COUNCIL REGULATION (EC) No 1523/2000

of 10 July 2000

imposing a definitive countervailing duty and definitively collecting the provisional countervailing duty imposed on imports of stainless steel fasteners originating in Malaysia and the Philippines and terminating the proceeding concerning imports of stainless steel fasteners originating in Singapore and Thailand

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1], and in particular Articles 14 and 15 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) By Regulation (EC) No 618/2000 [2] (the 'Provisional Regulation'), the Commission imposed a provisional countervailing duty on imports into the Community of stainless steel fasteners ('SSF') originating in Malaysia and the Philippines and 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.

B. SUBSEQUENT PROCEDURE

(2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional countervailing measures on imports of SSF originating in Malaysia and the Philippines, several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard.

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

(4) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend:

(i) the imposition of a definitive countervailing duty on imports of SSF originating in Malaysia and the Philippines and the definitive collection, at the level of this duty, of the amounts secured by way of the provisional countervailing duty imposed on these imports, and

(ii) the termination of the proceeding concerning imports of SSF originating in Singapore and Thailand without the imposition of measures.

(5) They were also granted a period within which to make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the interested parties were considered and, where appropriate, the definitive findings have been modified accordingly.

(7) Having reviewed the provisional findings on the basis of the information gathered since then, it is concluded that the main findings as set out in the provisional Regulation should be hereby confirmed.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(8) The provisional Regulation described the product under consideration as stainless steel fasteners, i.e. bolts, nuts and screws of stainless steel which are used to join mechanically two or more elements. The product under consideration falls 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.

(9) In the absence of any comment raised by interested parties to the definition of the product under consideration provided in recitals 10 to 13 of the provisional Regulation, this definition is hereby confirmed.

2. Like product

(10) In the provisional Regulation, the Commission found that SSF produced and sold on the respective domestic markets of Malaysia and the Philippines, and those exported to the Community from the countries concerned as well as those produced and sold by the Community industry in the Community market have the same physical characteristics and uses.

(11) In the absence of any new information on the like product, the provisional findings as described in recital 16 of the provisional Regulation are hereby confirmed.

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ L 75, 24.3.2000, p. 18.

D. **SUBSIDIES**

I. MALAYSIA

1. **Double deduction of business expenses for the promotion of exports**

(12) The Government of Malaysia (the 'GOM') alleges that this programme is not contingent upon export performance, as the company is not required to export. The GOM also states that expenses incurred in an international trade fair in Malaysia are eligible for this benefit. However, it was found that this programme cannot reasonably confer any advantage to sales on the domestic market, and, more specifically, that an international trade fair is focused on export activity. Consequently, since the programme is targeted at fostering export sales to be made in the future, the programme is in fact tied to anticipated exports. Therefore, this claim cannot be accepted and it is concluded that this programme constitutes a *de facto* export subsidy in the sense of Article 3(4)(a) of Council Regulation (EC) No 2026/97 (the 'Basic Regulation').

(13) One company claimed that in the calculation of the benefit to the exporting producer under this scheme, the Commission had used the wrong amount of tax savings. However, after verification, it is hereby confirmed that the subsidy amount for this programme is 0,01 %.

2. **Pioneer status**

(14) The GOM claims that this programme does not constitute a countervailable subsidy since the definition of a promoted product is based on objective criteria. It further alleges that the list of promoted products covers a broad range and is available to all companies producing promoted products.

(15) It was found during the verification that the criteria to determine whether a product qualifies as a promoted product are vague and not objective. A number of criteria used by the GOM (i.e. suitability to meet the economic requirements or development of Malaysia and the national or strategic requirements of Malaysia) can cover any basic product. The verification revealed that there were no objective criteria applied in the decision which products should be promoted and that only producers of certain products benefited from the scheme. The fact that a broad range of products is covered does not alter the situation that there are no objective criteria. Therefore, this claim cannot be accepted and it is concluded that this programme constitutes a specific subsidy in the sense of Article 3(2)(a) of the Basic Regulation.

(16) One company stated that its pioneer status expired in July 1999 and the company has ceased to benefit from this programme. It was found that the company was still claiming tax reductions under this programme during the investigation period (1 April 1998 to 31 March 1999, the 'IP'). In addition, pursuant to Section 14A of the Promotion of Investment Act, the benefit under this programme can be extended for another five-year period. Neither the GOM nor the company submitted evidence that the benefit has effectively expired. Since the company effectively benefited from a countervailable subsidy during the IP, and since there is no evidence that it has ceased to benefit from the scheme, this claim cannot be accepted.

3. **Sales tax and import duty exemptions**

(17) The GOM and one company claimed that the sales tax and import duty exemption does not constitute a subsidy since the programme is also available to companies located outside the export processing zones. During the verification, it was established that an exemption from duties or taxes under the conditions for this programme is not available outside the Free Zones, therefore this claim is rejected.

(18) The GOM and one company also assert that the sales tax and import duty exemption falls within the criteria of footnote 1 to the WTO Agreement on Subsidies and Countervailing Measures (the 'SCM Agreement') because it constitutes an exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption. The Commission is of the view that a distinction should be made between the sales tax/import duty exemption for raw materials and machinery. It is clear that footnote 1 to Article 1.1(a)(1)(ii) of the SCM Agreement does not apply to exemptions from duties or taxes for machinery which cannot be considered as inputs consumed in the production process as required by Annex II to the basic Regulation and the SCM Agreement. Since no specific arguments were raised pertaining to the countervailability of the sales tax and import duty exemption for machinery, the findings in recital 54 of the provisional Regulation on this programme are hereby confirmed.

(19) As regards the sales tax and import duty exemption for raw materials, it is considered that this programme does not fall within the criteria of footnote 1 to Article 1.1(a)(1)(ii) of the SCM Agreement. This provision provides that, 'the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes not in excess of those which have accrued, shall not be deemed a subsidy'. Footnote 1 applies to the exemption of duties or taxes where no excess remission occurs. It was established that the Malaysian authorities do not have a verification system in place to determine what inputs are used in the production process and especially in what amounts. The verification revealed that the company that is admitted to start production in a free trade zone has to submit a simple listing of possible inputs to produce the finished product. The customs authorities do not verify what input/output ratio is applicable for the specified

imported inputs. Therefore, there is no framework in place to establish whether an excess remission occurred and consequently, the conditions of footnote 1 and Annex I to III are not met. It should also be noted that the GOM did not carry out a further examination based on the actual inputs involved in the context of determining whether an excess payment occurred in accordance with Annex II(II)(5) to the basic Regulation. Therefore, these programmes constitute subsidies pursuant to Article 1.1 (a)(1)(ii) of the SCM Agreement and the exemption in footnote 1 to the abovementioned provision does not apply. Since footnote 1 does not apply, these schemes constitute export subsidies in the sense of Article 3(4)(a) (and item (h) and (I) of Annex I) of the basic Regulation.

(20) As regards the calculation of the benefit, there is no system in place to verify the consumption of inputs in the production of the exported product and the GOM did not carry out a further examination based on actual inputs in order to establish the excess remission of sales tax and import duties. In accordance with Annex II to the basic Regulation, the full amount of the import duties not paid constitutes the benefit to the exporting producer.

(21) The GOM further claimed that the raw material used in the production of the product concerned (steel wire rod) is, even without the benefit of this programme, not subject to sales taxes.

(22) The Commission examined the evidence provided by the GOM and concluded that the raw materials used in the production of SSF are listed in Schedule B of the Sales Tax Order. This schedule is a listing of goods that are not subject to sales taxes. Therefore, this claim is accepted and the countervailing duty rates for the sales tax exemption for raw materials have been amended accordingly since no sales taxes would have been payable without the benefit of this programme.

(23) However, as regards import duties on raw materials, it was established that these imports are subject to import duties. On the basis of the above arguments, the provisional findings for the import duty exemption on raw materials are hereby confirmed.

(24) One exporting producer asserts that the Commission did not substantiate with positive evidence its determination of specificity for this programme.

(25) In recitals 50, 65, 66 and 67 of the provisional Regulation, the Commission listed the reasons why these programmes constitute specific and, therefore, countervailable subsidies. These findings are not based on assertions but on positive evidence. This claim has therefore been rejected.

4. **Interest rate**

(26) The GOM and one exporting producer claim that the Commission should have used an average interest rate of 11,42 % instead of 11,5 %.

(27) On the basis of the information provided during the verification, it was found that an average interest rate of 11,5 % during the IP was appropriate. The average commercial interest rate was calculated on the basis of the average monthly lending rate of commercial banks in Malaysia during the IP which results in an average of 11,4975 % (attachment C2 of the GOM questionnaire response). No additional evidence was provided which may justify a downward adjustment of the interest rate. Therefore, this claim cannot be accepted.

5. **Amount of countervailable subsidy**

(28) As regards the calculation of the amount of countervailable subsidies, an adjustment was made concerning the amount of interest added to the subsidy amount calculated provisionally. This adjustment is reflected in the following table showing the amount of countervailable subsidy.

(29) In view of the above, the following subsidy rates have been found at the definitive stage. The countrywide weighted average subsidy margin is above the applicable de minimis level.

Company	Double Deductions	Pioneer Status	Sales Tax Exemptions	Import duty exemptions	Total
Tong Heer Fasteners Co. Sdn. Bhd.	0,01 %	1,87 %	0,40 %	2,43 %	4,71 %
Tigges Stainless Steel Fasteners (M) Sdn. Bhd.	0,34 %	0,00 %	0,03 %	1,94 %	2,31 %

II. PHILIPPINES

1. **Introduction**

(30) Comments on the disclosure document were submitted jointly by the Government of the Philippines (the 'GOP') and by the exporting producer Lu Chu Shin Yee Works (Philippines) Co. Ltd. ('Lu Chu'). The comments relate to two subsidy schemes: the gross income tax scheme (Section 24 of the Special Economic Zones Act (SEZA) and the import duty exemption on machinery, raw materials, supplies and spare parts (Sections 4(c) and 23 (SEZA)). Comments were focused on the exemption on imports of spare parts and supplies.

2. **Gross Income Tax (GIT)**

(31) The GOP and Lu Chu submitted that in certain circumstances, depending on the respective levels of gross income and net income, the application of the GIT (i.e. 5 % of the gross income) may result in a greater amount of taxes to be paid compared to the application of the ordinary income tax (34 % of the net income). In particular, a company could have a net loss but still pay the GIT because it has taxable gross income.

(32) It is firstly noted that the argument submitted by the GOP and Lu Chu does not affect the Commission's findings on specificity and countervailability of the GIT. In this respect, it is considered that the argument relates to a hypothetical situation that is wholly different from the one actually examined in this case. Would the GIT application in certain circumstances result in the company paying more taxes as compared with the ordinary income tax regime, the company could simply resign this option. However, this was not the case for the exporting producer in question. As calculated by the Commission within its provisional findings, the application of the GIT to the exporting producer allowed it a certain tax saving in the IP vis-a-vis the application of the ordinary income tax regime. Since the GOP and Lu Chu did not contest this calculation, it is hereby confirmed that in this case the GIT involved a financial contribution by the GOP and conferred a benefit to the recipient. Hence, the claim of the GOP and Lu Chu should be rejected.

3. **Import duty exemption on imports of spare parts and supplies**

(33) The GOP and Lu Chu consider that the Commission properly excluded imports of non-subject carbon steel nuts from its subsidy calculation for the import duty exemption on spare parts and supplies. However, they argued that the Commission did not exclude all carbon steel nuts, but only some, and urged the Commission to make a full exclusion of imports of carbon steel nuts. They argued that if, as acknowledged by the Commission, the producer in question exported the totality of its finished products and in addition it can be expected to continue doing so in the future, then it should be recognised that all non-subject carbon steel nuts have been or will be re-exported in the future.

(34) This claim cannot be accepted, since it has not been supported by any verifiable evidence either during the investigation or after disclosure of the provisional findings. In particular, the Commission's view, in the context of its provisional findings, that all finished products were actually exported, refers only to the products manufactured by the exporting producer in its facilities in the Philippines, i.e. essentially stainless steel fasteners. Only data concerning these products have been submitted in complete form and verified by the Commission. No data or other evidence have been submitted by the GOP and/or by the exporting producer showing that all imported carbon steel nuts were or would be actually re-exported. The data in possession of the Commission in this respect only allow the exclusion of imports of carbon steel nuts from the subsidy calculations in the way and to the extent done by the Commission in its provisional findings. Since no new evidence has been submitted in this regard, the provisional findings are hereby confirmed.

(35) The GOP and Lu Chu also claim that imports of oil and tools should be excluded from the calculation of the subsidy amount since they are consumed in the production of stainless steel fasteners. Again, this claim cannot be accepted, as the GOP and Lu Chu failed to provide any evidence thereof. Data in possession of the Commission does not allow consideration in isolation of the respective import values of oil, other consumables, tools and spare parts. These imports are only reported in cumulative amounts, and some of these tools, components and spare parts, based on the available evidence, are not consumed in the course of their use to produce the exported products. Therefore, lacking any further evidence, no assessment can be made as to whether certain imports should be excluded from its calculation of the subsidy amount. The provisional findings are thus hereby confirmed.

4. **Amount of countervailable subsidies**

(36) As regards the calculation of the amount of countervailable subsidies, an adjustment was made concerning the amount of interest added to the subsidy amount calculated provisionally. This adjustment is reflected in the following table showing the amount of countervailable subsidy.

(37) The following subsidy rates have been found at the definitive stage. The countrywide weighted average level of subsidisation is above the applicable *de minimis* level.

Company	Gross Income Tax	Import Duty Exemption	Total
Lu Chu Shin Yee Works Co. Ltd/Philshin Works Corporation	0,50 %	3,09 %	3,59 %

III. SINGAPORE

(38) In the Provisional Regulation it was concluded that none of the alleged subsidies had been used by exporting producers in Singapore. In the absence of any new information, the findings in recitals 81 to 83 of the Provisional Regulation are hereby confirmed. The proceeding should therefore be terminated as regards imports of SSF originating in Singapore.

IV. THAILAND

(39) In the provisional Regulation it was concluded that the countrywide weighted average subsidy margin for Thailand was below the de minimis level of subsidisation applicable to this country. In the absence of any new information, the findings in recitals 84 to 91 of the provisional Regulation are hereby confirmed. The proceeding should therefore be terminated as regards imports of SSF originating in Thailand.

E. **COMMUNITY INDUSTRY**

(40) In the absence of any new information on the Community industry, the provisional findings as described in recitals 129 to 132 of the Provisional Regulation are hereby confirmed.

F. **INJURY**

1. **Cumulation**

(41) One exporting producer in Malaysia argued that the Commission should not cumulatively assess imports originating in Malaysia with those originating in the Philippines in view of the different behaviour of the former. It was claimed that the volume of imports originating in Malaysia increased at a lower rate than those originating in the Philippines and that the decrease of average import prices of SSF originating in Malaysia had been due to the decrease of prices of raw materials.

(42) One exporting producer in the Philippines argued that the Commission should not cumulatively assess imports originating in the Philippines with those originating in Malaysia, as the price level of imports from the Philippines has consistently been as high or higher than the price level of the Community industry.

(43) In these respects, it was found that the amount of countervailable subsidies from each of these countries was more than *de minimis* and the volume of imports from each of these countries increased during the period considered, reaching levels that were not negligible. Furthermore, the investigation did not show a different price pattern between imports from Malaysia and the Philippines. The prices of the imports from these two countries have substantially undercut the Community industry's prices in the IP and followed a similar downward trend during the period considered. Finally, the SSF imported from both countries are marketed in the Community through the same sales channels and under similar commercial conditions, thus competing with each other and with the SSF sold by the Community industry.

(44) In view of the above, the provisional findings in recitals 139 to 142 of the provisional Regulation regarding the appropriateness of the cumulative assessment of imports from Malaysia and the Philippines are hereby confirmed.

2. **Prices of the subsidised imports**

(45) In the absence of any new information on the prices of the subsidised imports, the provisional findings as described in recitals 145 to 148 of the Provisional Regulation are hereby confirmed.

3. **Situation of the Community industry**

(46) Interested parties argued that the Community industry had not suffered material injury in view of the positive development, during the period considered, of certain indicators such as production, capacity, sales, market share, investment, employment and productivity.

(47) In the Provisional Regulation the Commission concluded that, as a result of the imposition of anti-dumping measures on imports originating in the People's Republic of China, India, Malaysia, the Republic of Korea, Taiwan and Thailand in 1997 [1], the situation of the Community industry had improved notably in terms of production and sales. Indeed, the imposition of anti-dumping measures in 1997, as expected and intended, allowed the Community industry to increase production and to recover lost market share by increasing its sales in the Community market. This had a positive effect on employment and productivity.

[1] Commission Regulation (EC) No 1732/97, OJ L 243, 5.9.1997, p. 17.

(48) However, despite an increase in the sales of the Community industry, those sales were made at decreasing prices which, in the IP, did not cover the costs of the Community industry and resulted in losses. Indeed, it was found that the prices of the Community industry decreased over the period considered by 17 %, from EUR 3,65/kg in 1996 to EUR 3,02/kg in the IP. Although the raw material also decreased over the period considered, the decrease in SSF prices was well above the decrease in the cost of raw material. This price depression had a severe impact on profitability which, despite an improvement between 1996 and 1997, decreased in 1998 and turned into losses in the IP (–0,8 % of turnover). Therefore, the Community industry could not fully benefit from the imposition of anti-dumping measures.

(49) In view of the above, it is concluded that the Community industry has suffered injury in the form of price depression and financial losses.

(50) Secondly, one exporting producer argued that the decrease in the prices of the Community industry was due to a decrease in the costs of the raw material used to produce SSF. This situation could therefore not be characterised as one of price depression. In this respect it was alleged that the raw material represented a higher percentage than the 56,7 % of full cost in the IP quoted in the provisional Regulation, reaching 80 to 85 % and even 90 % of its total cost.

(51) According to the information provided by the cooperating raw-material suppliers, the price of the raw material concerned decreased by 20,9 % over the period considered, while the Community industry's prices of the product concerned fell by 17 % over the same period. As the cost of raw materials during this period ranged, on a weighted average basis, between around 57 % and 68 % of the Community industry's full cost, it has been found that the Community industry's prices of SSF have decreased well above the decline in the costs of raw material. In this respect it should be noted that the allegation that the raw materials represent 80 to 85 % of the costs appears to relate solely to manufacturing costs and not to the full cost. In view of the above, it is concluded that the Community industry suffered a depression of its prices.

(52) Finally, one exporting producer in Malaysia argued that if production and employment of the Community industry as mentioned in the disclosure document are compared, the productivity per employee appears to be much lower than the figures in recital 161 of the provisional Regulation suggest.

(53) It should be noted that the above productivity was calculated as production divided by the number of employees involved in the production of the product concerned, which amounted to 287 in 1996, 320 in 1997, 321 in 1998 and 315 in the IP. This number is lower than the number of employees mentioned in recital 160 of the provisional Regulation or in the disclosure document, which refer to the total employees of the company.

4. **Conclusion on injury**

(54) During the period considered, the Community industry suffered significant price pressure from the subsidised imports originating in the countries concerned, which were found to considerably undercut the Community industry's prices in the IP and which increased in terms of import volume during the period considered. As a consequence, the Community industry was unable to reflect its costs on the level of its selling prices. This resulted in the deterioration of the Community industry's financial situation, reaching a weighted average loss of 0,8 % of turnover in the IP.

(55) The fact that certain indicators of the Community industry such as production, sales, employment and productivity improved should be seen in the light of the imposition of anti-dumping measures in 1997, which afforded a certain relief to the Community industry. The pressure exerted by the increasing imports at low prices from the countries concerned frustrated a full recovery by the Community industry which was found to have suffered injury in the present investigation in the form of depressed prices and financial losses in the IP.

(56) In view of the above, it is hereby confirmed that the Community industry has suffered material injury within the meaning of Article 8(2) of the Basic Regulation.

G. **CAUSATION OF INJURY**

1. **Effects of the subsidised imports**

(57) In the provisional Regulation the Commission found a clear coincidence between the significant price undercutting by the subsidised imports and the deterioration of the prices of the Community industry and its profitability in the IP. The significant price pressure from the subsidised imports, especially between 1998 and the IP coincided with a severe decrease in the prices of the Community industry, leading to losses of 0,8 % of turnover during the IP.

(58) The increase in the imports concerned (+16 %), which reached a significant level of the Community market during the IP (12,4 % of market share), the depressed prices (–17 %) and the deterioration of the financial situation of the Community industry was attributed to the continuously low prices of the imports originating in the countries concerned.

2. **Effects of other factors**

a) *Increased capacity and investments by the Community industry*

(59) It has been alleged that the poor financial performance of the Community industry has been caused by its increase in production capacity at a time when consumption contracted sharply. It was also argued that the high level of investments and the financial costs related to them, coupled with lower sales volume as consumption contracted abruptly, were the cause of the deterioration of the financial situation of the Community industry.

(60) It has been found that the biggest increase in production capacity took place between 1996 and 1997 (+15 %), when the Community industry expected to increase its production and sales given the imposition of anti-dumping measures. It should be noted that the increase in capacity was accompanied by an increase in production of 20 % and in sales (33 %) between 1996 and 1997. Therefore, the increase in capacity by the Community industry allowed it to benefit from expectations of restored, effective competition between the Community industry and countries subject to anti-dumping measures. On the contrary, consumption only contracted as from 1998, while capacity remained stable between 1998 and the IP.

(61) As regards the investments made by the Community industry, they remained relatively stable over the period considered with the exception of 1997 when substantial investments were made mainly by one company in the purchase of buildings. It should be noted, however, that this company showed one of the best profit margins of the Community industry during the year 1997 and even over the period considered. Furthermore, it should be noted that, despite a contraction in consumption over the period considered, the Community industry increased its sales and thus its share of the Community market.

(62) In view of the above, it is concluded that the poor financial performance of the Community industry is thus not linked to an increase in capacity or to its level of investments, but mainly to a price depression caused by the subsidised imports.

b) *Export performance by the Community industry*

(63) The export performance of the Community industry in the period considered was also examined in order to assess whether any decrease in the export volume could have negatively influenced the production of the Community industry.

(64) It should firstly be noted that exports of SSF have represented a small share of the total sales made by the Community industry throughout the period considered. Furthermore, the injury suffered by the Community industry was mainly in the form of a deterioration of its profitability due to a severe price depression caused by the subsidised imports as explained in recitals 166 to 168 of the provisional Regulation. In turn, production volumes increased in the period considered.

(65) In view of the above, it cannot be considered that the injury suffered by the Community industry is due to its export performance.

3. **Conclusion on causation**

(66) In view of the above, it is hereby confirmed that the imports originating in the two countries concerned, taken in isolation, have caused material injury to the Community industry. Indeed, imports from Malaysia and the Philippines have impeded the full recovery of the injurious situation of the Community industry found in the context of the previous anti-dumping proceeding concerning SSF and their low-priced increasing imports have negatively affected the profitability of the Community industry.

H. **COMMUNITY INTEREST**

(67) In the Provisional Regulation the Commission found that no compelling reasons existed for not imposing measures in the present case. In the absence of further comments regarding the impact of countervailing duties on the situation of the Community industry, it is hereby confirmed that the imposition of countervailing measures is likely to enable the Community industry to regain a satisfactory profitability margin, allowing the companies to continue trading and make the necessary investments.

(68) One importer reiterated its claim that the imposition of countervailing measures would significantly deteriorate the situation of Community importers/traders. This was based on the deterioration of the financial situation of this particular trader between 1997 and 1998 after the imposition of definitive anti-dumping measures in February 1998. Furthermore, it was claimed that if countervailing measures were to be imposed importers/traders would not be able to import from South-East Asian suppliers thus causing shortages in supply.

(69) It should firstly be noted that the provisional Regulation already stated that the imposition of measures could result in a certain reduction of the margins of importers/traders. The information provided by this importer/trader and relating to the total company profitability, including products not covered by the current investigation, showed a certain reduction of its margins subsequent to the imposition of definitive anti-dumping

measures in February 1998, albeit still reaching a reasonable level. In this respect it should be noted that the level of the countervailing measures adopted in the present proceeding and the fact that it only affects two exporting countries is unlikely to significantly affect importers/traders.

(70) As regards the impossibility for importers/traders to import from South-East Asia in case of the imposition of countervailing measures, it should be noted that the level of the countervailing measures proposed are not expected to prevent imports from the countries concerned but rather to ensure that these imports are made at fair market conditions. Furthermore, a number of other sources of supply exist, including South-East Asian suppliers not subject to measures. It is therefore concluded that it is unlikely that the imposition of definitive countervailing measures will result in shortages of supply.

(71) In view of the above, the provisional findings in recitals 183 to 213 of the provisional Regulation regarding the Community interest aspects of this case are hereby confirmed.

I. DEFINITIVE COURSE OF ACTION

1. **Singapore and Thailand**

(72) On the basis of the above findings, this proceeding should be terminated as regards imports of SSF originating in Singapore and Thailand in accordance with Article 14 of the Basic Regulation.

2. **Malaysia and the Philippines**

(73) The conclusions reached as to the subsidisation, injury, causation and Community interest call for definitive measures. In view of the diversity of product types, the measures should be in the form of *ad valorem* duties. In the absence of any new information on the injury elimination level, the provisional findings as described in recitals 215 to 219 of the provisional Regulation are hereby confirmed. In accordance with Article 15(1) of the basic Regulation, the duty rate corresponds to the subsidy margin, as the injury margin is higher.

(74) As regards Malaysia, for both exporting producers anti-dumping duties are currently in force, ranging from 5,7 % to 7,0 %. The level of the duty imposed within the present proceeding shall therefore take into account the totality of the domestic subsidy plus the export subsidy amount in excess of the existing anti-dumping duty in accordance with Article 24(1) of the basic Regulation, and for as long as the existing anti-dumping duty remains in force. As shown in the table below, one Malaysian exporting producer should be subject to a definitive countervailing duty (in addition to the existing anti-dumping duty) of 1,8 %. As for the second exporting producer, the countervailing duty should be nil, since the existing anti-dumping duty exceeds the export subsidy amount.

(75) Given that the companies cooperating in the proceeding covered virtually all imports from this country, the residual duty should be set equal to the highest subsidy margin level found for cooperating companies. Thus, the residual countervailing duty should be set at 1,8 %, in addition to the existing residual anti-dumping duty of 7,0 %.

Company	Total Subsidy	Export Subsidy	Existing AD duty	Proposed CVD
Tong Heer Fasteners Co. Sdn. Bhd.	4,71 %	2,84 %	7,0 %	1,8 %
Tigges Stainless Steel Fasteners (M) Sdn. Bhd.	2,31 %	2,31 %	5,7 %	0,0 %
Others			7,0 %	1,8 %

(76) The following rates of duty should apply for the Malaysian cooperating producers:

Tong Heer Fasteners Co. Sdn. Bhd.: 1,8 %;

Tigges Stainless Steel Fasteners (M) Sdn. Bhd.: 0 %.

(77) As regards the Philippines, for which no anti-dumping measures are in force, the following rate of duty should apply for the cooperating producer:

Lu Chu Shin Yee Works Co. Ltd/Philshin Works Corporation: 3,5 %

(78) In order to avoid granting a bonus for non-cooperation, it was considered appropriate to establish the duty rate for the non-cooperating companies as the highest rate established for any cooperating exporting producer, i.e. 1,8 % for Malaysia and 3,5 % for the Philippines.

(79) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect a situation found during

that investigation with respect to the above companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of SSF originating in the countries concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(80) Any claim requesting the application of these individual company countervailing duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities), should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

(81) Imports from Malaysia are already subject to anti-dumping duties which were taken into account in the determination of the countervailing duty imposed in the present proceeding. Indeed, as explained above, the export subsidy amount of the countervailing duty has been reduced up to the amount of the existing anti-dumping duty. In view of the above, it is considered appropriate to align the period of operation of the definitive countervailing duty concerning imports of SSF originating in Malaysia and the Philippines, so that its expiry coincides with that of the anti-dumping duties imposed on imports of SSF originating in the People's Republic of China, India, the Republic of Korea, Malaysia, Taiwan and Thailand, i.e. 17 February 2003, without prejudice to the applicable provisions on reviews.

3. **Collection of provisional duties**

(82) In view of the magnitude of the subsidy margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional countervailing duty, imposed by Commission Regulation (EC) No 618/2000 on imports of SSF originating in Malaysia and the Philippines, should be definitively collected at the rate of the duty definitively imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports 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 and originating in Malaysia and the Philippines.

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

Malaysian companies	Rate of the duty	Taric additional code
Tong Heer Fasteners Co. Sdn. Bhd. (referred to as Tong Heer Fasteners in Commission Regulation No 618/2000), No 2515, Tingkat Perusahaan 4A, Perai Free Trade Zone, 13600 Perai Pulau Penang, Malaysia	1,8 %	A104
Tigges Stainless Steel Fasteners (M) Sdn. Bhd. (referred to as Tigges Stainless Steel Fasteners in Commission Regulation No 618/2000), Plot 23 & 24, Kinta Free Trade Zone, Jalan Kuala Kangsar, 31200 Chemor, GPO Box 24, 30700 Ipoh Perak Darul Ridzuan, Malaysia	0 %	A105
All other companies	1,8 %	A999

[1] European Commission, Directorate-
(General for Trade, Directorate E, DM 24-8/38 Rue de la Loi/Wetstraat 200 B-1049 Bruxelles/Brussel.

Philippine companies	Rate of the duty	Taric additional code
Lu Chu Shin Yee Works Co. Ltd (referred to as Lu Chu Shin Yee Works, Ltd in Commission Regulation No 618/2000), Cavite Export Zone, Rosario, Philippines/Philshin Works Corporation (referred to as Philshin Works Corporation in Commission Regulation No 618/2000), Amaya 1, Tanza, Cavite, Philippines	3,5 %	A106
All other companies	3,5 %	A999

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

Article 2

The amounts secured by way of provisional countervailing duties pursuant to Commission Regulation (EC) No 618/2000 on imports of the product described in Article 1(1) originating in Malaysia and the Philippines shall be collected at the rate of the duty definitively imposed. Amounts secured in excess of the definitive rate of countervailing duties shall be released.

Article 3

The countervailing duty shall expire on 17 February 2003.

Article 4

The anti-subsidy proceeding concerning imports of stainless steel fasteners and parts thereof originating in Singapore and Thailand is hereby terminated.

Article 5

This Regulation shall enter into force on the day following that of 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.

Done at Brussels, 10 July 2000.

For the Council
The President
H. VÉDRINE