred to as 'the original investigation'.

2. Request for an expiry review

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 2/2012. (See end of Document for details)*

(4) Following the publication of a notice of impending expiry[4] of the definitive anti-dumping measures in force, the Commission received on 19 August 2010 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by the European Industrial Fasteners Institute ('EIFI') ('the applicant') on behalf of five Union producers: Bulnava SRL, Inox Viti di Cattinori Bruno & C. SNC, Inox Bolt SRL, Bontempi Vibo SpA. and Ugivis SA representing a major proportion, in this case more than 25 %, of the total Union production of SSF.

(5) The request was limited to the anti-dumping measures imposed on imports originating in the PRC and Taiwan ('the countries concerned'). Consequently, the anti-dumping measures imposed by the original Regulation on imports of SSF originating in Vietnam, Indonesia and Thailand are not subject to this review.

(6) The request was based on the grounds that the expiry of the measures imposed on imports of SSF originating in the countries concerned would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

3. Initiation of an expiry review

(7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 19 November 2010, by a notice published in the *Official Journal of the European Union*[5], the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation ('notice of initiation').

4. Investigation

4.1. *Review investigation period and the period considered*

(8) The investigation of continuation of dumping covered the period from 1 October 2009 to 30 September 2010 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2007 to the end of the review investigation period ('the period considered').

4.2. *Parties concerned by the investigation*

(9) The Commission officially advised the applicant, other known Union producers, exporting producers, importers, users in the Union known to be concerned and their associations, and the representatives of the countries concerned of the initiation of the expiry review.

(10) The Commission also gave interested parties the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(11) In view of the apparent large number of exporting producers from the countries concerned, unrelated importers in the Union and Union producers involved in the investigation, sampling was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation.

(12) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the publication of the notice of initiation and to provide the Commission with the information requested in the notice of initiation. In view of the replies received it was decided to apply sampling in respect of Taiwanese exporting producers, unrelated importers in the Union and Union producers. As regards the PRC, no exporting producers from the PRC cooperated in the investigation.

(13) Thirty six Taiwanese exporters/groups of exporters provided the requested information and agreed to be included in the sample. Ten of them could not be taken into account as they appeared to be trading companies only or did not export to the Union in the RIP. On the basis of the information received from the cooperating Taiwanese companies, the Commission selected a sample of four exporting producers. Subsequently one sampled company withdrew its cooperation. The remaining three sampled companies represented 41,6 % of the Taiwanese exports to EU during the RIP.

(14) As regards unrelated importers in the Union, out of eight companies which provided the requested information, the three largest ones representing almost 90 % of the imported volume reported by the cooperating companies were selected for the sample. Subsequently only one importer submitted a questionnaire reply.

(15) Twelve Union producers provided the requested information and agreed to be included in the sample. On the basis of the information received from the cooperating Union producers, the Commission selected a sample of six Union producers. Subsequently one sampled Union producer withdrew its cooperation. The remaining five sampled producers represented 38 % of the sales by all Union producers to unrelated customers in the EU during the RIP.

(16) The Commission sent questionnaires to the sampled parties and to all users known to be concerned. As explained above, replies to the questionnaires were received from five Union producers, three exporting producers from Taiwan and one importer. None of the users contacted came forward or made themselves known in the course of the investigation.

(17) As explained in recitals 13 and 15 one sampled Taiwanese exporting producer and one sampled Union producer decided not to submit a questionnaire reply. However, in both cases the sample of the remaining companies was considered to be still representative in terms of the relevant sales volumes.

(18) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and

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resulting injury and for the determination of the Union interest. Verification visits were carried out at the premises of the following companies:

(a) *Union producers*

— Bulnava SRL, Suello, Italy,

— Inox Viti di Cattinori Bruno & C. SNC, Grumello del Monte, Italy,

— Bontempi Vibo SpA, Rodengo Saiano, Italy,

— Reisser Schraubentechnik GmbH, Ingelfingen-Criesbach, Germany,

— Ugivis SA, Belley, France;

(b) *Exporting producers in Taiwan*

— Arrow Fastener Co., Ltd and its related exporters, Shu-Lin City,

— Shekai Precision Co., Ltd and its related exporter, Kaohsiung,

— Yi Tai Shen Co., Ltd Tainan Hsien;

(c) *Unrelated importer in the Union*

— Würth-Gruppe, Künzelsau, Deutschland.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(19) The product concerned by this review is the same as the one defined in the original Regulation, namely certain stainless steel fasteners and parts thereof, originating in the PRC and Taiwan, currently falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 (‘the product concerned’).

(20) The review investigation confirmed that, as in the original investigation, the product concerned and the products manufactured and sold by the exporting producers on the domestic markets, as well as those manufactured and sold in the EU by the Union producers, have the same basic physical and technical characteristics as well as the same uses and are, therefore, considered to be like products within the meaning of Article 1(4) of the basic Regulation.

(21) Four parties came forward and claimed that the products falling under CN codes 7318 12 10, 7318 14 10 and 7318 15 51 should be excluded from the scope of this investigation because allegedly they are not produced within the Union. This claim was rejected because (i) no evidence was presented showing that these products would be different in terms of basic physical and technical characteristics and (ii) in any event the product scope cannot be modified in the context of an expiry review.

(22) After disclosure of the essential facts and considerations on the basis of which it was recommended that the existing measures be maintained (the ‘final disclosure’) one of the Taiwanese exporting producers claimed that bi-metal fasteners should not be included in the product scope due to the significant differences existing between the bi-metal fasters and stainless steel fasteners in terms of unit sales price, cost of production, basic physical and technical characteristics, as well as applications. However, as explained in recital 21 above the product scope cannot be modified in the

context of an expiry review. This claim could be dealt with in a product scope interim review, which can be requested by the company.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

(23) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

1. PRC

1.1. *Preliminary remarks*

(24) As explained above, none of the PRC exporting producers cooperated in the investigation.

(25) Therefore, findings on the likelihood of continuation or recurrence of dumping set out below had to be based on best facts available, in particular the Eurostat data and the information submitted by the Union industry in the review request. Official PRC exports statistics could not be used in this case as the product concerned represents only a small fraction of the quantities reported in the relevant Harmonised System Tariff positions.

1.2. *Dumping of imports during the RIP*

(26) In view of the lack of cooperation of the PRC exporting producers no individual dumping margins could be calculated.

(27) According to the review request, exports from the PRC into the Union were allegedly dumped with margins ranging from 13,6 % to 61,8 %. As mentioned in the notice of initiation, the applicant compared the export prices from the PRC to the Union with a constructed normal value in Taiwan, the analogue country used in the original investigation.

(28) As there was no cooperation from the PRC companies, there is no information available which would allow a different conclusion. Moreover, it is noted that normal value established for the only cooperating Taiwanese company was found to be substantially higher than the normal value established by the applicant in the expiry investigation request. Since there is no indication that export prices from the PRC to the Union are different than in the request, it is likely that dumping from the PRC has continued at higher levels than those indicated in the request.

1.3. *Development of imports should measures be repealed*

(29) Further to the analysis of the existence of dumping during the RIP, the likelihood of the recurrence of dumping was also investigated.

(30) In this respect the following elements were analysed: the spare capacity of the PRC exporting producers; the attractiveness of the Union market for the PRC producers and their export to third countries.