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COUNCIL REGULATION (EC) No 393/98

of 16 February 1998

imposing a definitive anti-dumping duty on imports of stainless steel fasteners and parts thereof originating in the People's Republic of China, India, the Republic of Korea, Malaysia, Taiwan and Thailand

(OJ L 50, 20.2.1998, p. 1)

Corrected by:

►**C1** Corrigendum, OJ L 148, 19.5.1998, p. 48 (393/98)

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imposing a definitive anti-dumping duty on imports of stainless steel fasteners and parts thereof originating in the People's Republic of China, India, the Republic of Korea, Malaysia, Taiwan and Thailand

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], and in particular Article 9(4) thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) By Commission Regulation (EC) No 1732/97 [2] (hereinafter referred to as 'the provisional duty Regulation') provisional anti-dumping duties were imposed on imports into the Community of stainless steel fasteners and parts thereof (hereafter called SSFs) falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30 originating in the People's Republic of China, India, the Republic of Korea, Malaysia, Taiwan and Thailand.

B. SUBSEQUENT PROCEDURE

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

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

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

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

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

C. PRODUCT CONCERNED AND LIKE PRODUCT

(7) For the purposes of its preliminary findings the Commission considered stainless steel fasteners produced and sold in India, Malaysia, the Republic of Korea, Taiwan and Thailand and those exported to the Community from the countries concerned as well as those produced and sold in the Community by Community producers, as like products within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereafter called 'the Basic Regulation') as they have the same basic physical, chemical and technical characteristics and uses.

(8) It has again been claimed by some exporters (as prior to the imposition of provisional measures) that nuts imported from the

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[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).

[2] OJ L 243, 4. 9. 1997, p. 17.

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countries concerned should be excluded from the investigation on the basis that there is little or no production of nuts within the Community.

(9) However, as at the provisional stage, this allegation is not confirmed by the results of the investigation which has shown that nuts are manufactured by the Community producers. It was not, therefore, considered justifiable to exclude nuts from the scope of the present proceeding.

(10) One exporting Indian producer claimed that the domestic sales of a certain type of high carbon alloy steel screws made by that company should be used to determine the normal value of some stainless steel screws exported to the Community on the grounds that these types of screws were comparable. However the investigation has shown that these different types of steel screws could not be considered as like products since their physical characteristics are different from those of the exported product concerned. This claim was therefore rejected.

(11) Several exporting producers in Taiwan contested the fact that in the provisional duty Regulation non-standard SSFs have been excluded from the dumping calculations, although the Commission considered these non-standard SSFs as a like product. As already explained in recital 9 of the provisional duty Regulation, the Commission considered standard SSFs to be sufficiently representative, i.e. more than 70 % of total exports of SSFs to the Community to serve as a basis for the determination of dumping of all exports concerned. This approach is confirmed for all companies with the exception of one. For this company the analysis revealed that non-standard SSFs represented a large majority of its export sales to the Community. It was therefore decided that for this exporter the dumping calculations had to be adjusted in order to include non-standard SSFs.

(12) Since no other comments were received on the definition of the 'like product' the findings made on the issue, as established in recital 11 of the provisional duty Regulation, are confirmed.

D. **DUMPING**

1. **Normal value**

(a) *India*

(13) One company claimed that the Commission had wrongly determined its constructed normal value by using an inaccurate allocation key in the calculation of cost of production. This claim was rejected since the allocation key used by the Community institution more accurately reflected the raw material costs as compared to the one proposed by the company concerned.

(14) The other two cooperating exporting producers claimed that the methodology used for the determination of normal value set out in recital 15 of the provisional duty Regulation, i.e. to use, whenever possible, the weighted average ex-works prices of the cooperating producer which had domestic sales, did not allow a proper comparison with their export prices.

In this respect, it was eventually found that normal values based on the ex-works domestic prices of the only cooperating Indian producer selling SSFs on the domestic market were not comparable with the export prices of the two exporting producers. This was due to an incorrect classification by this company of the different types of SSFs sold on the domestic market which made the comparison inappropriate.

For these two companies, the Commission therefore calculated a constructed normal value for all types of SSFs exported to the Community during the investigation period. This was done on the basis of manufacturing costs of the exported types plus a reasonable amount for sales, general and administrative expenses

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(hereafter called 'SG&A') and profit. The methodology applied for the determination of the amount for SG&A and profit remains the same as at the provisional stage, i.e. it is based on the only cooperating producer selling the product concerned on the Indian market. However, since the normal value of this Indian producer has changed, the amount for SG&A and profit margin has been corrected accordingly.

(b) *Republic of Korea*

(15) In the absence of further arguments, the provisional findings are hereby confirmed.

(c) *Malaysia*

(16) One Malaysian exporting producer contested the methodology used in establishing SG&A and profit margin when constructing normal value. It is recalled that, in accordance with Article 2(6) of the Basic Regulation, SG&A were based on the data pertaining to this company while the profit margin was based on the weighted average profit made by the group to which the company belonged.

In this respect, it is considered that the fact that the domestic sales are not made in representative quantities is not in itself sufficient to disregard the data pertaining to these sales in the context of Article 2(6)(c) of the Basic Regulation. In this particular case, as far as SG&A are concerned, the investigation showed that this company's SG&A proved to be in line with the average amount of SG&A found for all companies investigated in the proceeding as already explained in recital 18 of the provisional duty Regulation. The use of this SG&A was therefore considered to be the most reasonable method. With regard to profits, as the company's profits differed greatly from those found for other producers, which might result from the fact that this company is a fully-owned subsidiary of a foreign group, it was considered that the domestic sales could not constitute a reasonable basis for this determination. In these circumstances, the Commission considered that the methodology used in the provisional duty Regulation (based on the profit margin found in respect of the product concerned for the group to which this company belonged) was the most appropriate means of reflecting the economic reality of this company for establishing profit realised on sales in Malaysia. Consequently, the claim was rejected.

(17) The same company objected to the fact that the Commission had disregarded unprofitable domestic sales when calculating the profit margin to be used in the constructed normal value. It should be recalled that for certain product types domestic sales made at a loss represented more than 20 % of total domestic sales of this type. Thus, sales made at a loss were not made in the ordinary course of trade and could consequently not be taken into consideration for the determination of the profit margin.

(d) *Taiwan*

(18) Three exporting producers objected to the methodology used to determine normal value as set out in recital 20 of the provisional duty Regulation. They argued that normal value should have been constructed rather than being based on the prices charged by other producers in Taiwan.

In accordance with Article 2(1) of the Basic Regulation, normal value is normally based on domestic prices. If an exporter does not make sufficient domestic sales in the ordinary course of trade, normal value will be established on the basis of other exporters' sales prices for the comparable product. Only in the absence of representative domestic sales by other producers, or if such sales prices are not suitable, will normal value be constructed in accordance with Article 2(3) of the Basic Regulation. Moreover, the exporters in question did not substantiate why the use of the other exporters' prices should not have been suitable. Therefore,

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normal value was determined, wherever possible, on the basis of the domestic prices of the other Taiwanese companies.

(19) Two exporting producers estimated that the profit margin used for the constructed normal values was too high and claimed that the Commission had not provided sufficient information on the calculation method of this profit margin. In this respect, it should be noted that the Commission provided a summary table regarding the data used for the calculation of the average profit margin. As these data were taken from other Taiwanese companies, no further details could be disclosed since, in accordance with Article 19(4) of the Basic Regulation, disclosure must take into account the legitimate interests of the parties concerned that their business secrets should not be divulged.

(20) As in Malaysia, one exporting producer claimed that unprofitable domestic sales should be taken into account when calculating the profit margin to be used in constructed normal value. This request was rejected on the grounds explained in recital 17 with regard to Malaysia.

(21) Two related exporting producers contested that, in the case of domestic sales made through a related reselling company, normal value was established on the basis of the prices at which the product was first resold to an independent customer. They argued that, although these sales were made to a related company, they were made at arm's length prices, i.e. they were in the ordinary course of trade in the sense of the third paragraph of Article 2(1) of the Basic Regulation. Consequently, it was requested that the prices paid by the related reselling company be used in the calculation of normal value. However, the analysis of prices of sales by these two related producers to both related and unrelated customers did not show that the prices to the former were at arm's length. Under these circumstances, this claim had to be rejected.

(e) *Thailand*

(22) A Thai company claimed that certain amounts related to export sales had been included in the SG&A used for constructing the normal value and that they should consequently be excluded. After verification the Commission granted this request and amended the calculations of the costs of production accordingly.

(23) It should be noted that this amendment also influenced the determinations for the second company as these SG&A were used to construct its normal value.

(24) The same company claimed that the use of the constructed normal value was not appropriate where there were sales of similar types on the domestic market. This claim could not be accepted since the differences between the exported types and the types proposed were of more than a minor nature. Thus, a comparison on the basis proposed by this company would have necessitated adjustments for differences in physical characteristics of such an extent that the comparison would no longer have been accurate.

(25) It should be noted that as far as the third Thai company is concerned, which had been provisionally subject to an individual duty, it was finally not possible to establish a definitive dumping margin as it exported a negligible quantity of stainless steel fasteners which were not produced in Thailand.

(f) *People's Republic of China*

(i) Analogue country

(26) One cooperating company in Hong Kong which exported SSFs originating in the People's Republic of China proposed that its domestic sales in Hong Kong be used to determine normal value for the People's Republic of China instead of data relating to Taiwan, which was selected as an analogue country. In the

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absence of new arguments to justify the choice of Hong Kong as an analogue country and since the domestic sales of this company represented less than 5 % of the total Chinese export sales to the Community, this proposal was rejected.

(ii) Amendment to normal value

(27) For the company referred to in recital 26, it should be noted that the amendments made to the Taiwanese normal value influenced the calculations of its own normal value.

(g) *Conclusion*

(28) The other findings made in recitals 12 to 28 of the provisional duty Regulation concerning the determination of normal value are hereby confirmed.

2. **Export price**

(a) *India*

(29) As stated in recital 29 of the provisional duty Regulation, the export prices of the Indian producer which sold the product concerned for export through a trading company were established on the basis of the prices it charged to the trading company. This company contested the adjustments made to these export prices. However, after verification and in the light of all available information, it was concluded that the approach taken at the provisional stage was not appropriate as the price charged to the trading company was not reliable because of the existence of an association or compensatory arrangement between the producer and this company. At the definitive stage export prices were therefore based on the prices charged to the first independent customer in the Community.

(b) *Taiwan*

(30) As no arguments were received except for those relating to the changes regarding the product concerned mentioned under recital 8, the findings set out in recital 33 of the provisional duty Regulation are hereby confirmed.

(c) *People's Republic of China*

(i) Individual treatment

(31) The six cooperating companies which were refused individual treatment reiterated their claim in this respect. However, only one of the six companies provided substantial additional evidence in support of its claim. After a careful examination of this evidence, it was concluded that this company enjoyed a degree of legal and factual independence from the influence of the State comparable to that which would prevail in a market economy country. Individual treatment was therefore granted to this company.

(32) The other five cooperating companies did not provide relevant additional evidence in support of their claim for individual treatment. It was therefore confirmed that these companies were not sufficiently independent from the Chinese State in their operations, in particular in view of the fact that four of them were joint ventures in which the partner from the People's Republic of China was a State-owned enterprise. The remaining company also failed to show that its operations were sufficiently independent of the Chinese authorities.

Under these circumstances, the claim for individual treatment made by these five companies was rejected.

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(ii) Use of Eurostat as export prices

(33) Some interested parties contested the use of Eurostat by the Commission in the determination of the export prices. These interested parties argued that the Eurostat figures were greatly overestimated, and that the seven cooperating companies in the People's Republic of China and Hong Kong in reality accounted for the majority of the exports concerned, and were therefore representative.

However, these interested parties failed to show the alleged inaccuracy of Eurostat figures and to provide more reliable alternative data. Moreover, the Commission investigated the accuracy of Eurostat data by contacting Eurostat, national custom authorities, and the European importers concerned. The outcome of this inquiry confirmed that Eurostat was the most reliable source of information for the purpose of the current investigation. Therefore, the methodology used in the provisional determination is confirmed.

(d) *Republic of Korea, Malaysia and Thailand*

(34) In the absence of new arguments, the provisional findings are hereby confirmed.

3. **Comparison**

(a) *India*

(35) For the two companies mentioned under recital 29, in order to make a fair comparison between normal value and export price the latter had to be adjusted to take account of the activities of the trading company. Since its function can be considered to be similar to that of a trader acting on a commission basis, an adjustment was made on the basis of this company's own SG&A and a reasonable amount for profit. This adjustment was deducted from the prices charged by the trading company to independent customers in the Community.

(36) These companies also alleged that insufficient allowance had been granted for duty drawback. In this respect it should be noted that they failed to submit conclusive evidence to substantiate the claim that all stainless steel used for the production of fasteners, including those sold domestically, contained imported raw materials for which duties were paid in accordance with Article 2(10)(b) of the Basic Regulation. Therefore the position set out in recital 42 of the provisional duty Regulation is hereby confirmed.

(37) Of these two companies, the one which produced and sold the product concerned on the domestic market repeated the claim set out in recital 41 of the provisional duty Regulation concerning adjustment for credit costs. As the company concerned did not supply new supporting evidence, the position set out in recital 41 of the provisional duty Regulation is hereby confirmed.

(38) The same companies also claimed an adjustment for level of trade on the grounds that domestic sales were made to traders and end users whereas the sales for export were made to traders only. The companies provided sufficient evidence showing that a part of domestic sales was made at a level of sale different to export sales and that this difference affected price comparability. Indeed, there were consistent and distinct differences in the functions and prices of the two companies for the different levels of trade. Consequently, the claim was granted and the calculation based on a comparison of the domestic and export sales to traders only where they were made in sufficient quantities to be representative.

(b) *Malaysia*

(39) One Malaysian exporting producer claimed an allowance for currency conversions on export sales and requested that the exchange rate prevailing on the payment date be used. This claim

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was rejected on the grounds that, in accordance with Article 2(10)(j) of the Basic Regulation, the relevant exchange rate can be either that on the date of invoice, the date of contract, the date of purchase order or the date of order confirmation, but not the one valid for the date of payment.

(c) *Taiwan*

(40) The exporting producers mentioned under recital 18 who had requested that normal value be constructed rather than based on the prices of other producers claimed that if this request were rejected, an adjustment for differences in level of trade should be made since the product concerned was sold to retailers on the domestic market whereas the export product was sold to traders. This claim was rejected since the prices used were taken from producers who had already in comparable circumstances been refused the same kind of level of trade adjustment.

(41) Two related exporting producers claimed an allowance for currency conversions similar to the one discussed in recital 39. The claim was rejected on the same grounds set out in that recital.

(42) These two related companies claimed an allowance for the credit cost of sales on the domestic market and requested that the actual payment date be used. This claim was rejected on the grounds already mentioned in recital 41 of the provisional duty Regulation.

(d) *Republic of Korea, Thailand, People's Republic of China*

(43) In the absence of new arguments, the provisional methodology is hereby confirmed.

4. **Dumping margins**

(a) *General*

(44) In the absence of any other new arguments concerning the determination of the dumping margin, the methodology set out in recitals 45 to 47 of the provisional duty Regulation is hereby confirmed. On this basis, the dumping margins are as follows:

(b) *India*

(45) In view of the changes in the calculations mentioned above, it was found that, for the two exporting producers in India which did not sell the product concerned on the domestic market, there was a pattern of export prices which differed significantly among different time periods and that a calculation based on weighted average would not reflect the full degree of dumping being practised. The new weighted average normal value was therefore compared to prices of all individual export transactions.

(46) The dumping margins expressed as a percentage of the cif price at Community frontier are as follows:

— Audler Fasteners, Vasai	11,2 %
— Lakshmi Precision Screws Ltd, Rothak	19,8 %
— Kundan Industries Ltd, Vasai/Tata Export Ltd, Mumbai	47,4 %.

(47) The dumping margin definitively established for Indian exporters other than those cooperating in this investigation, expressed as a percentage of the cif price at Community frontier, is 59,4 %.

(c) *Republic of Korea*

(48) In the absence of any comment from the sole cooperating exporting producer in Korea, its dumping margin remains

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unchanged; this margin, expressed as a percentage of the cif price at Community frontier is as follows:

— Daegil Trading Co. Ltd, Seoul 24,0 %

The definitive dumping margin established for Korean exporting producers other than those cooperating in this investigation, expressed as a percentage of the cif price at Community frontier is 26,7 %.

(d) *Malaysia*

(49) One Malaysian exporting producer contested the existence of a pattern in its export prices which differed significantly among different time periods in the sense of Article 2(11) of the Basic Regulation. This exporter pointed out that the steady decrease in its export prices during the period of investigation could be explained by a parallel decrease in the costs of raw materials. Should monthly average costs instead of a yearly average cost have been used in the dumping calculation, the pattern mentioned above would have disappeared. In view of the evidence submitted the claim was accepted and the dumping margin for this company was established on an average to average basis for the purpose of definitive determination.

One company in Malaysia offered undertakings on the basis of Article 8 of the Basic Regulation. However, after consultation with the Commission the company withdrew its request.

The definitive dumping margins calculated for the cooperating Malaysian exporting producers, expressed as a percentage of the cif price at Community frontier, are as follows:

— Tong Heer Fasteners Co., Sdn. Bhd., Penang 7,0 %

— Tigges Stainless Steel Fasteners (M) Sdn. Bhd. 5,7 %.

(50) The definitive dumping margin established for Malaysian exporting producers other than those cooperating in this investigation, expressed as a percentage of the cif price at Community frontier is 7,0 %.

(e) *Taiwan*

(51) Some non-cooperating exporting producers in Taiwan submitted information to the Commission concerning their export prices in order to show that, had these prices been used in the calculation of the residual duty, this duty would have been much lower. Whilst these companies acknowledged that they should be considered as non-cooperating parties, they requested that their data nevertheless be taken into consideration as part of the facts available in the sense of Article 18(1) of the Basic Regulation. This claim is not acceptable since it would consitute a bonus for non-cooperation and could result in unreliable findings due to selectively submitted information. Moreover, pursuant to Article 18(3) of the Basic Regulation, the information submitted by an interested party should not be disregarded provided that, *inter alia*, it is appropriately submitted in good time and it is verifiable. However, none of these conditions is fulfilled in the present case.

(52) The same non-cooperating companies contested that, whilst a single dumping margin had been imposed on two related Taiwanese companies, the residual duty was based on the individual margin found for one of these related companies, this margin being the highest found in Taiwan. However, the fact that an average dumping margin is imposed on a group of related companies in order to avoid circumvention does not have a bearing on the determination of the duty applicable to non-cooperating companies. The claim was therefore rejected.

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(53) For three exporting producers in Taiwan, the new weighted average normal value was compared to prices of all individual export transactions as it was found that there was a pattern of export prices which differed significantly among different time periods and that a calculation based on weighted average would not have reflected the full degree of dumping being practised.

(54) The definitive dumping margins established for the cooperating Taiwanese exporting producers, expressed as a percentage of the cif price at Community frontier, are as follows:

— Arrow Fastener Co. Ltd/Level Fastener Co. Ltd, Taipei	5,3 %
— CLC Industrial Co. Ltd, Taiwan	5,4 %
— Min Hwei, Kaohsiung	10,2 %
— Rodex Fasteners Corp., Chung Li	8,8 %
— Sen Chang, Tao Yuen	11,1 %
— Tong Hwei, Kaohsiung	10,2 %.

(55) The definitive dumping margin established for the Taiwanese exporting producers other than those cooperating in this investigation, expressed as a percentage of the cif price at Community frontier is 23,1 %.

(f) *Thailand*

(56) In view of the amendments made to the normal value mentioned above, the definitive dumping margins established for the two cooperating Thai exporting producers, expressed as a percentage of the cif price at Community frontier, are as follows:

— A.B.P. Stainless Steel Fastener Co. Ltd	8,4 %
— Dura Fastener Co. Ltd	2,7 %.

(57) The definitive dumping margin established for the Thai exporting producers other than those cooperating in this investigation, expressed as a percentage of the cif price at Community frontier is 8,4 %.

(g) *People's Republic of China*

(58) With regard to the company in the People's Republic of China which was granted individual treatment only at the definitive stage, the weighted average normal value fob Taiwan national frontier was compared with its own weighted average export prices fob China national frontier at the same level of trade.

Four cooperating companies in China which were not granted individual treatment requested an undertaking on the basis of Article 8 of the Basic Regulation. However, undertakings are not normally accepted from companies operating in non-market economy countries. Moreover, in this case the risk of circumvention is high and it should be noted that these companies were refused individual treatment because it was considered that they were not operating under normal market economy conditions. Under these circumstances the proposed undertakings could not be accepted.

The definitive dumping margin, expressed as a percentage of the cif price at Community frontier, is as follows.

— Ningbo Shyechang Metal Products	24,2 %.

With regard to the company which was already granted individual treatment in the provisional duty Regulation, the definitive dumping margin based on the amended Taiwanese normal value

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expressed as a percentage of the cif price at Community frontier is as follows:

— Power Van Industrial Co. Ltd 13,6 %.

(59) For the Chinese exporting producers other than those mentioned above, the definitive dumping margin based on the amended Taiwanese normal value expressed as a percentage of the cif price at Community frontier is 78,0 %.

E. INJURY

1. Cumulative assessment of the effects of the dumped imports

(60) Representatives of certain Indian exporters have claimed that imports from India should not be cumulated with imports of the product concerned from the People's Republic of China, Malaysia, the Republic of Korea, Taiwan and Thailand and should be excluded from the scope of the proceeding. This claim was made on the basis that the increase in the volume and market share of imports from India was not comparable to that of the other third countries concerned and that the volume of imports from India during the investigation period was lower than in 1995 (by 1,5 %). In addition, it was alleged that the market share held by India during the investigation period (2,9 %) was negligible 'in the overall trade of the product concerned'.

(61) In this respect, the investigation has shown that the volume of imports from India during the investigation period was significant, as were the volume of imports from the other countries concerned. Moreover, when the volume of imports from India during the investigation period (11 months) is extrapolated for a 12-month period and compared to 1995 levels the volume actually increased. Furthermore, pursuant to Articles 5(7) and 9(3) of the Basic Regulation a market share of 2,9 % cannot be considered as negligible.

(62) In the light of the above, it is concluded that imports of the product concerned from India should be examined cumulatively with the imports from the other countries concerned.

2. Prices of the dumped imports on the Community market

(63) Indian exporters have claimed that the imports of the product concerned originating in India have not caused injury to the Community industry given that their average prices have been stable for much of the period considered and, between 1994 and 1996, have increased by 19 %.

(64) The investigation has shown that the weighted average prices of the Indian imports remained relatively stable between 1992 and 1994, but at a very low price level and significantly below the level of the Community producers' prices, even when account is taken of the subsequent increase in prices. It should also be remembered that substantial levels of undercutting were established during the investigation period.

(65) Similar allegations have been made by the Taiwanese exporters, i.e. that the prices of the imports from Taiwan were stable over the period considered.

Again, the prices of the Taiwanese imports show some stability but at a relatively low price level. SSFs from Taiwan were imported in large quantities and undercut the Community producer's prices substantially during the investigation period.

3. Price undercutting

(66) The basis of calculation of price undercutting is set out in recital 65 of the provisional duty Regulation.

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(67) However, new information on export sales and prices was supplied by three exporters (two Indian and one Taiwanese). Revised undercutting margins were established on the basis of this new data.

(68) As a consequence of individual treatment being granted to a second cooperating exporter in China an individual undercutting margin was calculated for the exporter concerned and a revised undercutting margin calculated for the remaining five cooperating exporters in China.

(69) In addition to the above, the adjustments to the cif export price granted to all exporters (to take account of post-importation expenses incurred) were recalculated and resulted in minor changes to the margins of undercutting provisionally established.

(70) The revised margins of undercutting are expressed, as in the provisional duty Regulation, as a percentage of the Community industry's prices (at ex-works level). The undercutting margins established are as follows:

Country	Undercutting margin
People's Republic of China	from 39,4 to 39,8 %
Malaysia	from 21,8 to 42,5 %
Taiwan	from 17,8 to 60,9 %
India	from 23,6 to 36,6 %
Korea	22,7 %
Thailand	from 25 to 33,5 %

(71) An overall weighted average price undercutting from all countries concerned of 28,7 % was found for the investigation period.

4. **Situation of the Community industry**

4.1. *Production, capacity, capacity utilisation rates and market shares*

(72) Chinese exporters have alleged that any injury suffered by the Community industry is due to the increase in production and production capacity by the producers concerned over the period considered, most noticeably in 1994.

(73) However, the investigation has shown that consumption of the product concerned increased by 75 % between 1992 and 1996. Even though capacity increased by 91 % (mainly due to acquisition by a complaining Community producer of a non-complaining producer's production facilities), production by the Community industry increased by only 48 %. In addition, capacity utilisation rates decreased by 18 %. The market share of the Community producers decreased by 7 % over the period considered while that of the exporters concerned increased by 16,5 %. The investigation has shown that the Community industry was unable to take full advantage of the increase in consumption due to the high volume and low prices of the dumped imports.

4.2. *Stocks*

(74) Chinese exporters have claimed that the increase in the stocks of the Community producers is due to an increase in production of SSFs during a period when there was ‘no increase in consumption to absorb these extra SSFs’.

(75) The investigation has shown that this is not the case as can be seen from the development of consumption as outlined in the preceding recital. Indeed, the increase in consumption (75 %) was significantly greater than that of production (48 %) and sales (27 %) of the Community industry.

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4.3. *Prices*

(76) Chinese exporters have further claimed that (contrary to the above) although consumption increased between 1992 and 1996, the Commission failed to take account of the increase in production capacity by the Community producers and that in the circumstances any drastic increase in prices would not have been expected.

(77) This argument does not appear to be particularly pertinent and fails to take account of the fact that, despite an increase in production capacity, and an overall negligible increase in prices by the Community industry, the increase in sales did not keep pace with the increase in consumption and the Community industry's lost market share over the period considered.

4.4. *Profitability*

(78) It has been claimed that the negative situation of the Community industry was overstated in the provisional duty Regulation and separate information has been provided by exporters' representatives on the overall financial strength of each of the five complaining producers.

(79) Information supplied related to all five companies for the periods prior and up to the investigation period. However, information in relation to profitability during the period of investigation was provided for only one of the complaining producers and was therefore incomplete. For this producer the information confirms the facts as established during the investigation, i.e. that there was a sharp and significant decrease in profitability during the investigation period. In addition, the investigation has shown that this decline was clearly evident for each of the other complaining producers during the investigation period. This claim is therefore rejected.

4.5. *Employment*

(80) It has been alleged that despite heavy investment in automated production machinery the number of employees in the Community industry increased by 16 % over the period considered (from 325 to 378) and that this increase in employment is an indication that the Community industry is not suffering material injury.

(81) The investigation has shown that, despite heavy investment in production machinery (which necessitated additional employment) and an increase in productivity of 10 % between 1992 and the investigation period, the Community industry experienced a loss of market share and a serious deterioration in its financial situation.

5. **Conclusion on injury**

(82) It should be remembered, in accordance with Article 3(5) of the Basic Regulation, that any one of the above injury factors cannot necessarily give decisive guidance as to the impact of the dumped imports on the situation of the Community industry.

(83) In this respect it is to be noted that, while production and sales by the Community industry increased, this development cannot lead to the conclusion that the Community industry has not been injured as consumption on the Community market shows a much greater increase. Furthermore, the market share held by the dumped imports increased by 17 % (to 50,1 %) during a period when the Community industry's market share decreased by 7 % (to 19 %) and its profitability suffered and significant decline.

(84) In the light of the above and in the absence of other arguments, it is confirmed that, as was established in recitals 66 to 73 of the provisional duty Regulation, the Community industry has suffered material injury within the meaning of Article 3(1) of the Basic Regulation.

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F. **CAUSATION**

1. **Effect of the dumped imports**

(85) Indian exporters have referred to the fact that the financial situation of the Community producers was negative in 1992 at a time when the imports from India were 'nearly non-existent'.

(86) In this respect it is noted, in the first instance, that the impact of the Indian imports on the situation of the Community industry should, as previously stated, be examined cumulatively with the imports from the other countries concerned. Cumulatively, the volume of imports from the countries concerned represented 57,5 % of total imports in 1992 (33,5 % of Community consumption). In addition, even if considered separately, the Indian imports were seen to increase at the same time as the market share and profits of the Community industry decreased.

2. **Effect of other factors**

(87) The Commission had provisionally examined the extent to which the material injury suffered by the Community industry was caused by the impact of the dumped imports originating in the People's Republic of China, India, Malaysia, the Republic of Korea, Taiwan and Thailand and whether other factors had caused or contributed to that injury in order to ensure that any injury caused by these other factors was not attributed to the dumped imports concerned. Such other factors included the evolution of consumption, the effect of imports from other third countries, fluctuations in the price of raw materials and any possible anti-competitive practices by the Community industry.

(88) In spite of this detailed analysis on the causation of injury it has been alleged that there was no causal link between the material injury suffered by the Community industry and the dumped imports, or alternatively, that any material injury suffered was caused by factors other than the dumped imports.

(89) In particular, it has been alleged that the scope of the anti-dumping proceeding is clearly discriminatory as imports of stainless steel fasteners originating in South Africa have been omitted from the investigation even though they have been imported in large quantities and at very low prices. It is further alleged that the only explanation given by the Commission in the provisional duty Regulation for the exclusion of these imports from the scope of the investigation is that, in this particular instance, Eurostat data was found to be unreliable.

(90) In this respect it is noted that as far as Eurostat data are concerned, imports alleged to originate in South Africa are considered unreliable as available evidence suggests that there is no production of the product concerned in South Africa. No submission has been received to support the contrary.

(91) It has also been alleged that imports originating in the Philippines may have contributed to the injury suffered by the Community industry and it was stated that the price of the product concerned originating in the Philippines decreased by 18,3 % between 1995 and 1996.

(92) The Council confirms that the price of SSFs originating in the Philippines decreased between 1995 and 1996. However, the investigation has shown that, having decreased, prices were still significantly (and consistently) higher than those of the countries concerned by the present investigation. Furthermore, the Commission has no evidence that the prices of the product concerned originating in the Philippines were being dumped.

(93) It has been alleged that the decrease in apparent Community consumption in 1996, following three years in which consumption increased, had an effect on the situation of the Community industry as the industry concerned was expecting a continuous increase in consumption, had invested heavily in machinery and

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had increased production in the light of this expectation. Attention was drawn to Article 3(7) of the Basic Regulation which states that a 'contraction of demand' is one of a number of elements which may be considered when assessing whether factors other than the dumped imports have caused injury to the Community industry.

(94) The investigation has shown that, between 1992 and 1995, Community consumption increased from 47 187 tonnes to 86 472 tonnes (an increase of 83 %) while it shows a slight decrease in 1996 to 82 352 tonnes (a decrease of 4,7 %). This small decrease in consumption can not by itself explain the substantial deterioration of the economic situation of the Community industry during the investigation period, in particular in terms of the decrease in the market share of this industry.

(95) It has also been alleged that any injury suffered is partly due to a 'frivolous' pricing policy adopted by the Community producers. It was alleged that between 1992 and 1994 the Community industry reduced its sales prices by 10 %, but in compensation its production increased by 48 %, its volume of sales by 44 % and its profitability improved by 7,7 %. It was then alleged that in 1995 the Community industry radically changed its policy and increased its prices which resulted in a decrease in sales volume and loss of market share.

(96) This allegation should be seen in the context of the overall results of the investigation. Essentially, the investigation has shown that while the weighted average prices of the Community industry decreased between 1992 and 1994 and increased in 1995, prices decreased again substantially during the investigation period. Over the entire period considered prices only show an increase of 1 %.

(97) Specifically, between 1994 and 1995, the prices and profits of the Community industry increased (at a time when, under pressure from the imports concerned, the Community industry maintained profits at the expense of market share). However, after 1995, the cumulated effect of the dumped imports led to an oversupply on the Community market forcing the Community industry to lower prices and profits in the investigation period, while losing further market share. This shows that in spite of fluctuations in prices, aimed at dealing with the pressure from the dumped imports concerned, the Community industry was unable to either retain market share or sustain reasonable levels of profit during the period considered.

(98) It was furthermore alleged that the Community industry adopted anti-competitive behaviour and that there was collusion between the complaining Community producers concerned.

(99) No evidence has been provided or found in support of these allegations. This submission could not, therefore, be accepted.

3. **Conclusion on causation**

(100) Based on the findings as explained above, and in accordance with recitals 74 to 82 of the provisional duty Regulation, it is confirmed that the combined low-priced dumped imports originating in the People's Republic of China, India, Malaysia, the Republic of Korea, Taiwan and Thailand, taken in isolation, have caused material injury to the Community industry.

G. **COMMUNITY INTEREST**

1. **Impact of the measures**

(101) In the provisional duty Regulation the Commission indicated why the Community interest calls for intervention and why no compelling reasons existed for not imposing measures.

(102) In particular, the Commission concluded that measures can be expected to afford the Community industry the opportunity to

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regain lost market share and restore profitability, with consequent beneficial effects on competitive conditions on the Community market.

(103) In spite of the detailed analysis given in recitals 84 to 98 of the provisional duty Regulation it has been alleged that it is not in the Community interest to impose anti-dumping measures in the present proceeding. In particular, it was claimed that far more people are employed by importers/traders in the product concerned than by the Community producers, that importers/traders would be forced to buy at artificially high prices by Community producers as a result of a foreseen reduction in the volume of imports and that importers/traders would be forced to cut back on employment.

(104) In addition, it was alleged that the downstream industry would be affected if definitive measures were imposed, because it would suffer significant price increases and that the user industry would be deprived of certain products (i.e. nuts).

(105) The investigation has shown that the Community industry is unable to cater for demand on the Community market and that there is a continuing need for imported products. Based on the results of the analysis and taking into account the past behaviour of the Community industry, it appears reasonable to conclude that the prices of SSFs will in all likelihood increase as a result of measures. However, given that the importers/traders have many options as regards sources of supply (including being supplied by the Community industry as seen during the investigation period) and that the margins of importers/traders have been good throughout the period, it is considered that the effect of measures could be minimised by a combination of a small reduction in profit margins and slight price increases to the user industry. Given the continued need for imported product and given that both imported and Community produced product is sold to users through a well established network of traders it is considered that employment of importers/traders will not be adversely affected by the imposition of measures.

(106) As regards the users of the product concerned, it is considered, as stated in recitals 95 to 97 of the provisional duty Regulation, that the extent to whicht SSFs have an impact on the cost of finished product is negligible and that, therefore, any increase in these costs is unlikely to have a significant effect on users' costs. It is further noted that the imposition of an anti-dumping duty will still permit traders to import the product concerned (i.e. including nuts).

(107) In the absence of further arguments with regard to the interests of raw material suppliers the conclusions as stated in recitals 86 and 87 of the provisional duty Regulation are confirmed.

2. **Conclusion on Community interest**

(108) In summary, after an appreciation of all the various interests, and for the reasons given in recitals 84 to 98 of the provisional duty Regulation it is concluded that, on balance, it is in the Community interest to impose definitive measures.

H. **ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(109) Based on the above conclusions on dumping, injury, causal link and Community interest, it was then considered what level and form the anti-dumping measures should take in order to remove the trade-distorting effects of injurious dumping and to restore effective competitive conditions on the Community market.

(110) After publication of the provisional duty Regulation, new information (as previously stated) on export sales and prices was supplied by representatives of three exporters (two Indian and

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one Taiwanese). Revised injury elimination levels were established on the basis of this new data.

(111) In addition, as a consequence of individual treatment being granted to a second cooperating exporter in China an individual injury elimination level was calculated for the exporter concerned and a revised injury elimination margin calculated for the other five exporters in China.

(112) Furthermore, adjustments to the cif export price granted to all exporters (to take account of post-importation expenses incurred) were recalculated and resulted in changes to the margins provisionally established. Otherwise, the basis of calculation of the injury elimination level is as set out in recital 99 of the provisional duty Regulation.

(113) The revised injury elimination levels are expressed, as in the provisional duty Regulation, as a percentage of the weighted average free-at-Community-frontier price of the imported product.

(114) The injury elimination levels established were greater or equal to the following:

The People's Republic of China	74,7 %
India:	
cooperating producers	41,3 %
non-cooperating producers	54,0 %
Malaysia	37,7 %
Republic of Korea	38,6 %
Taiwan	34,1 %
Thailand	48,3 %.

2. **Duty**

(115) The injury elimination margin established for non-cooperating producers in India and for companies in the People's Republic of China which were not granted individual treatment were, in each case, less than the dumping margins established. The duty should, therefore, be based on the injury margins, in accordance with the provisions of Article 9(4) of the Basic Regulation.

(116) Since the injury elimination levels established were, in all other cases, in excess of the dumping margins the duty should be based on the dumping margins pursuant to Article 9(4) of the Basic Regulation.

(117) The definitive anti-dumping duties, applicable to the net, free-at-Community-frontier price, before duty should therefore be as follows:

Country	Company	Rate of duty
China	Ningbo Shyechang Metal Products	24,2 %
	Power Van Industrial Co. Ltd	13,6 %
	All other companies	74,7 %
India	Lakshmi Precision Screws Ltd	19,8 %
	Kundan Industries Ltd/Tata Export Ltd, Mumbai	47,4 %
	Audler Fasteners	11,2 %
	All other companies	54,0 %

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Country	Company	Rate of duty
Malaysia	Tigges Stainless Fasteners (M) Sdn. Bhd.	5,7 %
	Tong Heer Fasteners Co. Sdn. Bhd.	7,0 %
	All other companies	7,0 %
Republic of Korea	Daegil Trading Co. Ltd	24,0 %
	All other companies	26,7 %
Taiwan	►C1 Arrow Fastener Co. Ltd/ Level Fastener Co. Ltd, Taipei ◄	5,3 %
	Sen Chang Industrial Co. Ltd	11,1 %
	Tong Hwei Enterprise Co. Ltd	10,2 %
	Rodex Fasteners Corp.	8,8 %
	CLC Industrial Co. Ltd	5,4 %
	Min Hwei Enterprise Co. Ltd	10,2 %
	All other companies	23,1 %
Thailand	A.B.P. Stainless Fastener Co. Ltd	8,4 %
	Dura Fasteners Co. Ltd	2,7 %
	All other companies	8,4 %

I. COLLECTION OF THE PROVISIONAL DUTY

(118) In view of the magnitude of the dumping margins found for the exporting producers and in the light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 1732/97 be definitively collected. Amounts secured by way of provisional anti-dumping duty shall be definitively collected at the rate of duty definitively imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports into the Community of 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, 7318 15 70 and 7318 16 30 originating in the People's Republic of China, India, Malaysia, the Republic of Korea, Taiwan and Thailand.

2. The rate of the definitive anti-dumping duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows:

Country	Company	Rate of duty	Taric additional code
China	Ningbo Shyechang Metal Products	24,2 %	8757
	Power Van Industrial Co. Ltd	13,6 %	8333
	All other companies	74,7 %	8900

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Country	Company	Rate of duty	Taric additional code
India	Lakshmi Precision Screws Ltd	19,8 %	8415
	Kundan Industries Ltd/Tata Export Ltd, Mumbai	47,4 %	8416
	Audler Fasteners	11,2 %	8417
	All other companies	54,0 %	8900
Malaysia	Tigges Stainless Fasteners (M) Sdn. Bhd.	5,7 %	8334
	Tong Heer Fasteners Co. Sdn. Bhd.	7,0 %	8335
	All other companies	7,0 %	8900
Republic of Korea	Daegil Trading Co. Ltd	24,0 %	8418
	All other companies	26,7 %	8900
Taiwan	►C1 Arrow Fastener Co. Ltd/ Level Fastener Co. Ltd, Taipei ◄	5,3 %	8336
	Sen Chang Industrial Co. Ltd	11,1 %	8337
	Tong Hwei Enterprise Co. Ltd	10,2 %	8338
	Rodex Fasteners Corp.	8,8 %	8408
	CLC Industrial Co. Ltd	5,4 %	8409
	Min Hwei Enterprise Co. Ltd	10,2 %	8414
	All other companies	23,1 %	8900
Thailand	A.B.P. Stainless Fastener Co. Ltd	8,4 %	8419
	Dura Fasteners Co. Ltd	2,7 %	8420
	All other companies	8,4 %	8900

3. Unless otherwise specified, the provisions in force concerning customs duty shall apply.

Article 2

1. The amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 1732/97 shall be definitively collected at the rate of the duty definitively imposed.

2. Amounts secured in excess of the definitive rate of anti-dumping duty shall be released.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.