

**COMMISSION REGULATION (EU) No 502/2012
of 13 June 2012**

initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 2/2012 on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China by imports of certain stainless steel fasteners and parts thereof consigned from Malaysia, Thailand and the Philippines, whether declared as originating in Malaysia, Thailand and the Philippines or not, and making such imports subject to registration

THE EUROPEAN COMMISSION,

Having regard to the Treaty of the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation') and in particular Articles 13(3) and 14(5) thereof,

After having consulted the Advisory Committee in accordance with Articles 13(3) and 14(5) of the basic Regulation,

Whereas:

(1) The European Commission ('the Commission') has decided, pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate on its own initiative the possible circumvention of the anti-dumping measures imposed on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China and to make imports of certain stainless steel fasteners and parts thereof consigned from Malaysia, Thailand and the Philippines, whether declared as originating in Malaysia, Thailand and the Philippines or not, subject to registration.

A. PRODUCT

(2) The product concerned by the possible circumvention is certain stainless steel fasteners and parts thereof, originating in the People's Republic of China, currently falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 ('the product concerned').

(3) The product under investigation is the same as that defined in the previous recital, but consigned from Malaysia, Thailand and the Philippines, whether declared as originating in Malaysia, Thailand and the Philippines or not, currently falling within the same CN codes as the product concerned. ('the product under investigation').

B. EXISTING MEASURES

(4) The measures currently in force and possibly being circumvented are anti-dumping measures imposed by

Council Implementing Regulation (EU) No 2/2012 ⁽²⁾ following an expiry review of the measures imposed by Council Regulation (EC) No 1890/2005 ⁽³⁾.

C. GROUNDS

(5) The Commission has at its disposal sufficient prima facie evidence that the anti-dumping measures on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China are being circumvented by means of the transshipment via Malaysia, Thailand and the Philippines.

(6) The prima facie evidence at the Commission's disposal is as follows:

(7) There is a significant change in the pattern of trade involving exports from the People's Republic of China, Malaysia, Thailand and the Philippines to the Union which has taken place following the imposition of measures on the product concerned, without sufficient due cause or justification for such change other than the imposition of the duty.

(8) This change in the pattern of trade appears to stem from the transshipment of certain stainless steel fasteners and parts thereof originating in the People's Republic of China via Malaysia, Thailand and the Philippines.

(9) Furthermore, the evidence points to the fact that the remedial effects of the existing anti-dumping measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of the product under investigation appear to have replaced imports of the product concerned. In addition, there is sufficient evidence that imports of the product under investigation are made at prices well below the non-injurious price established in the investigation that led to the existing measures, adjusted for the increase in the costs of the raw material.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 5, 7.1.2012, p. 1.

⁽³⁾ OJ L 302, 19.11.2005, p. 1.

- (10) Finally, the Commission has sufficient prima facie evidence that the prices of the product under investigation are dumped in relation to the normal value previously established for the product concerned, adjusted for the increase in the costs of the raw material.
- (11) Should circumvention practices via Malaysia, Thailand and the Philippines covered by Article 13 of the basic Regulation, other than transshipment, be identified in the course of the investigation, the investigation may also cover these practices.

D. PROCEDURE

- (12) In light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13 of the basic Regulation and to make imports of the product under investigation, whether declared as originating in Malaysia, Thailand and the Philippines or not, subject to registration, in accordance with Article 14(5) of the basic Regulation.

(a) Questionnaires

- (13) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the known exporters/producers and to the known associations of exporters/producers in Malaysia, Thailand and the Philippines, to the known exporters/producers and to the known associations of exporters/producers in the People's Republic of China, to the known importers and to the known associations of importers in the Union and to the authorities of the People's Republic of China, Malaysia, Thailand and the Philippines. Information, as appropriate, may also be sought from the Union industry.

- (14) In any event, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 of this Regulation, and request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.

- (15) The authorities of the People's Republic of China, Malaysia, Thailand and the Philippines will be notified of the initiation of the investigation.

(b) Collection of information and holding of hearings

- (16) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) Exemption of registration of imports or measures

- (17) In accordance with Article 13(4) of the basic Regulation, imports of the product under investigation may be

exempted from registration or measures if the importation does not constitute circumvention.

- (18) Since the possible circumvention takes place outside the Union, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to producers in Malaysia, Thailand and the Philippines of certain stainless steel fasteners and parts thereof that can show that they are not related⁽¹⁾ to any producer subject to the measures⁽²⁾ and that are found not to be engaged in circumvention practices as defined in Article 13(1) and 13(2) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3(3) of this Regulation.

E. REGISTRATION

- (19) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied retroactively from the date of registration of such imports consigned from Malaysia, Thailand and the Philippines.

F. TIME LIMITS

- (20) In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

⁽¹⁾ In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife; (ii) parent and child; (iii) brother and sister (whether by whole or half blood); (iv) grandparent and grandchild; (v) uncle or aunt and nephew or niece; (vi) parent-in-law and son-in-law or daughter-in-law; (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context 'person' means any natural or legal person.

⁽²⁾ However, even if producers are related in the aforementioned sense to companies subject to the measures in place on imports originating in the People's Republic of China (the original anti-dumping measures), an exemption may still be granted if there is no evidence that the relationship with the companies subject to the original measures was established or used to circumvent the original measures.

- producers in Malaysia, Thailand and the Philippines may request exemption from registration of imports or measures,
- interested parties may make a written request to be heard by the Commission.

- (21) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits mentioned in Article 3 of this Regulation.

G. NON-COOPERATION

- (22) In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.
- (23) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available.
- (24) If an interested party does not cooperate or cooperates only partially and findings are therefore based on the facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

H. SCHEDULE OF THE INVESTIGATION

- (25) The investigation will be concluded, according to Article 13(3) of the basic Regulation, within nine months of the date of the publication of this Regulation in the *Official Journal of the European Union*.

I. PROCESSING OF PERSONAL DATA

- (26) It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾.

J. HEARING OFFICER

- (27) It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of Directorate-General for Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with

regard to issues concerning access to the file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details, interested parties may consult the Hearing Officer's web pages on the website of Directorate-General for Trade (http://ec.europa.eu/trade/tackling-unfair-trade/hearing-officer/index_en.htm),

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 13(3) of Regulation (EC) No 1225/2009, in order to determine if imports into the Union of certain stainless steel fasteners and parts thereof, consigned from Malaysia, Thailand and the Philippines, whether declared as originating in Malaysia, Thailand and the Philippines or not, currently falling within CN codes ex 7318 12 10, ex 7318 14 10, ex 7318 15 30, ex 7318 15 51, ex 7318 15 61 and ex 7318 15 70 (TARIC codes 7318 12 10 11, 7318 12 10 91, 7318 14 10 11, 7318 14 10 91, 7318 15 30 11, 7318 15 30 61, 7318 15 30 81, 7318 15 51 11, 7318 15 51 61, 7318 15 51 81, 7318 15 61 11, 7318 15 61 61, 7318 15 61 81, 7318 15 70 11, 7318 15 70 61 and 7318 15 70 81), are circumventing the measures imposed by Implementing Regulation (EU) No 2/2012.

Article 2

The customs authorities are hereby directed, pursuant to Article 13(3) and Article 14(5) of Regulation (EC) No 1225/2009, to take the appropriate steps to register the imports into the Union identified in Article 1 of this Regulation.

Registration shall expire nine months following the date of entry into force of this Regulation.

The Commission, by regulation, may direct customs authorities to cease registration in respect of imports into the Union of products manufactured by producers having applied for an exemption of registration and having been found to fulfil the conditions for an exemption to be granted.

Article 3

1. Questionnaires should be requested from the Commission within 15 days from publication of this Regulation in the *Official Journal of the European Union*.

2. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views in writing and submit questionnaire replies or any other information within 37 days from the date of the publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

3. Producers in Malaysia, Thailand and the Philippines requesting exemption from registration of imports or measures should submit a request duly supported by evidence within the same 37-day time limit.

4. Interested parties may also apply to be heard by the Commission within the same 37-day time limit.

5. Interested parties are required to make all submissions and requests in electronic format (the non-confidential submissions via e-mail, the confidential ones on CD-R/DVD), and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. However, any Powers of Attorney, signed certifications, and any updates thereof, accompanying questionnaire replies shall be submitted on paper, i.e. by post or by hand, at the address below. Pursuant to Article 18(2) of the basic Regulation if an interested party cannot provide its submissions and requests in electronic format, it must immediately inform the Commission. For further information concerning correspondence with the Commission, interested parties may consult the relevant web page on the website of Directorate-General for Trade: <http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence>. All written submissions, including the information requested in this Regulation, questionnaire replies and correspondence

provided by interested parties on a confidential basis shall be labelled as 'Limited' ⁽¹⁾ and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: N105 4/92
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Contact:

Case mailbox: TRADE-STEEL-FAST-13-A@ec.europa.eu
Fax +32 22984139

Article 4

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 13 June 2012.

For the Commission
The President
José Manuel BARROSO

⁽¹⁾ A 'Limited' document is a document which is considered confidential pursuant to Article 19 of Regulation (EC) No 1225/2009 and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).