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COUNCIL REGULATION (EC) No 1890/2005

of 14 November 2005

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam and terminating the proceeding on imports of certain stainless steel fasteners and parts thereof originating in Malaysia and the Philippines

(OJ L 302, 19.11.2005, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EC) No 768/2009 of 17 August 2009	L 221	1	25.8.2009

Corrected by:

►**C1** Corrigendum, OJ L 256, 2.10.2007, p. 31 (1890/2005)

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([1]) (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

A. **PROVISIONAL MEASURES**

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

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

B. **SUBSEQUENT PROCEDURE**

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

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

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

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

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

(8) Following the imposition of provisional measures, one importer and its association questioned the representativeness of the

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

([2]) OJ L 128, 21.5.2005, p. 19.

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

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

C. **PRODUCT CONCERNED AND LIKE PRODUCT**

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

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

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

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and 105 of the provisional Regulation, the proceeding should be terminated as regards the Philippines.

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

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

(15) It should be recalled, as stated in recital 15 of the provisional Regulation, that the investigation confirmed that types of SSF falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30 and 7318 15 51 are produced in the Community. Consequently, the sampled Community producers (i) have the machinery to produce these other types of SSF; and (ii) face competition for these types from the dumped product concerned. The information with regard to some orders which could not be supplied by the Community industry relates to a period outside the IP which, normally, shall not be taken into account according to Article 6(1) of the basic Regulation. In any event, this fact does not show that these products are not produced by the Community industry. In addition, the investigation established that, in the absence of unfair dumped competition from the countries concerned, the Community industry is able to increase production in order to meet demand of such items. In this context, it should be considered that the Community industry has significant spare capacity (see table before recital 127 in the provisional Regulation). Consequently, the claim of the importers could not be accepted.

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

(17) In the case at hand, the investigation has shown that all types of fasteners under consideration share, from a user's perspective, similar basic physical and technical characteristic and uses, i.e.

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they are threaded stainless steel metal pins, used to join things, by means of rotation of the fastening devices. Thus, all these fasteners fall under the same four digit heading of the Combined Nomenclature. Consequently, the claim to further limit the product scope has to be rejected.

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

D. **SAMPLING**

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

E. **DUMPING**

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

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

2. **Individual treatment (IT)**

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

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

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

3. **Normal value**

3.1. *Analogue country*

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

3.2. *Methodology applied for the determination of normal value*

(24) Four Thai exporting producers argued that the selling, general and administrative (SG&A) expenses and the profit realised on domestic sales in another country, in this case Taiwan, cannot be used for constructing their normal value. However, as set out in recital 80 of the provisional Regulation, these exporting producers had no representative sales of the like product, or other products in the same general category, in the ordinary course of trade. It was therefore, necessary to rely on another

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reasonable method for the calculation of SG&A expenses and profit as provided for by Article 2(6)(c) of the basic Regulation. In this respect, the use of Taiwanese SG&A expenses and profit was considered the most reasonable method because of (i) the representative domestic market, in terms of volumes and competition in terms of prices, for the like product in Taiwan; and (ii) the fact that the Taiwanese SSF industry controls the majority of SSF producers in all the countries under investigation, including some in Thailand (see recital 71 of the provisional Regulation). No information was provided to show that the profit so used would exceed the profit normally realised by other exporters or producers on sales of the same general category of products in Thailand.

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

3.3. *Determination of normal value*

(a) People's Republic of China

(26) In the absence of any comments, the findings set out in recital 73 of the provisional Regulation are hereby confirmed.

(b) Indonesia

(27) In the absence of any comments, the findings set out in recital 74 of the provisional Regulation are hereby confirmed.

(c) Malaysia

(28) In the absence of any comments, the findings set out in recital 76 of the provisional Regulation are hereby confirmed.

(d) Taiwan

(29) One Taiwanese exporting producer objected to the methodology used to determine normal value as set out in recital 79 of the provisional Regulation. The company claimed that it did not classify the different types of the product concerned according to the specifications given by the Commission as some of these fasteners were speciality fasteners. It also claimed that the company had demonstrated during the on-spot verification, by way of drawings, samples and sales documentation, the unique product characteristics of its speciality fasteners exported to the Community.

(30) In fact, the evidence collected during the verification visit indicated that these products are not falling within the CN codes under investigation. In these circumstances, it was considered appropriate not to consider the exports of these products for the purposes of this investigation. Findings for this company, including those on normal value as set out in recital 79 of the provisional Regulation, are based on its remaining exports which fell within the description of the product concerned.

(31) For the normal value of its remaining exports, the company suggested some adjustments to the cost of production used for the provisional determination of its normal value (see recital 79 of the provisional Regulation).

(32) However, these adjustments were based on data which were not submitted either with the response to the questionnaire or during the verification visit and, thus, were not verifiable. Furthermore, these adjustments were not supported by any information available on the record. Consequently, this claim concerning the cost of production should be rejected.

(33) Another Taiwanese exporting producer claimed that there was certain double counting in the cost of production and the

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SG&A expenses used for the determination of normal value. It argued that the SG&A expenses ratio submitted in the Profit and Loss table of its response to the questionnaire was not the correct one and that the SG&A expenses ratio given during the verification visit should be used instead.

(34) In this respect, it should be noted that the company did not make any correction on its Profit and Loss table before the verification visit. The company provided a significantly revised table for the SG&A expenses at the very last stage of the verification, when it was too late for it to be verified. Consequently, and since the revised SG&A expenses did not link to other verified information available on the record, the claim was rejected and data derived from the Profit and Loss table submitted in the questionnaire response have been maintained in the dumping calculation, in line with the provisions of Article 6(8) of the basic Regulation.

(35) The same Taiwanese exporting producer claimed that scrap materials must be deducted from the cost of the raw materials. The company claimed that since scrap is obtained from the production process, the income from its sales should be allowed to offset cost of production. However, it has not reported the amount of any such income. In any event, any income from other products or by-products is not relevant for the calculation of the cost of production of the like product as it has not been a practice historically utilised by the company in allocating costs. Therefore, the claim of the company should be rejected and the provisional findings confirmed.

(36) No other comments were submitted and, therefore, the findings set out in recitals 77 to 79 of the provisional Regulation are hereby confirmed.

(e) Thailand

(37) One Thai exporting producer having some domestic sales made several claims relating to the calculation of the cost of production and the SG&A expenses used for the determination of its normal value. Furthermore, it stated that should the claims be accepted its domestic sales in the ordinary course of trade would be representative and could be used for the determination of normal value in Thailand.

(38) It should be noted that this company provided several revised versions of its questionnaire response during the verification visit to an extent that significantly impeded the investigation as it was not possible to reconcile any of the different versions with its accounts. Nevertheless, all this information was examined as far as possible in line with the provisions of Article 6(8) of the basic Regulation. It is noted that the cost of production, as reported by the company for a large number of product types, was significantly understated, in particular the cost of raw materials, and it was, therefore, corrected for the provisional dumping calculations. As the company has not provided any substantiated information regarding its cost of production that would require a change in the dumping calculations, its claim regarding calculation of the cost of production has to be rejected.

(39) This exporting producer claimed that income from sales of scrap should be deducted from the cost of raw materials in the cost of production of the like product. However, no income from sales of scrap has been reported in the company's Profit and Loss Table. In any event, any income from other products or by-products is not relevant for the calculation of the cost of production of the like product as it has not been a practice historically utilised by the company in allocating costs.

(40) Concerning the exporting producer's claim to use a different level of SG&A expenses, it was established that, even if the claim was

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accepted, it would not lead to a situation where the company's domestic sales could have been used as a basis for establishing normal value, as they would still not be made in the ordinary course of trade.

(41) Consequently, these claims regarding scrap and SG&A expenses should be rejected and the findings set out in recital 80 of the provisional Regulation are hereby confirmed.

(f) Vietnam

(42) In the absence of any comments, the findings set out in recital 81 of the provisional Regulation are hereby confirmed.

4. **Export price**

(43) In the absence of any comments, the findings set out in recitals 82 to 91 of the provisional Regulation concerning the establishment of the export price pursuant to Article 2(8) of the basic Regulation for all countries concerned are hereby confirmed.

5. **Comparison**

(44) In the absence of any comments, the methodology and the findings set out in recitals 92 and 93 of the provisional Regulation concerning the comparison between normal value and export price are hereby confirmed.

6. **Dumping margins**

6.1. *General methodology*

(45) In the absence of any comments concerning the determination of the dumping margin, the methodology set out in recitals 94 to 100 of the provisional Regulation is hereby confirmed.

6.2. *Dumping margins*

(a) People's Republic of China

(46) In the absence of any comments, the definitive dumping margins, expressed as a percentage of the CIF import price at the Community border, duty unpaid, are the following:

— Tengzhou Tengda Stainless Steel Product Co., Ltd, Tengzhou City 21,5 %

— Tong Ming Enterprise (Jiaxing) Co. Ltd, Zhejiang 12,2 %

— All other companies 27,4 %.

(b) Indonesia

(47) In the absence of any comments, the definitive dumping margins, expressed as a percentage of the CIF import price at the Community border, duty unpaid, are the following:

— PT. Shye Chang Batam Indonesia, Batam 9,8 %

— All other companies 24,6 %.

(c) Malaysia

(48) In the absence of any comments on the calculation of the provisional dumping margin for the two cooperating exporting producers in Malaysia, the findings as set out in recital 104 of the provisional Regulation are hereby confirmed. Consequently, as no dumping was found for any Malaysian exporting producer, the proceeding should be terminated as regards imports of the product concerned from Malaysia.

(d) The Philippines

(49) In the absence of any comments on the situation concerning the Philippines, no dumping margin has been established. Conse-

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quently, as stated above in recital 12, the proceeding should be terminated as regards imports of the product concerned from the Philippines.

(e) Taiwan

(50) In the absence of any further comments on the calculation of the provisional dumping margins for Taiwan, as set out in recitals 106 to 108 of the provisional Regulation, the definitive dumping margins, expressed as a percentage of the CIF import price at the Community border, duty unpaid, are the following:

— Arrow Fasteners Co. Ltd, Taipei 15,2 %

— Jin Shing Stainless Ind. Co. Ltd, Tao Yuan 18,8 %

— Min Hwei Enterprise Co. Ltd, Pingtung 16,1 %

— Tong Hwei Enterprise, Co. Ltd, Kaohsiung 16,1 %

— Yi Tai Shen Co. Ltd, Tainan 11,4 %

— Cooperating exporting producers not included in the sample 15,8 %

— All other companies 23,6 %.

(f) Thailand

(51) One Thai exporting producer made claims relating to the calculation of its individual dumping margin insofar as product type classifications, production quantities and the use of various grades of stainless steel were concerned.

(52) The claims were examined on the basis of the verified information and certain appropriate corrections were made leading to the determination of a revised individual dumping margin for this exporting producer. As the basis for establishing the dumping margin for any non-cooperating Thai exporters was the level of the highest dumping margin found for a cooperating Thai exporter, the residual dumping margin was revised accordingly.

(53) Consequently, the definitive dumping margins, expressed as a percentage of the CIF import price at the Community border, duty unpaid, are the following:

— A.B.P. Stainless Fasteners Co. Ltd, Ayutthaya 11,1 %

— Bunyat Industries 1998 Co. Ltd, Samutsakorn 10,8 %

— Dura Fasteners Company Ltd, Samutprakarn 14,6 %

— Siam Screws (1994) Co. Ltd, Samutsakorn 11,0 %

— All other companies 14,6 %.

(g) Vietnam

(54) In the absence of any further comments on the calculation of the provisional dumping margin for Vietnam, as set out in recital 110 of the provisional Regulation, the definitive dumping margin for all companies in Vietnam, expressed as a percentage of the CIF import price at the Community border, duty unpaid, is confirmed as 7,7 %.

F. **INJURY**

1. **Community production and Community industry**

(55) The cooperating Thai exporting producers contested the analysis methodology set out in recital 114 of the provisional Regulation, i.e. that some data have been established for the sampled Community producers only (transaction prices, investment and return on investment, wages, profitability, cash flow and ability

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to raise capital), whereas the other indicators (market share, production, capacity and capacity utilisation, sales volume and value, growth, stocks, employment and productivity) additionally included data of another Community producer, constituting with the sampled producers, the Community industry. They argued that this approach is (i) not objective within the meaning of Article 3(2) of the basic Regulation and that (ii) Article 17(4) of the basic Regulation allegedly does not permit such an approach.

(56) It is normal practice in anti-dumping proceedings to analyse injury factors for the full Community industry. However, in cases where the industry consists of a high number of producers, resort is made to sampling. The purpose of sampling is to provide that detailed data can be collected and verified from a limited number of producers within the time available. This data concerns factors such as prices, wages, investments, profit, return on investment, cash flow and ability to raise capital, where it would be unfeasible to verify the data for the full industry within the time available. For other factors, such as market share, sales volume and production, data is usually readily available for the full industry. To base the injury analysis merely on data from sampled producers would ignore usable data from other producers, thereby leading to an incomplete assessment. Therefore, in the interests of having as complete an assessment as possible within the time available in this case, data received and verified for trends in all injury factors from the sampled producers was complemented by information relating to the full industry.

(57) No other comment has been submitted concerning Community production and the definition of the Community industry and, therefore, the findings set out in recitals 111 to 114 of the provisional Regulation are hereby confirmed.

2. **Community consumption, imports and their cumulative assessment**

(58) The cooperating Thai exporting producers claimed that Thai imports should not have been assessed cumulatively with dumped imports of SSF originating in the PRC, Indonesia, Taiwan and Vietnam, because of an alleged lack of competition with imports from the latter mentioned countries in terms of volumes, average prices and market share. They pointed out that in 2002, volume and market share of Thai imports dropped by 29 % and 35 % respectively, whereas already in 2002 an increase can be observed with regard to the other countries concerned. Furthermore, they noted that since 2003, average Thai import prices increased by 2 %.

(59) It should be recalled that the margins of dumping established in relation to the imports from each country concerned are more than *de minimis* as defined in Article 9(3) of the basic Regulation, i.e. 2 %, and the volume of imports from each country concerned is above the threshold of 1 % market share set by Article 5(7) of the basic Regulation. Furthermore, it is pertinent to note that the analysis should not focus on 2002 in isolation, but on the overall picture during the period considered, i.e. from 2001 to the IP. Overall, Thai imports' volume and market share in fact increased significantly whilst their prices dropped considerably. Consequently, overall, the pattern of Thai imports is in line with the trends established for all countries concerned. Furthermore, it is recalled that the SSF imported from the countries concerned were alike in all respects, they are interchangeable, they are marketed in the Community through comparable sales channels and under similar commercial conditions and compete with the SSF produced in the Community. Therefore, and in line with Article 3(4) of the

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basic Regulation, it is confirmed that a cumulative assessment of the effects of the dumped imports of the product concerned is appropriate.

(60) No other comment has been submitted concerning the analysis of the situation on the Community market and, therefore, the findings set out in recitals 115 to 126 of the provisional Regulation are hereby confirmed.

3. **Economic situation of the Community industry**

(61) Following the imposition of provisional measures, no comments were submitted concerning production, capacity, capacity utilisation, sales volume, sales price, market share, growth, stocks, employment, productivity, the magnitude of dumping and the recovery from past dumping of the Community industry. Therefore, the findings set out in recitals 127 to 133, 137, 142, 143, 145 and 146 of the provisional Regulation are hereby confirmed.

3.1. *Profitability*

(62) The cooperating Thai exporting producers contended that the profitability situation of the sampled Community producers had improved and did not reflect any injury. They further argued that the Community industry has not achieved the minimum profit margin of 5 % considered adequate and achievable in the absence of dumping because of the investments made by the sampled Community producers in 2002 and 2003. They also argued to disregard the fact that the Community industry benefited from the use of low priced stainless steel because this should be considered as a normal market situation from which all operators have benefited.

(63) It should be recalled, as set out in recitals 149 and 150 of the provisional Regulation, that the profitability situation was neither the only factor, nor the central factor, showing injury in the present case. According to Article 3(5) of the basic Regulation, not any one or more of the injury factors set out in that Article necessarily give decisive guidance as to the state of the Community industry. Investments were necessary to remain competitive, as set out in recital 138 of the provisional Regulation, so that no negative impact on profitability can be attributed to such investment. Furthermore, as set out in recital 136 of the provisional Regulation, the positive effect on the sampled Community producers' profitability from the rising stainless steel prices during the IP was strictly temporary and was a factor which may have benefited other economic operators for a very short period.

(64) Thus, the allegation that the profitability situation does not reflect injury has to be rejected and the findings set out in recitals 134 to 136 of the provisional Regulation confirmed.

3.2. *Investments, return on investment, cash flow and the ability to raise capital*

(65) The cooperating Thai exporting producers pointed out that the rising investments, return on investment, cash flow as well as the ability to raise capital did not indicate any injury.

(66) As mentioned in recital 147 of the provisional Regulation, it should be recalled that the factors 'investment' and 'ability to raise capital' have not been considered as factors showing injury during the period considered.

(67) With regard to return on investment, however, the overall improvement over the period considered needs to be viewed in the context of (i) the temporary and exceptional nature of the profitability situation of the sampled Community producers

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during the IP as already set out in recitals 136 and 139 of the provisional Regulation and (ii) the increased usage of leased machinery, which has not been considered as an investment. Leased capital goods were not included in the investments, but their increased usage contributed to the profit earned. These two reasons explain the artificially high increase on return on investment during the IP.

(68) Concerning cash flow, the fact remains that over the period considered its development deteriorated by 36 %, and this clearly indicates injury over the period considered. Consequently, the findings set out in recitals 138 to 141 of the provisional Regulation should be confirmed.

3.3. *Wages*

(69) The cooperating Thai exporting producers further contended that the 10 % increase in labour costs per employee over the period considered does not show injury in the present case.

(70) It is recalled that the provisional conclusion on injury with regard to wages had acknowledged an increase in wages to reflect reward for improved productivity and compensation for inflation. However, the fact remains that employment decreased by 5 % over the period considered, which was assessed as a sign of injury. Consequently, the findings set out in recital 144 of the provisional Regulation should be confirmed.

3.4. *Conclusion on injury*

(71) In summary, the conclusions set out in recitals 147 to 150 of the provisional Regulation are confirmed. Overall, the negative trend indicators (significant losses in market share, growth, loss in employment, unsatisfactory improvement of profitability/return on investments and cash flow) significantly outweigh the positive trends (small increase of production and sales volume, stocks reduction, continuing investments, decrease in labour costs in absolute terms and ability to raise capital).

G. **CAUSATION**

(72) The Thai exporting producers and an importers association submitted comments on the provisional causation analysis with regard to certain factors which are set out below. In the absence of any other comments, the findings set out in the provisional Regulation concerning the effect of dumped imports (recital 152 of the provisional Regulation), the impact of imports from other third countries (recitals 153 to 159 of the provisional Regulation) and the development of consumption on the Community market (recital 160 of the provisional Regulation) are hereby confirmed.

1. **Impact of currency exchange rates**

(73) The cooperating Thai exporting producers, one importer and its association focused on the impact of the currency depreciation of the USD compared to the euro, notably during 2003, which they alleged favoured the Chinese and Thai exports to the Community. Thus, they argued that at least partially, the price decrease and consequent injurious effect on the Community industry should not be attributed to dumping practices by exporters in the PRC and Thailand, but to such exchange rate development (in case of the PRC in particular due to the Yuan/USD peg).

(74) First of all, it is noted that the invoice currencies of all export transactions from the countries concerned are not known. Therefore, the effect of any exchange rates fluctuation cannot be estimated. Furthermore, as regards injury, irrespective of whether the low import prices may also be somewhat due to currency movements, actual import prices during the IP are used to establish the level of undercutting and the subsequent

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impact on the Community industry. The undercutting margins were found to be significant (see recitals 125 and 126 of the provisional Regulation).

(75) In light of the above, the argument regarding the possible effect of exchange rate movements must be rejected.

2. **Competitiveness of the Community industry**

(76) The Thai exporting producers further submitted that the injury endured by the Community industry should be attributed to a lack of competitiveness due to allegedly outdated production facilities.

(77) However, it should be recalled that the Community industry constantly invested over the period considered in order to replace obsolete machinery and to maintain 'state of the art' production facilities. Thus, no outdated non-competitive production technique exists which could have broken the causal link between dumped imports from the countries concerned and their injurious effects on the Community industry. The argument should be therefore rejected and the findings set out in recital 161 of the provisional Regulation concerning the competitiveness of the Community industry are confirmed.

3. **Conditions on the Community market**

(78) The cooperating Thai exporting producers also contended that the injury might have been caused by unstable market conditions. In this context, they referred to the temporary steel price increases and the bargaining power of large customers.

(79) It is noted, however, that the temporary steel price increases have not inflicted any injury on the sampled Community producers. To the contrary, it was beneficial to them, since profitability temporarily increased. With regard to the impact of large customers, it is noted that unfair competition in the form of dumped imports essentially contributes to their bargaining power. Thus, a direct linkage between imports from the countries concerned and the behaviour of importers/distributors can be observed. Overall, therefore, the conditions on the Community market have not broken the causal link between dumped imports and the injury sustained by the Community industry.

4. **Conclusion on causation**

(80) In summary, an appreciation of the above comments on causation and for the reasons set out in recitals 151 to 162 of the provisional Regulation, it is confirmed that no other factor has broken the causal link between the imports from the five countries concerned taken together and the material injury sustained by the Community industry.

H. **COMMUNITY INTEREST**

(81) A number of importers/distributors and Thai exporting producers alleged that measures may not be in the interests of the Community.

1. **Impact of the measures on importers and users**

(82) The importers/distributors, pointed out that measures would have a direct impact on their profit margins as they would not be able to pass on the costs of measures to their customers through higher prices.

(83) First of all, these parties did not substantiate their allegations. Moreover, as already stated in the provisional Regulation, no indication exists that anti-dumping measures would put the economic viability of importers/distributors at risk. Moreover, their profit margins were, over the period considered, well above the profitability of the Community industry. It is

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therefore confirmed that any advantage importers/distributors may gain from the non-imposition of anti-dumping measures is outweighed by the interest of the Community industry in having the unfair and injurious trading practices from the countries concerned redressed. The findings set out in recitals 164 to 170 of the provisional Regulation should be therefore confirmed.

(84) The Thai exporting producers commented that the imposition of measures would increase costs for the European car industry and this would not be in the Community's interest. However, they did not substantiate this alleged impact on users. On the basis of information available, i.e. the reply of one user, a rolling stock vehicles producer, the impact of measures on downstream users would be negligible. The findings set out in recitals 173 and 174 of the provisional Regulation concerning interests of users and consumers should therefore be confirmed.

2. **Conclusion**

(85) Having examined the various interests involved, it is confirmed for the reasons given in recitals 163 to 175 of the provisional Regulation that from an overall Community interest perspective no interest overweighs the Community industry's interest to have anti-dumping measures imposed with the aim of eliminating the trade distorting effects resulting from dumped imports.

I. **DEFINITIVE ANTI-DUMPING MEASURES**

(86) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, it is considered appropriate to impose definitive anti-dumping measures in order to prevent further injury being caused to the Community industry by the dumped imports. For the purpose of determining the level of these measures, account was taken of the dumping margins found during the IP and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

1. **Injury elimination level**

(87) The necessary price increase to eliminate injury was determined on a per-company basis, by comparing the weighted average import price of the product concerned with the non-injurious price of the like product sold by the Community industry on the Community market. The price difference was expressed as a percentage of the CIF import value.

(88) The non-injurious price has been obtained by taking the weighted cost of production of the Community industry together with a profit margin of 5 %. In the absence of comments, this profit margin is confirmed to be that that the Community industry could achieve in the absence of dumped imports. It reflects the achievable profit margin for similar product groups of the Community industry not subject to unfair competition, e.g. fasteners which do not fall under the CN codes of the product scope of the present investigation.

2. **Form and level of the duty**

(89) In the light of the foregoing, it is considered that, in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed on imports of SSF from the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam.

(90) With regard to the level of duty, in the case of two cooperating exporting producers (one in Taiwan and one in the PRC), the injury elimination level was found to be lower than the dumping margin. In these cases, the level of the duty should be restricted to the injury elimination level. In all other cases, the level of the

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duty should be set at the level of the dumping margin found pursuant to Article 9(4) of the basic Regulation.

(91) On the basis of the above, the definitive duty rates should be as follows:

Country	Exporting producer	AD duty rate
The PRC	Tengzhou Tengda Stainless Steel Product Co., Ltd, Tengzhou City	11,4 %
	Tong Ming Enterprise (Jiaxing) Co. Ltd, Zhejiang	12,2 %
	All other companies	27,4 %
Indonesia	PT. Shye Chang Batam Indonesia, Batam	9,8 %
	All other companies	24,6 %
Taiwan	Arrow Fasteners Co. Ltd, Taipei	15,2 %
	Jin Shing Stainless Ind. Co. Ltd, Tao Yuan	8,8 %
	Min Hwei Enterprise Co. Ltd, Pingtung	16,1 %
	Tong Hwei Enterprise, Co. Ltd, Kaohsiung	16,1 %
	Yi Tai Shen Co. Ltd, Tainan	11,4 %
	Cooperating exporting producers not included in the sample	15,8 %
	All other companies	23,6 %
Thailand	A.B.P. Stainless Fasteners Co. Ltd, Ayutthaya	11,1 %
	Bunyat Industries 1998 Co. Ltd, Samutsakorn	10,8 %
	Dura Fasteners Company Ltd, Samutprakarn	14,6 %
	Siam Screws (1994) Co. Ltd, Samutsakorn	11,0 %
	All other companies	14,6 %
Vietnam	All companies	7,7 %

(92) The Thai exporting producers drew attention to Article 15 of the WTO Anti-dumping Agreement, which provides that special regard is to be given to the special situation of developing countries when consideration is being given to the imposition of anti-dumping measures. However, it was not substantiated that the case at hand affects the essential interests of Thailand, as stipulated by this provision. In these circumstances, it is considered appropriate to impose an anti-dumping duty on imports from Thailand at the abovementioned rates.

(93) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products 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

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its name, 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'.

(94) Any claim requesting the application of these individual company anti-dumping 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. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

3. **Collection of provisional duty**

(95) In view of the magnitude of the dumping 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 anti-dumping duty imposed by the provisional Regulation, i.e. Regulation (EC) No 771/2005, be collected definitively to the extent of the amount of the duty definitively imposed by the present Regulation. For exporting producers whose rate of definitive duty is lower than the provisional duty, the amounts provisionally secured in excess of the definitive duty should be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of certain stainless steel fasteners and parts thereof, falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 and originating in the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for products manufactured by the Taiwanese exporting producers listed in the Annex shall be 15,8 % (TARIC additional code A649).

3. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for products manufactured by the companies listed below shall be as follows:

Country	Exporting producer	Rate of duty (%)	TARIC additional code
The People's Republic of China	Tengzhou Tengda Stainless Steel Product Co., Ltd, Tengzhou City	11,4	A650
	Tong Ming Enterprise (Jiaxing) Co. Ltd, Zhejiang	12,2	A651
	All other companies	27,4	A999
Indonesia	PT. Shye Chang Batam Indonesia, Batam	9,8	A652
	All other companies	24,6	A999

[1] European Commission, Directorate-General for Trade, Directorate B, J-79 5/17, rue de la Loi/Wetstraat 200, B-1049 Brussels.

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Country	Exporting producer	Rate of duty (%)	TARIC additional code
Taiwan	Arrow Fasteners Co. Ltd, Taipei	15,2	A653
	Jin Shing Stainless Ind. Co. Ltd, Tao Yuan	8,8	A654
	Min Hwei Enterprise Co. Ltd, Pingtung	16,1	A655
	Tong Hwei Enterprise, Co. Ltd, Kaohsiung	16,1	A656
	Yi Tai Shen Co. Ltd, Tainan	11,4	A657
	All companies other than the above and those listed in the Annex	23,6	A999
Thailand	A.B.P. Stainless Fasteners Co. Ltd, Ayutthaya	11,1	A658
	Bunyat Industries 1998 Co. Ltd, Samutsakorn	10,8	A659
	Dura Fasteners Company Ltd, Samutprakarn	14,6	A660
	Siam Screws (1994) Co. Ltd, Samutsakorn	11,0	A661
	All other companies	14,6	A999
▼M1 Vietnam	Header Plan Co. Ltd	0	A958
	All other companies	7,7	A999

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

Article 2

Amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 771/2005 imposing an anti-dumping duty on imports of certain stainless steel fasteners and parts thereof, falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 originating in the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam shall be definitively collected, in accordance with the rules set out below. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

The proceeding concerning imports of certain stainless steel fasteners and parts thereof originating in Malaysia and the Philippines is hereby terminated.

Article 4

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

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

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ANNEX

(TARIC additional code A649)

A-STAINLESS INTERNATIONAL CO. LTD, Taipei

BOLTUN CORPORATION, Tainan

CHAEN WEI CORPORATION, Taipei

CHIAN SHYANG ENT CO. LTD, Chung-Li City

CHONG CHENG FASTENER CORP., Tainan

DIING SEN FASTENERS & INDUSTRIAL CO. LTD, Taipei

DRAGON IRON FACTORY CO. LTD, Kaohsiung

EXTEND FORMING INDUSTRIAL CORP. LTD, Lu Chu

FORTUNE BRIGHT INDUSTRIAL CO. LTD, Lung Tan Hsiang

FWU KUANG ENTERPRISES CO. LTD, Tainan

HSIN YU SCREW ENTERPRISE CO. LTD, Taipin City

HU PAO INDUSTRIES CO. LTD, Tainan

J C GRAND CORPORATION, Taipei

JAU YEOU INDUSTRY CO. LTD, Kangshan

JOHN CHEN SCREW IND. CO. LTD, Taipei

►C1 KUOLIEN SCREW INDUSTRIAL CO LTD, Kaohsiung ◄

►C1 KWANTEX RESEARCH INC, Tainan ◄

LIH LIN ENTERPRISES & INDUSTRIAL CO. LTD, Taipei

LIH TA SCREW CO. LTD, Kweishan

LU CHU SHIN YEE WORKS CO. LTD, Kaohsiung

►C1 M & W FASTENER CO LTD, Kaohsiung ◄

MULTI-TEK FASTENERS & PARTS MANIFACTURER CORP., Tainan

NATIONAL AEROSPACE FASTENERS CORP., Ping Jen City

QST INTERNATIONAL CORP., Tainan

SEN CHANG INDUSTRIAL CO. LTD, Ta-Yuan

SPEC PRODUCTS CORP., Tainan

►C1 SUMEEKO INDUSTRIES CO LTD, Kaohsiung ◄

TAIWAN SHAN YIN INTERNATIONAL CO. LTD, Kaohsiung

VIM INTERNATIONAL ENTERPRISE CO. LTD, Taichung

YEA-JANN INDUSTRIAL CO. LTD, Kaohsiung

ZONBIX ENTERPRISE CO. LTD, Kaohsiung

ZYH YIN ENTERPRISE CO. LTD, Kaohsiung.