

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 924/2012

of 4 October 2012

amending Regulation (EC) No 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1515/2001 of 23 July 2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters⁽¹⁾ ('the WTO enabling Regulation'), in particular Article 1 thereof,

Having regard to the proposal submitted by the European Commission after consultation of the Advisory Committee,

Whereas:

A. MEASURES IN FORCE

- (1) The Council by Regulation (EC) No 91/2009⁽²⁾ imposed a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China ('the definitive Regulation').

B. REPORTS ADOPTED BY THE DISPUTE SETTLEMENT BODY OF THE WTO

- (2) On 28 July 2011, the Dispute Settlement Body ('DSB') of the World Trade Organization ('WTO') adopted the Appellate Body Report and the Panel Report as modified by the Appellate Body Report in the dispute 'European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China'⁽³⁾ ('Reports'). In these Reports, it was found, inter alia, that the EU acted inconsistently with:

— Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement with respect to Article 9(5) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁽⁴⁾ ('the basic Regulation') as applied in the investigation on the imports of certain iron or steel fasteners originating in the People's Republic of China ('the fasteners investigation'),

— Articles 6.4, 6.2 and 2.4 of the WTO Anti-Dumping Agreement with respect to certain aspects of the dumping determination in the fasteners investigation,

— Article 4.1 of the WTO Anti-Dumping Agreement with respect to the definition of the Union industry in the fasteners investigation,

— Articles 3.1 and 3.2 of the WTO Anti-Dumping Agreement with respect to the consideration of the volume of dumped imports in the fasteners investigation,

— Articles 3.1 and 3.5 of the WTO Anti-Dumping Agreement with respect to the causation analysis in the fasteners investigation, and

— Articles 6.5 and 6.5.1 of the WTO Anti-Dumping Agreement with respect to the treatment of confidential information in the fasteners investigation.

C. PROCEDURE

- (3) On 6 March 2012, pursuant to the WTO enabling Regulation, a review was initiated by the publication of a Notice⁽⁵⁾ in the *Official Journal of the European Union* ('the Notice of Initiation'). The European Commission informed parties to the investigation which led to Regulation (EC) No 91/2009 ('the original investigation') of

⁽¹⁾ OJ L 201, 26.7.2001, p. 10.

⁽²⁾ OJ L 29, 31.1.2009, p. 1.

⁽³⁾ WTO, Report of the Appellate Body, AB-2011-2, WT/DS397/AB/R, 15 July 2011. WTO, Report of the Panel, WT/DS397/R, 3 December 2010.

⁽⁴⁾ OJ L 343, 22.12.2009, p. 51.

⁽⁵⁾ OJ C 66, 6.3.2012, p. 29.

the review and of the manner in which the findings of the Reports in regard to the definitive Regulation was intended to be taken into account.

D. PRODUCT CONCERNED

- (4) The product concerned is certain iron or steel fasteners, other than of stainless steel, i.e. wood screws (excluding coach screws), self-tapping screws, other screws and bolts with heads (whether or not with their nuts or washers, but excluding screws turned from bars, rods, profiles or wire, of solid section, of a shank thickness not exceeding 6 mm and excluding screws and bolts for fixing railway track construction material), and washers, originating in the People's Republic of China (referred to as 'fasteners' or 'product concerned').
- (5) The product concerned is currently falling within CN codes 7318 12 90, 7318 14 91, 7318 14 99, 7318 15 59, 7318 15 69, 7318 15 81, 7318 15 89, ex 7318 15 90, ex 7318 21 00 and ex 7318 22 00.
- (6) The Reports do not affect the findings set out in recitals 40 to 57 of the definitive Regulation concerning the product concerned and the like product.

E. REVISED FINDINGS BASED ON THE REPORTS

- (7) As indicated in the Notice of Initiation, the Commission reassessed the definitive findings of the original investigation by taking account of the recommendations and rulings of the DSB. This reassessment was based on information collected in the original investigation and information collected after the publication of the Notice.
- (8) The original investigation of dumping and injury covered the period from 1 October 2006 to 30 September 2007 ('investigation period' or 'IP'). With respect to the parameters relevant in the context of the injury assessment, data covering the period from 1 January 2003 to the end of the investigation period were analysed ('period considered').
- (9) This Regulation seeks to correct the aspects of the definitive Regulation found to be inconsistent by the DSB in the Reports it adopted and bring into conformity the definitive Regulation with the DSB recommendations and rulings.

1. Individual Treatment: application of Article 9(5) in the definitive Regulation

- (10) This section sets out the reassessed findings of the original investigation regarding the following recommendations and rulings of the Reports that the EU acted inconsistently with Articles 6.10 and 9.2 of the WTO

Anti-Dumping Agreement with respect to Article 9(5) of the basic Regulation as applied in the fasteners original investigation.

- (11) As mentioned in recitals 81 and 84 of the definitive Regulation, all of the five sampled exporting producers as well as three individually examined exporting producers which claimed individual treatment ('IT') were found to meet all the requirements to be granted IT in accordance with Article 9(5) of the basic Regulation. As stated in recitals 62 and 78 of the definitive Regulation, four exporting producers originally part of the sample, as well as one company granted individual examination were considered as non-cooperating companies, since they submitted information not consistent with the evidence in the course of the investigation.
- (12) In the light of the recommendations regarding Article 9(5) of the basic Regulation contained in the Reports, the Commission invited exporting producers in the People's Republic of China to come forward and provide the necessary information to review their current situation if their exports to the European Union are currently subject to the anti-dumping measures in force on imports of certain iron or steel fasteners originating in the People's Republic of China; and they considered themselves to have been discouraged from cooperating and requesting IT in the original investigation because of the administrative burden entailed by, or because they considered that they did not meet all the criteria in, Article 9(5) of the basic Regulation.
- (13) The Commission invited those producers to declare whether they considered themselves to have been discouraged from cooperating and requesting IT in the original investigation because of the administrative burden entailed by, or because they considered that they did not meet all the criteria in Article 9(5) of the basic Regulation. Those interested parties were invited to come forward within 30 days following the publication of the Notice of Initiation and to provide the following two elements of information:
- whether they considered themselves to have been discouraged from cooperating and requesting IT at the time of the initiation of the initial investigation, and
 - provide information on export quantities to the European Union and export prices covering the IP used in the original investigation.
- (14) Some exporting producers in the PRC expressed concerns regarding the implementing procedure of the DSB Reports laid down in the Notice of Initiation. They underlined in particular that they considered the deadlines published to be too short. They claimed that an undue administrative burden had been placed on exporting producers, having a dissuasive effect and preventing them from receiving individual treatment.

- (15) The concern expressed by those exporting producers was considered to be not founded. The Commission considered this deadline appropriate in view of the administrative burden and the small amount of information requested. The Notice of Initiation explained that a review of the current situation of an exporting producer would be considered once an application was received including the following information:
- a simple statement that the exporting producer considers to have been discouraged and therefore had not cooperated and requested IT, and
 - very basic figures showing that it exported the product concerned to the EU during the original investigation period.
- (16) The sole purpose of requesting this information was to allow the Commission to identify those exporting producers that would have been in a position to cooperate and request IT during the original investigation but considered themselves to have been discouraged from doing so. A deadline of 30 days was considered to be appropriate to reply to a request for a simple statement and very basic figures and cannot be regarded as imposing a disproportionate administrative burden. The Chinese Chamber of Commerce and a Chinese exporting producer argued that by requesting the information mentioned in recital 15 above, the Commission imposed conditions on Chinese exporting producers, although IT should be granted as rule pursuant to Articles 6.10 and 9.3 of the WTO Anti-Dumping Agreement. This approach was contrary to the recommendations of the DSB reports and these parties invited the Commission to contact Chinese exporting producers *ex officio* and indicate they will be granted IT. In this respect, the Commission considers that, by publishing the Notice of Initiation which was sent to all known Chinese exporting producers and their trade association and national authorities, the Commission has contacted all Chinese exporting producers inviting them to come forward within 30 days, should they have exported during the original investigation period and not made themselves known during the original investigation. This latter question should not be considered as a 'condition' in the sense of a 'test' as presented by the said parties, but rather as a statement of fact showing that they were actually concerned by the original investigation. Finally, it should be noted that questions related to exported products are requested for the purpose of verifying whether the sample originally chosen needed to be amended and are not related to the issue of IT. This claim was therefore rejected.
- (17) Of the 15 companies that came forward following the publication of the Notice of Initiation and made enquiries within the deadline:
- Ten companies were exporting producers that had already come forward and cooperated with the original investigation. This showed that they had not been discouraged from cooperating and requesting IT in the original investigation and their situation could therefore not be re-examined in the context of the current review; one of these 10 companies which requested a review of its current duties was invited to submit a review request to the Commission pursuant to Article 11(3) of the basic Regulation.
 - One company was a new exporting producer (i.e. it had not exported to the EU during the original investigation). This company was therefore not in a position to cooperate and request IT in the original investigation for that reason. It was informed of the procedures for claiming New Exporting Producer Treatment pursuant to Article 2 of the definitive Regulation.
 - Two were considered not to be exporting producers but trading companies so they were informed that they were not concerned by this review.
 - Two exporting producers stated that they complied with the criteria and requested that their situation be examined. However, one of these companies subsequently withdrew its application.
- (18) The companies having made enquiries were given the opportunity to comment on the information provided to them.
- (19) The exporting producer stating that it complied with the criteria and requesting that its situation be examined was found to fall within the criteria laid down in point 1 of the Notice of Initiation. This exporting producer also requested individual examination under Article 17(3) of the basic Regulation claiming that if it would not have been discouraged from cooperating during the original investigation it would have requested such treatment. Taking into account that during the original investigation, all of the exporting producers who had made such a request were individually examined, for reasons of equal treatment, its request was accepted.
- (20) A Notice was published on 6 June 2012 ⁽¹⁾ announcing the review of the current situation for this exporting producer, Bulten Fasteners (China) Co., Ltd ('BFC'). The exported quantities of this exporting producer during the IP amounted to less than 0,4 % of the total exports from the PRC during the IP. In view of this, the Commission considered that there was no need to modify the original sample of exporting producers. A questionnaire was sent to the exporting producer in the PRC and its related companies in the EU involved in the resale of the product concerned during the original IP.

⁽¹⁾ OJ C 160, 6.6.2012, p. 19.

(21) The Commission sought and verified all the information deemed necessary for a determination of dumping and carried out verifications at the premises of the following related companies:

— Bulten Sweden AB, Göteborg, Sweden,

— Bulten GmbH, Bergkamen, Germany.

(22) The Commission concluded that BFC should be granted IT in accordance with the recommendations concerning Article 9(5) of the basic Regulation in the DSB reports.

2. Certain aspect of the dumping determination in the fasteners investigations

(23) This section sets out the reassessed findings of the original investigation regarding the following recommendations and rulings of the Reports that the EU acted inconsistently with Articles 6.4, 6.2 and 2.4 of the WTO Anti-Dumping Agreement with respect to certain aspects of the dumping determination in the fasteners original investigation.

(24) In the context of the open dialogue held with some Chinese exporting producers and the Chamber of Commerce, more detailed information regarding the product characteristics of the products sold by the Indian cooperating producer was provided to the parties in order to address the recommendations of the WTO DSB regarding Articles 6.4, 6.2 and 2.4 of the WTO Anti-Dumping Agreement, as mentioned in recitals 28 to 53 above. This information covered in particular the product characteristics which were found to be pertinent in the determination of the normal value and that were used in the comparison with the product concerned, i.e. the fact that the Indian domestic sales have been divided into 'standard' sales and 'special' sales and the strength class of each transaction has been identified. A normal value per kg was then calculated for each strength class as identified in the PCN table.

(25) The Commission concentrated on two crucial elements of comparison, namely strength class and standard versus special fasteners, as indicated in recitals 48 to 50 of the definitive Regulation. The distinction between special vs standard was added as a new element of comparison during the investigation and the strength class was used as the other main comparison criterion as submitted by most of the Chinese exporting producers themselves during the original investigation.

(26) As mentioned in recital 56 of the definitive Regulation, standard fasteners produced in the analogue country could be compared with the fasteners exported to the EU by the sampled PRC producers as they were found

to have the same basic physical and technical characteristics as products exported from the PRC.

(27) The normal value was expressed ex-works, adjusted to take account of the price effect of the quality control step performed by the Indian producer which was not performed in China. The result was therefore two lists of normal values in Chinese Yuan (CNY) per kg by strength class, one for standard fasteners and one for special fasteners.

2.1. Information disclosure note of 30 May 2012

(28) On 30 May 2012 additional information was disclosed to all interested parties regarding the product types used for the purposes of comparing normal value and export price. As stated in the Notice of Initiation, more precise information regarding the product characteristics which were found to be pertinent in the determination of the normal value was provided to all interested parties.

(29) The content of the information disclosure note related to the normal value which was determined based on the prices of the product concerned sold on the domestic market by the Indian cooperating producer. According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET had to be established on the basis of the prices or constructed value in an analogue country. Two Indian producers agreed to cooperate by replying to a questionnaire. The data submitted in their questionnaire replies were verified at the premises of these two companies. However, only one of the companies provided sufficiently detailed data to be used as a basis for establishing normal value.

(30) As mentioned in recital 90 of the definitive Regulation, 'a number of importers and exporters questioned the appropriateness of using the data from the latter Indian producer on the grounds that: (i) the quantity produced and sold in the Indian domestic market by this producer would allegedly not be representative of the quantity exported from the PRC to the Community; and (ii) this Indian producer has alleged commercial links with one of the Community producers supporting the complaint. In this respect, it should be noted that: (i) the sales volume of the Indian producer were considered sufficiently representative to allow for the establishment of reliable normal values; and (ii) the fact that the analogue country producer has links to a Community producer supporting the complaint does not make the choice of that analogue country unreasonable. It was also noted that these links were established after the IP. Given the above and the absence of cooperation from other third country producers, the choice of India as analogue country was considered reasonable'.

(31) Given the conditions of competition and openness of the Indian market, and the fact that the cooperating Indian producer sold product types comparable to those

exported by the PRC exporting producers, it was concluded that India was a suitable market economy third country within the meaning of Article 2(7) of the basic Regulation.

- (32) The information disclosure note stated that the data regarding domestic sales covered the investigation period but without the Product Control Number ('PCN'). The Indian producer, however, was able to identify the strength class of the fastener sold, and also whether that fastener was 'standard' or 'special' as defined in the definitive Regulation. The need to distinguish between standard and special fasteners had not been identified at the start of the investigation when the PCN had been created.
- (33) However, the Commission noted that this distinction affected price comparability and therefore this data was requested from the Indian producer and was provided. Indian domestic sales were therefore divided into 'standard' sales and 'special' sales and then the strength class of each transaction was identified. A normal value per kg was calculated for each strength class as originally identified in the PCN table.
- (34) The remaining characteristics of the original PCN were not used, not only because the Indian producer was not able to provide the data at this level of detail, but also for the following reasons:
- diameter and length were not considered relevant because the analysis was performed on the basis of weight, thus automatically taking into account any differences resulting from different diameter or length of the fastener,
 - there was no indication that there were any differences in terms of chrome on coating or coating in general — in essence an indicator of galvanisation — between the Indian producer's products and Chinese fasteners,
 - in respect of the only other remaining PCN element, the CN code, it was considered that it would not be a reliable indicator since the Chinese or Indian authorities do not distinguish between the 10 CN codes used to define the product concerned as do the EU authorities.
- (35) The Commission therefore concentrated on two crucial differences between products: strength class, on the one hand; and standard vs special fasteners, which is an indicator of customer differences and quality differences, on the other hand.
- (36) The normal value was expressed ex-works, minus an adjustment to remove the price effect of the quality control performed by the Indian producer which was

not performed in China. The result was therefore two lists of normal values in Chinese Yuan (CNY) per kg by strength class, one for standard fasteners and one for special fasteners.

- (37) The Commission informed all interested parties that the normal value could not be disclosed as it concerns the confidential price of a single Indian producer on the domestic market. However, interested parties were informed that the 'standard' normal value for an 8.8 strength class fastener ('G' in the PCN table), which is a standard type commonly exported by Chinese producers, was calculated in the range of 9 to 12 CNY per kg ex-works.
- 2.2. *Comments received to the information disclosure note of 30 May 2012*
- (38) One importer and four exporting producers alleged that the time given to parties to comment on the additional information (10 days) was too short. However, the Commission considers that the abovementioned time limit was appropriate, given that the information provided was only a supplement to that already disclosed in the definitive Regulation, at the end of the original investigation. The time granted to examine and comment on this additional information was therefore considered reasonable.
- (39) Some parties alleged that the Commission had stated that it did not have any new information regarding the physical characteristics other than strength class of the products used for the determination of the normal value. That claim should be rejected. At that stage of the review, the Commission was merely providing additional clarification about how normal value had been established in the original investigation. It is important to emphasise that 'strength' had been identified as one of the relevant characteristics by the Chinese exporting producers. However, this did not imply that the Commission did not have any information regarding other physical characteristics.
- (40) The same parties claimed that the Commission stated, during hearings, in regard to possible adjustments to be made for the purpose of comparison between export prices and the normal value that a preference would be given for adjusting on the basis of a price analysis rather than a cost analysis. In fact the Commission clarified that according to Article 2(10) of the basic Regulation, a comparison should be made with due account taken of differences which affect price comparability and not to cost differences.
- (41) Subsequently, these parties repeated their claim that adjustments should be made to take into account the differences in cost of production such as differences in efficiency of consumption of the raw material; differences in wire rod consumption; in electricity consumption, in self-generated electricity, in productivity per employee, in

reasonable profit level and in differences related to tooling. As stated above, Article 2(10) of the basic Regulation is referring to price and not cost. There was no evidence adduced by these parties that the alleged differences in cost translated into differences in prices. In investigations concerning economies in transition such as China, an analogue country is used when warranted to prevent account being taken of prices and costs in non-market economy countries which are not the normal result of market forces. Thus, for the purpose of establishing the normal value, a surrogate of the costs and prices of producers in functioning market economies is used. Therefore, these claims for adjustments taking into account the differences in cost of production are rejected.

- (42) These parties further argued that the additional information provided on 30 May 2012 regarding the characteristics of the products sold by the Indian producer was incomplete in so far as information regarding the following issues was allegedly missing: differences related to type of fastener; coating and use of chrome; diameter and length; traceability; ISO 9000; unit of defective rate; and other aspects of hardness, bending, strength, impact toughness and other friction coefficients. They sought clarification regarding the reasons why the remaining characteristics of the original PCN were not deemed relevant. These issues were explained in two information disclosure notes respectively sent on 5 July 2012 and put in the file for inspection by interested parties on 11 July 2012.

2.3. Information disclosure note of 5 July 2012

- (43) Following the request of additional information made by the parties as mentioned in recital 42 above, a second information disclosure note was sent to all interested parties on 5 July 2012. In this note, the following additional information was provided:

- A table showing the ranges of the price levels of the normal values calculated by strength class for standard fasteners sold on the Indian domestic market, to independent customers, by the sole Indian cooperating producer. It was also specified that the vast majority of exports by the Chinese producers fall under strength class G.
- An in-depth analysis of the data in India showed that standard fasteners sold on the domestic market were electroplated corresponding to the PCN Code 'A'. Therefore, the Commission proposed to compare the normal value with coating type A for exported models.
- Following a manual analysis of the Indian domestic price data, information on diameter and length were extracted from the text string of sales coding used by the Indian producer. To allow for a comparison with the exports of the Chinese companies, this data was summarised into ranges to distinguish between the main product dimensions:

Indicator	Diameter	Length
Small	M4 to M10	0 to 100 mm
Medium	M12 to M20	100 to 200 mm
Large	M22 to M30	200 to 300 mm

- The Commission therefore proposed to use this data to further refine the normal value and calculate dumping margins on this basis. Where exported fasteners did not fall into these ranges they would not be used in the dumping calculation. This affected only a very small amount of exports.
- The Commission provided for reference the proposed revised PCN:

Indicator	Description	PCN
Standard/Special	Standard fastener	S
	Special fastener	P
Strength class	3.6	A
	4.6	B
	4.8	C
	5.6	D
	5.8	E
	6.8	F
	8.8	G
	9.8	H
	10.9	I
	12.9	J
	Electroplated coating	A
Diameter	M4 to M10	S
	M12 to M20	M
	M22 to M30	L
Length	0 to 100 mm	S
	101 to 200 mm	M
	201 to 300 mm	L

- The Commission provided an overview of the dumping margins modified as per the proposal listed in the information disclosure note, noting that these revised anti-dumping margins would not be automatically the anti-dumping duties, which would be subject to the lesser duty rule.
- Finally, new Tables 22, 23, 32, 33 and 34 of one EU producer were provided in reply to the comments made by some interested parties that the additional information provided with the information disclosure note of 30 May 2012 was incomplete, in so far as some elements in those Tables were missing or not properly summarised.

2.4. Comments to the information disclosure note of 5 July 2012

- (44) Some parties requested additional information on the price level of the normal value. As mentioned in recital 82 below, the price level could not be disclosed to interested parties as it is confidential information concerning the prices of a single analogue producer. However, a non-confidential version of the normal value by strength class for standard fasteners was disclosed on 5 July 2012 to those Chinese exporting producers who requested such further information and was also placed in the file for inspection by interested parties. In this note, the Commission provided a table showing the ranges of the price levels of the normal values calculated by strength class for standard fasteners sold on the Indian domestic market, to independent customers, by the sole Indian cooperating producer.
- (45) Some parties also argued that the Commission informed them during a hearing held on 26 June 2012 that the Indian domestic sales were of two types of coating 'A' and 'B' according to the PCN table used in the original investigation. This allegation is not founded. The Commission informed the said parties that at that stage of the review it was examining the types of coating used by the Indian producer on standard fasteners. During a subsequent hearing held on 3 July 2012 and by means of an information note placed on 11 July 2012 in the file for inspection by interested parties, all parties were informed that the Indian producer was using coating 'A' for the production of standard fasteners.
- (46) During a hearing held on 11 July 2012, the same parties asked the Commission to explain how the split of the normal value between special and standard fasteners by the Indian producer had been carried out. The Commission indicated that it had been done on the basis of the names of the customers. However, as

evidenced by the minutes produced by the Hearing Officer for Trade DG, the Commission stated before the end of the hearing that it would have to clarify this issue, which it did in a further note for information of 13 July 2012 that was sent to the parties which participated in the hearing and was placed in the non-confidential file for consultation by all interested parties. The statement made by the said parties according to which the Commission stated that 'the split of the normal value between special and standard fasteners was carried out, inter alia, on the basis of the names of the customers', is therefore incomplete as more information regarding this issue has been provided as mentioned in the recital below.

- (47) On the difference between standard and special fasteners, the Commission's note of 13 July 2012 explained that 'it cannot be excluded that the automotive industry also uses standard fasteners for certain applications'. Some parties argued that the Commission considered that automotive fasteners could also have been regarded as standard. Such allegation is unfounded. As is clearly explained in that note, the Commission's statement was made in the absence of a customer list from the Indian producer. However, as established in the original investigation and further explained in Section 2.7 below, for quality and commercial reasons, automotive producers always order fasteners which are custom designed in order to comply with that industry's ISO requirements. Therefore, all fasteners destined for the automotive sector that are considered as 'special' products by fasteners producers, including in India, according to information found on the websites of Indian automotive manufacturers. Since the Indian producer clearly defined as 'special fasteners' all parts manufactured to a custom design, the Commission considers that standard fasteners destined to the automotive industry were not included in the list of standard fasteners provided during the original investigation.
- (48) The Chinese Chamber of Commerce and a Chinese exporting producer made similar claims as above regarding the possible inclusion of fasteners destined to the automotive sector in the normal value and, in addition, alleged that automotive fasteners which are not made according to a specific customer design still have to go through a special quality control or have to respect traceability requirements making them more expensive and should normally be considered as special fasteners. They claimed that the Commission's findings according to which fasteners used for high-end applications but not manufactured according to user's drawings had nevertheless been considered as special fasteners were baseless, and thereby the Commission acted inconsistently with Article 2(10) of the basic Regulation by breaching the principle of a fair comparison. Furthermore, they considered that the Commission's findings based on the split made by the Indian

producer had not been subject to an on-spot verification visit. In the light of the above, they requested the Commission to review the distinction between standard and special fasteners and if not possible, to revert to a different normal value data set.

(49) The reasoning of the Commission regarding the distinction between standard and special fasteners is already addressed in recital 47 above. With regard to the claim concerning the absence of verification of the split made by the Indian producer, the Commission verified the sales listing through a number of 'walk-through' tests (i.e. in-depth verification of a sample of sales transactions included in the sales listing in order to verify its accuracy) as per standard verification practices. In addition, the subsequent split of that sales listing provided by the Indian producer was checked against an average price level of the split as explained in the said note. Therefore, the allegation that the Commission took at face value the data provided by the Indian producer is not founded.

(50) In addition, the criteria used by the Indian producer to define special fasteners, i.e. according to customer drawing as mentioned in recital 47 above, provides sufficient assurance of the reliability of the data. In the original investigation the Commission already made an adjustment to the normal value to take into account quality control steps applied by the Indian producer which were not found for Chinese sampled producers. Under these circumstances, the Commission does not consider it necessary to resort to another normal value data set as suggested by the parties concerned. Finally, as mentioned in recital 89 of the definitive Regulation despite the efforts of the Commission no other producers from any possible analogue country offered to cooperate in the proceeding.

(51) Regarding the use of the data of the Indian analogue country producer for the determination of the normal value, the Association of European Distributors (EFDA) claimed that such technique was not appropriate given that its product range, production volume, customer profile, distribution method and market position were not comparable to the situation of the Chinese exporting producers. In addition, it claimed that the Chinese prices were low because they reflected the benefits of high-volume production of standard products since they are specialised and efficient producers. Moreover, it requested more detailed information regarding the Indian producer's prices and production volume of standard fasteners. Finally, EFDA submitted Eurostat data to support their allegations that a comparison regarding export prices from the PRC and India for two specific CN codes would show that the Indian exports of these products were less than 4 % of

the PRC exports and that India was not a credible supplier of these products for export markets.

(52) As regards the appropriateness of the choice of the Indian analogue country producer, reference is made to the last part of recital 49 above. In relation to the general claim that Chinese export prices reflected the benefits of high-volume production, these claims were not substantiated or quantified in a meaningful manner that could assist in the analysis being carried out at that stage of the review. As regards the request for additional information regarding the Indian producer's data, reference is made to recital 82 regarding confidentiality. With regard to the claim that the exports from India were not comparable to those from the PRC during the IP and after the IP, for the determination of the normal value, it is the Indian domestic prices which are considered to be relevant according to the basic Regulation and not the Indian export prices. Therefore, these claims from EFDA were unfounded.

(53) Regarding the issue of the coating applied by the Indian producer, the Chinese Chamber of Commerce and a Chinese exporting producer expressed doubts and requested the Commission to explain how the confidential information offered is conclusive proof that the Indian producer only sold electro-plated fasteners on its domestic market. During the verification, the Indian producer provided evidence that allowed the Commission to conclude that standard fasteners sold domestically were electroplated, corresponding to the coating type 'A' of the original PCN. In these circumstances, the Commission considers that the evidence in the file is sufficient to conclude that standard fasteners sold on the domestic market were electroplated. In this respect, an adjustment was made for difference in chrome, as mentioned in recital 81 below.

2.5. Further information requested after the information disclosure note of 5 July 2012

(54) Some exporting producers requested further clarifications and information in order to be able to make a possible request for adjustments to their own dumping margin as established in the original investigation, based on the following considerations:

- (a) characteristics of the 'product types' used (CN codes, strength class, standard vs special parts) for the determination of the normal value;
- (b) further information regarding characteristics of the products sold by the Indian producer used for the determination of the normal value;

- (c) clarification regarding the reasons why the remaining characteristics of the original PCN were not used; and
- (d) adjustments to be made for difference in physical characteristics.
- (55) Regarding point (a) above, as mentioned in the information note provided on 30 May 2012, the strength class of the fasteners sold by the Indian cooperating producer was the indicator of strength contained in the PCN used in the questionnaire sent to all parties. The strength class was identified by using the same relevant element of the PCN by the Indian producer on the sales listings verified during the on-spot verification visit.
- (56) The distinction between special and standard fasteners was explained in recital 54 of the definitive Regulation. 'Special' fasteners are those manufactured to a customer drawing. 'Standard' fasteners are those manufactured for stock and not to the specifications of a particular customer. The need to differentiate between standard and special fasteners produced by the Indian cooperating producer had been fully recognised and as mentioned in recitals 51 and 54 of the definitive Regulation, the comparison between the export price and the normal value for the sampled Chinese exporting producers was made between fasteners of the 'standard' type.
- (57) With regard to issues raised under point (b), for confidentiality reasons, it is not possible to disclose the exact types of model of screws and bolts sold by the Indian producer. However, as indicated above, the comparison was made on a weight basis within the same category standard or special and within the same strength class set out in the PCN.
- (58) Again in regard to issues raised under point (b), several interested parties requested more information on coating. The original investigation data was further analysed and this showed that the product sold as 'standard' on the Indian domestic market had a basic coating, i.e. electroplating. This information was provided in hearings requested by interested parties and was redisclosed to the interested parties that had requested this information and was also placed in the file for inspection by interested parties.
- (59) Two sampled exporting producers requested more information regarding adjustments for the use of chrome in coating. The sales data provided by the Indian cooperating producer were further analysed which led to an adjustment in the normal value for difference in chrome as explained in recital 81 below. The same two exporting producers requested more clarification as to how the profitability was determined for the domestic sales of the Indian cooperating producer; whether the production costs had been reported on a PCN basis or whether average costs had been used; and whether the normal value included sales to any related companies.
- (60) All relevant information regarding the normal value were mentioned in recital 94 of the definitive Regulation. It is also specified that only domestic sales to unrelated companies were used.
- (61) These two exporting producers later argued that they had serious doubts about whether the profitability and the representativity tests were carried out in a correct way. More specifically with regard to the representativity test, these exporting producers doubted that the quantities of the domestic sales of the Indian producer were above 5 % of their export sales per the revised product groups. In regard to the representativity test it was found that in cases where the 5 % test was not met for a particular product type, domestic sales were nonetheless found to be of sufficient magnitude to provide for a proper comparison. With regard to the profitability test, it is confirmed that this was carried out on a product type basis.
- (62) With regard to the issues raised under point (c) above, i.e. why the full PCN was not used to compare normal value to export price, it became clear during the investigation that the full PCN would not be a reliable indicator. Firstly, because neither the Chinese nor the Indian authorities distinguish between the 10 CN codes used to define the product concerned as do the EU authorities. Secondly, as explained in recital 48 of the definitive Regulation, a number of parties claimed that fasteners produced by the Chinese exporting producers were standard products (mainly ranging between 4.8 and 8.8 class of resistance), which had no special characteristics regarding raw material, resistance, coating, or certification/safety related aspects; which were destined for lower-end applications (non-professional use and general distribution) as opposed to high-end applications; and did not meet strict requirements of specific end-users such as the automotive, chemical or aerospace industry.
- (63) With regard to the issues raised under point (d) above, elements of 'traceability', ISO standard 9000, unit of defective rate and other criteria such as 'hardness, bending, strength, impact toughness, friction coefficient' which were raised by two other exporting producers could not be accepted, as the companies concerned have not shown how these elements affect the price comparability between the normal value and export price.
- (64) In the absence of any specific information with regard to the lack of comparability as claimed in addition to the recommendations which had been made by the interested parties in the original investigation, and given the limited amount of further information available regarding other technical characteristics such as coating, it was concluded in the original investigation that the main factors and differences highlighted by the interested

parties themselves, in particular standard vs special and strength class constituted a sufficient basis on which to base the comparison between the normal value and export prices.

2.6. Further disclosure of information concerning the normal value on 11 July 2012

- (65) On 11 July 2012 the Commission further disclosed the reclassification of the normal value as described above and its proposed recalculation of the dumping margins on the basis explained above and requested comments.
- (66) As mentioned in recital 32 above, the Indian producer provided in its original submission a domestic sales listing ('DMSAL'), without PCNs. The only identifier of each sale was an Item Code, which was an internal code for each product, and a product description text string, for example:

M8X1,25X16 FLANGE SCREW

- (67) As explained in recitals 48 to 57 of the definitive Regulation, the Indian company provided a split of its domestic sales between standard and special fasteners using the distinction mentioned in recital 77. As a result the DMSAL was submitted as two files, 'Standard DMSAL' and 'Special DMSAL'. Those sales that could not be identified as either Standard or Special were excluded from further calculation of the normal value.
- (68) During the investigation it also became clear that the strength class of the fastener would be needed to establish the normal value. The Indian company identified the strength class per line of the 'Standard DMSAL' and 'Special DMSAL' files and these were submitted with a column labelled 'Grade' with the strength class indicated, for example:

Description	Grade
M8X1,25X16 FLANGE SCREW	8.8

- (69) The original normal value was calculated on this basis, using the split into standard/special and the strength class, as set out in the first disclosure of the implementation review on 30 May 2012.
- (70) As mentioned in recital 54, some exporting producers requested further clarifications making reference to the lack of comparison on the basis of coating, diameter and length of the fastener and argued that this might have an effect on the level of the normal value originally calculated.

- (71) In the absence of the PCN, the description text string of each transaction (after grouping together transactions with the same description text) was analysed to extract the diameter and length of the fastener sold. Taking the example above, M8 = diameter, and 16 = length. In this case therefore, this describes a screw with a diameter of 8 mm and a length of 16 mm. The 1,25 refers to the thread pitch, which was not used to classify the product concerned.
- (72) The PCN used by the Chinese exporting producers reports this data slightly differently. The screw above would have reported '080016' for diameter and length.
- (73) To ensure matching between the normal value and the export price, the Commission ranged the diameter and length into three equal bands, as set out in the second disclosure letter of 5 July 2012:

Indicator	Diameter	Length
Small	M4 to M10	0 to 100 mm
Medium	M12 to M20	100 to 200 mm
Large	M22 to M30	200 to 300 mm

- (74) A small number of sales of the Indian producer fell outside these ranges and were not used to calculate the normal value. The screw described above would therefore be reported with the revised PCN 'GSS' = strength class 8.8; small diameter; small length.
- (75) It was clear from the example above that the product description text string does not include any information on the coating used by the Indian domestic producer. The investigation file was therefore checked for any evidence of the type of coating, if any, used by the Indian producer for their sales of standard fasteners on their domestic market. Confidential evidence in the file, verified at the premises of the Indian producer, showed the use of electroplating (PCN type A) on standard fasteners on the domestic market and this was disclosed to all parties on 5 July 2012.
- #### 2.7. Comments to the information disclosure note of 11 July 2012
- (76) Several exporting producers responded to the above disclosure. As requested by those exporting producers, a hearing, chaired by the Hearing Officer for Trade DG, was held to continue the dialogue with the Commission and discuss the points raised by them. In particular the exporting producers raised the following issues:

- (a) the methodology by which the Indian producer had split its domestic sales into standard and special;
- (b) in the event that some fasteners sold to the automotive industry were considered as standard fasteners, an 'important adjustment' would be warranted;
- (c) adjustments to the normal value under Article 2(10)(b) for the indirect taxes incurred on the import of wire rod into India;
- (d) the presence of Chrome VI in the coating of the standard fasteners;
- (e) the methodology followed by the Commission where there was no matching domestic sale for a particular export transaction; and
- (f) disclosure of the product codes of the Indian producer's domestic sales.
- (77) In regard to point (a) above, the Indian producer split its domestic sales into standard and special by considering that fasteners manufactured to a customer drawing were special fasteners, whilst other sales are standard fasteners, i.e. not made to any specific or customer drawing.
- (78) In regard to point (b) above and as mentioned in a note for the file dated 13 July 2012 sent to the said interested parties following the hearing held on 11 July 2012, the Commission confirmed that in the absence of the customer names as mentioned above, the Commission refers to recital 47 above. In addition, the Commission notes that, according to the European association of fastener producers, 'in Europe, when a Customer — particularly in the Automotive Sector — does order a fastener product manufactured in accordance with a drawing, but which is as well fully in accordance with international standards (ISO, EN, DIN, AFNOR, UNI), this product is in any case considered by the Fasteners Producer as "special" product and consequently identified — within the internal classification of the Company — as "special" ... this is the "modus operandi" of all of Fasteners Producers worldwide and also in India'. The Commission is thus confident that standard fasteners destined to the automotive industry were not included in the list of standard fasteners provided during the original investigation findings. Therefore, this claim was rejected.
- (79) In regard to point (c) above, in a hearing, exporting producers raised the issue of an adjustment under Article 2(10)(b) of the basic Regulation, to take account of the duties on importation of wire rod into India which are included in the normal value, but not on the export price from China. Chinese sampled companies during the original investigation purchased wire rod manufactured in China.
- (80) The raw material imported by the Indian producer was subject to the basic customs duty (5 % of assessable value) and the Customs Education Cess (3 % of the basic customs duty value plus the CVD amount). However, according to Article 2(10)(b) of the basic Regulation, such an adjustment for indirect taxes is claimable if the import charges borne by the like product and by material physically incorporated therein, when intended for consumption on the domestic market would not be collected or would be refunded when the like product is exported to the European Union. In the absence of a claim and evidence that exports from the abovementioned exporting producers to the EU would benefit from a non-collection or refund of import charges on imports of raw materials (wire rod), the claim must be rejected. Furthermore, such an adjustment is not normally available when the exporting producer concerned, as is the case in this review, sources all its raw materials from domestic suppliers incurring therefore no import charge.
- (81) In regard to point (d) above, evidence on the original investigation file showed that the standard coating on the standard fasteners sold on the Indian domestic market contained Chrome Cr3, and therefore this matched to the PCN definition of no Chrome VI added to the coating. Dumping margins were therefore recalculated taking the most expensive chrome coating type on the export side, without an export price adjustment. Two exporting producers argued that the information on coating concerned the present situation rather than the situation in the IP. This is incorrect. Verified evidence was obtained during the verification in the course of the original investigation showing that all standard fasteners sold domestically in India were electroplated during the original IP.
- (82) In regard to point (e) above, it is confirmed that dumping margins were calculated on the basis that where there was no matching domestic sale, the export transaction would be excluded from the dumping calculation. Some parties argued that there was no basis to exclude certain export transactions in calculating the dumping margin. However, for all the sampled Chinese exporting producer significant matching between the domestic sales and exports sales was found so as to arrive at a fair representation of the sales made by the different parties.
- (83) In regard to point (f) above, the Chinese Chamber of Commerce and a Chinese exporter claimed that the Indian producer did not give good cause for not allowing the Commission to disclose specific information regarding the product codes of its domestic sales. The Commission provided as much information as possible, while respecting the confidentiality rules, through a number of notes for the file, information note made

available to all interested parties and hearings granted to the Chinese Chamber of Commerce and to all Chinese exporters who requested them. In regard to the request for disclosure of the Indian producer's product codes, the disclosure of this information will allow the other parties to calculate with a reasonable accuracy the domestic prices of the Indian producer, which should be avoided on the ground of protection of business confidential information. Failure to protect confidential information could leave the Commission to possible claims for damages and discourage companies in analogue countries whose cooperation is voluntary from cooperating in investigations. This request was therefore rejected.

2.8. *Adjustments made to the methodology used in the definitive Regulation in the calculation of normal value*

- (84) In view of the representations made by Chinese exporting producers in this review as to the definition of product types in the calculation of the normal value from India arguing that in addition to the distinction between standard vs special and strength class, the elements of diameter, length and the coating were important and the hearings and dialogue which ensued in the presence of the Hearing Officer, the data of the Indian producer was re-examined.
- (85) Following this re-examination, the Commission was able to identify the diameter and the length of the fasteners sold on the Indian domestic market. To allow a fair comparison between these fasteners and those exported from the PRC, both the diameter and length were ranged and a normal value calculated for each range. This was explained in detail in two information notes dated 5 and 11 July 2012 which were made available to all interested parties. By summarising into ranges to distinguish between the main product dimensions sold by the Indian producer, this methodology allowed for a fair comparison with the exports of the Chinese companies as requested by interested parties. Subsequently, two exporting producers argued that they did not have complete information, claiming that the classification was obscure and inappropriate and, therefore, did not have sufficient information to claim an adjustment for physical differences. However, beyond these general statements these two exporting producers did not provide any valid alternative suggestion nor substantive evidence. The claim was therefore dismissed.
- (86) EFDA claimed that using diameter and length did not reflect reality and suggested an alternative which related the two criteria in order in their view to avoid leaving out some products, without however substantiating this alternative approach. The classification proposed by the Commission did not exclude any product types (all diameter and length possible combinations were covered) and thus this claim could not be further examined.
- (87) All of the standard fasteners sold were found to be electroplated and so the normal value was calculated on a coating basis corresponding to the PCN code 'A'. Where a sampled Chinese exporting producer did not export fasteners with coating type A, the nearest coating type was used without any export price adjustment.
- (88) The strength class data, and the split between standard and special, remained unchanged.
- (89) Two exporting producers requested the intervention of the Hearing Officer for Trade DG to examine the confidential data of the Indian analogue producer and provide assurances regarding the confidential nature of its domestic sales, as well as on the question of coating of standard fasteners, the presence of chrome on coating and on the extraction of information regarding length and diameter for standard fasteners. The Hearing Officer, after examining the confidential data of the Indian analogue producer clarified the questions posed by the two exporting producers. The report of the Hearing Officer was placed in the file for inspection by interested parties.
- (90) Despite the abovementioned additional information, clarifications, hearings and dialogue held, some parties continued to claim that they lacked information to allow them to make requests for adjustments to ensure a fair comparison. The Commission provided extensive information to the parties on the product groups used in establishing normal value, as required by the Appellate Body⁽¹⁾. In addition, over an extended period of time running from 30 May until 19 July 2012, the Commission provided information and replied to all questions raised by all parties. Furthermore, an additional period of 20 days was granted to all parties to comment on the final disclosure.
- (91) The same parties argued that, contrary to the Appellate Body Report, the Commission refused to disclose information on the specific products of the Indian producer that were used in establishing the normal value without showing good cause. Article 6.5 of the ADA stipulates that information which is confidential or is provided on a confidential basis shall be treated as such by the investigating authorities. In this case, the Indian producer provided information on product types sold on the domestic market on a confidential

⁽¹⁾ Appellate Body Report: paragraph 512 which states that 'Article 2(4) obliges investigation authorities ... at a minimum to inform parties of the product groups used for purposes of the price comparison'.

basis and the company has renewed its request for confidential treatment addressed to the Commission, stating that it continues to consider that information as strictly confidential as referred to in recital 82. These parties also claimed that the Commission failed to provide a meaningful non-confidential summary of the information provided by the Indian producer as required by the Reports. However, in the continuing dialogue process and as mentioned in the recitals above, the Commission disclosed all relevant information within the limits of confidentiality to the interested parties relating to the Indian producer so that they could defend their interest.

2.9. *Determination of normal value for the exporting producers in the PRC, Normal value, Export prices, comparison*

(92) Normal value was calculated and compared to the export price as set out above. Adjustments to the export price were made to remove the price difference where Chrome VI was added to the coating on the fasteners concerned. A comparison between the two was made on an ex-works basis, as in the original investigation.

2.10. *Claims for adjustments based on the product characteristics*

(93) One exporting producer claimed an adjustment under Article 2(10)(a) of the basic Regulation for physical differences in the various types (hexagon screws, wood screws, bolts, etc.) of the product concerned. Since the exporting producer concerned does not, for reasons of confidentiality, have access to the full normal value data, the company relied on its own export prices to demonstrate the extent to which prices vary for each type of fastener.

(94) In the original investigation the comparison between normal value and export price was made by distinguishing between standard and special types of fasteners, as stated in recital 102 of the definitive Regulation, and also by identifying strength class. The full product control numbers (PCNs) were not used in this case given that the producer in the analogue country did not provide information categorised on the basis of the PCNs as requested. One of the elements of the original PCN aimed at identifying the different types of fastener according to which CN code they fell under. Given that this information was not provided by the Indian producer, this element could not be used in making the comparison in the original investigation.

(95) The information provided by the exporting producer indicated that there may be grounds to adjust for differences in the various types of fasteners. However, the methodology suggested was not considered appro-

priate, given that the company did not provide precise product type information according to CN code, as explained in recital 34, as had originally been requested. As an alternative, an examination was made of the differences in prices of the Union industry on the Union market to determine whether price differences existed between the different types of fasteners. The information provided by the Union industry had been provided in full by PCN as originally requested. This examination confirmed that prices on the EU market varied depending on the type of fastener. On this basis, it was considered appropriate to adjust the normal values to reflect these differences. As a basis for adjustment, the average price of sales by the Union industry on the Union market was valued as '1' with all individual types being given their own individual value depending on their price relationship to the average price. These values were then applied to the normal value used in the comparison with each type exported by the exporting producer.

(96) As these adjustments were made on the basis of the market value of the differences in physical characteristics on the EU market, it was considered appropriate to make similar adjustments in the calculation of the dumping margins of all exporting producers.

(97) Following the publication of the General Disclosure document the CCME and a Chinese exporter argued that the Commission was still violating of Articles 2.4, 6.2 and 6.4 of the WTO Anti-Dumping Agreement by not providing timely information on the basis of which the export price and normal value was compared and invited the Commission to disclose comprehensive information on the normal value product types used in order to meet its obligation to provide the opportunities to the Chinese exporting producers to ensure the defence of their interest, present their case on a fully informed basis and ensure a fair comparison between export prices and the normal value. The said parties therefore requested the Commission to re-examine the following:

(a) full disclosure of the normal value product types;

(b) ensure that standard fasteners produced by the Chinese exporting producers are not compared to fasteners manufactured by the analogue producer for use in high-end applications;

(c) provide evidence on how to substantiate requests for adjustments;

- (d) provide information on how certain adjustments were made; and
- (e) the obligation of the EU not to disregard any export transactions.
- (98) With regard to point (a), in the light of the information made available through the information notes dated 30 May, 11 July and 13 July 2012, the General Disclosure document sent on 31 July 2012 and in particular recitals 77 to 96, and the hearings held in the course of the consultation process, it is considered that all information which could be disclosed within the limits of the requirements regarding confidentiality has been provided to interested parties.
- (99) With regard to point (b) regarding the need to ensure that standard fasteners produced by the Chinese exporting producers are not compared to fasteners manufactured by the analogue producer for use in high-end applications, this aspect has been addressed in recital 78 above. In the absence of any new evidence, and faced with mere allegations by the said parties about the possible presence of fasteners destined to high-end applications other than the automotive industry, the Commission considers that the information available in the file is sufficiently reliable to ensure that only standard fasteners were used for the determination of the normal value used for the comparison with the export prices of the said Chinese exporter.
- (100) With regard to point (c) and the allegations according to which the Commission failed to provide information on how Chinese exporting producers could substantiate requests for adjustments regarding elements of 'traceability', ISO standard 9000, unit of defective rate and other criteria such as 'hardness, bending, strength, impact toughness, friction coefficient' (see recital 63 above) and duties on the importation costs (see recitals 79 and 80 above), the Commission notes the following. Firstly, it is recalled that these elements have been raised by the parties without providing any further details. During a hearing held by the Hearing Officer on 11 July 2012, the Commission invited the parties to provide additional information regarding the abovementioned issues, but no additional information was provided. With regard to the request for adjustments on export prices to take into account the duties on the importation of wire rod into India and, in general, cheaper access to raw materials for Chinese exporting producers, the Commission explained in detail in recital 80 the reason why this adjustment could not be accepted. Moreover, as set out in recital 63 of the original Regulation, the cost of the major raw material — steel wire rod — did not substantially reflect market values. It was found that the prices of the steel wire rods charged on the domestic market were significantly lower than those charged on other markets. Therefore, these distorted prices cannot be used as a basis for adjustment as requested by the said parties. In these circumstances, the Commission fails to see which additional information, in the view of the Chinese Chamber of Commerce and the exporting producer, could be provided to further substantiate these two requests for adjustments.
- (101) With regard to point (d) it is recalled that information regarding the 'normal value types of the EU producers and their price levels, as well as the impact of the resulting adjustments on the normal value types of the analogue producer' are confidential and cannot be disclosed. The Chinese Chamber of Commerce and one Chinese exporting producer requested further clarifications on how the adjustments for the price difference of coating has been done. However, as indicated in recital 92 above, it should be noted that in the specific disclosure document, the Commission indicated which exported product types have been adjusted, thus allowing the parties concerned to understand how the adjustment was made.
- (102) With regard to point (e) and the alleged need to take into account all comparable export transactions in the dumping calculation in order to ensure a fair price comparison pursuant to Article 2.4.2 of the WTO Anti-Dumping Agreement, the Commission notes that it is precisely following the request and suggestions made by the said parties, that the normal value used for the determination of dumping margins was adjusted. The methodology used was explained in recitals 93 to 96 above and the reasons for expressing the amount of dumping found as a percentage of those export transactions used in calculating the amount of dumping outlined in recitals 107 and 108 below are in full compliance with Article 2.4.2 of the WTO Anti-Dumping Agreement, which refers to comparable export transactions. In this case, all comparable transactions (by product types) have been used for the comparison. Therefore, it was reasonable to express the amount of dumping found as a percentage of those export transactions used in calculating the amount of dumping.
- (103) Following the general disclosure, two Chinese exporting producers reiterated that adjustments should be made for alleged differences in efficiency of consumption of the raw material and easier access to raw material, more efficient electricity consumption and lower productivity per employee. It is recalled that none of the Chinese exporting producers received MET in the original investigation and their cost structure cannot be considered as reflecting market values that can be used as a basis for adjustments in particular with regard to access to raw materials. In addition, it should be noted that the production processes existing in the PRC were found to be comparable to the Indian producer's and the alleged differences were found to be very minor. In this case, the Indian producer was found to be competing with many other producers on the Indian domestic market, it is

considered that its prices were fully reflecting the situation in the domestic market. As mentioned in recital 41 above, a surrogate of the costs and prices of producers in functioning market economies had to be used for the purpose of establishing the normal value.

(104) The same two Chinese exporting producers argued that in summarising the data on diameter and length into ranges, the Commission should not refer to ranges but use the actual figures for length and diameter to carry out the comparison. Firstly, as mentioned in recital 70 above, the Commission agreed following a hearing held on 26 June 2012 with the same parties to range the diameter and length in order to take into account the impact of the physical characteristics on prices. The said parties themselves indicated some possible ranges, the Commission however, indicated during the hearing that these proposed ranges should be revised in order to ensure the matching of all exported types to closely resembling types of the Indian producer. Secondly, the said parties stated in a presentation made during a hearing held on 3 July 2012 as an example, that the

diameter would have a small impact in terms of unit consumption of raw material. Therefore, this claim was rejected.

2.11. Dumping margins

(105) The dumping margins were established on the basis of a comparison of a weighted average normal value with a weighted average export price.

(106) The definitive dumping margin, expressed as a percentage of the CIF import price at the Union border, duty unpaid, for the exporting producer subject to this review is the following:

Bulten Fasteners (China) Co., Ltd	0,0 %
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(107) The revised definitive dumping margins, expressed as a percentage of the CIF import price at the Union border, duty unpaid, are as follows:

Exporting producer in the PRC	Existing dumping margin (%)	Revised dumping margin (%)
Biao Wu Tensile Fasteners Co., Ltd	69,9 %	43,4 %
Kunshan Chenghe Standard Components Co., Ltd	93,2 %	63,7 %
Ningbo Jinding Fastener Co., Ltd	74,5 %	64,3 %
Ningbo Yonghong Fasteners Co., Ltd	105,3 %	69,7 %
Changshu City Standard Parts Factory and Changshu British Shanghai International Fastener Co., Ltd	63,1 %	38,3 %
CELO Suzhou Precision Fasteners Co., Ltd	0 %	0 %
Golden Horse (Dong Guan) Metal Manufactory Co., Ltd	26,5 %	22,9 %
Yantai Agrati Fasteners Co., Ltd	0 %	0 %
Cooperating exporting producers not selected to form part of the sample	78,1 %	54,1 %
All other companies	115,4 %	74,1 %

(108) One exporting producer argued that in calculating its dumping margin, the total amount of dumping found should be expressed as a percentage of the total CIF value of all export transactions and not as a percentage of those export transactions used in calculating the amount of dumping. To do otherwise would, in this company's opinion, amount to a presumption of dumping for those export transactions not used in the dumping determination.

(109) A comparison between export price and normal value was made on a weighted average basis only for those types exported by the Chinese exporting producer for which a matching type was produced and sold by the Indian producer. This was considered to be the most reliable basis for establishing the level of dumping, if any, of this exporting producer; to attempt to match all other exported types to closely resembling types of the Indian producer would have resulted in inaccurate findings. On this basis, it is correct to express the amount of dumping found as a percentage of those export transactions used in calculating the amount of dumping — this finding is considered to be representative for all types exported. The same approach was used in calculating the dumping margins of the other exporting producers.

3. Definition of the Union industry

- (110) As indicated in the Notice of Initiation, the Commission reassessed the definition of the Union industry, in order to take into account the recommendations of the DSB Reports, suggesting that the EU had acted inconsistently with Article 4.1 of the WTO Anti-Dumping Agreement by excluding from the Union industry definition those producers unwilling to be included in the sample and by considering that the threshold of 25 % enshrined in Article 4(1) of the basic Regulation automatically represented a 'major proportion' of the total Union production of the product concerned. In paragraph 430 of the report of the Appellate Body issued on 15 July 2011, it is acknowledged that the 'fragmented nature of the fasteners industry, however, might have permitted such a low proportion due to the impracticability of obtaining more information, provided that the process with which the Commission defined the industry did not give rise to a material risk of distortion. [...] by limiting the domestic industry definition to those producers willing to be part of the sample, the Commission **excluded producers that provided relevant information.**' (emphasis added). It is these latter producers which are now being included into the definition of Union industry.
- (111) In the original investigation it was found that the production of the Union producers that agreed to be included in the sample and fully cooperated in the original investigation represented 27,0 % of the total production of the product concerned in the Union. It was therefore considered that these companies constituted the Union industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.
- (112) Following the conclusions of the DSB Reports and based on all valid submissions received from all EU producers who had come forward within the deadline laid down in paragraph 6(b)(i) of the Notice of Initiation of an anti-dumping proceeding concerning imports of certain iron or steel fasteners originating in the People's Republic of China ⁽¹⁾, and regardless of whether they indicated that they were prepared to be part of the sample, the Commission recalculated that the Union industry actually represented 36,3 % of the total production of the product concerned in the Union in 2006.
- (113) Having reviewed the definition of the Union industry, the Commission ascertained whether the percentage of production of fasteners of that industry out of the total estimated production represented a major proportion in the sense of Article 4.1 of the WTO Anti-Dumping Agreement.
- (114) As mentioned in recital 112 of the definitive Regulation, the investigation established that the like product is manufactured by a high number of producers in the Union, estimated at over 300 mostly small and medium-sized enterprises ('SMEs') but including a few larger companies or groups of companies. At the time of initiation of the original investigation, the Commission contacted each of these known producers and asked them to participate in the investigation and provide certain information on their operations. Neither the Notice of Initiation published upon initiation of the original investigation nor the cover letter sent on the day of initiation to all known EU producers, made reference to the fact that the information submitted by EU producers who did not wish to cooperate would be disregarded.
- (115) As mentioned, most of the EU fasteners producers are small, if not, micro enterprises (family businesses) that typically have limited resources including financial and personnel resources, are not members of national or EU associations which could represent them during the investigation and, as is often the case for SMEs, have no resources to engage specialised trade lawyers and accountants. Small companies also have strong concerns with regard to the protection of their confidential data in the course of such investigations, which they consider as vital. Nevertheless, a good number of producers came forward (63 EU producers in total) and provided the required information. It should be noted that these producers consisted of both SMEs and larger companies which were spread throughout the EU. In light of the foregoing, in view of the specific circumstance of this case, these producers, which represented 36,3 % of the total production of the product concerned in the EU, can be considered to constitute a major proportion of the total Union industry and consequently within the meaning of Article 4.1 of the WTO Anti-Dumping Agreement. Furthermore, as mentioned, since all the largest known producers in the EU came forward upon initiation, within the deadline laid down in the original Notice of Initiation, the selected sample in the original investigation can be considered as representative, even after the inclusion of a further 18 EU producers in the definition of the Union industry.
- (116) The Chinese Chamber of Commerce argued that the Commission could not limit itself to use the data received from the EU producers that came forward within the deadline mentioned in recital 112 above as certain EU producers may have chosen not to manifest themselves since they were not willing to form part of the sample and therefore knew that their response would be disregarded. The association of Chinese exporters requested the Commission 'to start the whole selection process anew and contact all EU producers without referring to the fact that the producers must be willing

⁽¹⁾ OJ C 267, 9.11.2007, p. 31.

to form part of the sample' ⁽¹⁾. However, in the light of the above, it was considered that there was no need to reopen the process of selecting a final sample, as the largest known EU producers came forward at initiation stage. Following the disclosure, the Chinese Chamber of Commerce reiterated that it could not be excluded that a large number of producers simply did not respond to the sampling questionnaire 'precisely because they know that their unwillingness to form part of the sample would automatically result in their exclusion from the domestic industry'. It should be noted that the same arguments has been put forward by Chinese exporting producers and European importers during the original investigation who were arguing against the existence of standing. As explained in recital 26 of the definitive Regulation, the Commission contacted a significant number of Union producers after the initiation of the proceeding and only a few of them replied. It should be noted that no reference was made to their possible inclusion or not in the final sampling. In fact, the possible selection of Union producers in the final sample was irrelevant in their decision to come forward during the proceeding, as their decision was motivated by other factors, as those highlighted in recital 115 above. Therefore, the request addressed to the Commission that the Commission should conduct the injury assessment anew was rejected.

4. Situation of the Union industry

- (117) Following the Reports, the injury findings established in the original investigation were re-examined at the level of the Union industry as defined according to recital 114 above, for trends concerning production, production capacity, capacity utilisation, sales, unit prices, market share, employment and productivity, i.e. from the information collected with regard to the 6 sampled producers and the further 57 producers now forming part of the Union industry. With respect to other injury factors found for the sampled EU industry, since information regarding stocks, profitability, cash flow, investments, return on investments, ability to raise capital and wages were obtained from the verified questionnaire responses of the 6 sampled producers, the findings are therefore confirmed in the review.

4.1. Production, production capacity and capacity utilisation

- (118) The evolution of production, production capacity and capacity utilisation for the Union industry based on the whole information available (see recital 112) was the following:

Total Union Industry	2003	2004	2005	2006	IP
Production in volume (MT)	489 993	524 571	493 924	519 880	537 877
<i>Index</i>	100	107	100	106	110
Production Capacity (MT)	859 766	881 454	902 741	919 485	944 817
<i>Index</i>	100	102	105	107	110
Capacity utilisation (%)	57 %	60 %	55 %	57 %	57 %

- (119) Despite the significant increase in demand of 29 % between 2004 and the IP, the Union industry's production volume fluctuated throughout the period considered and was 9 % higher in the IP compared to 2003 to be compared with 6 % in the original investigation, i.e. still significantly lower than the increase in demand of 29 %.
- (120) With regard to production capacity and capacity utilisation, the conclusions reached in the original investigation, albeit on a different set of data, were confirmed (see recitals 130 to 133 of the definitive Regulation).

4.2. Sales, market share, growth and average unit prices in the Union

- (121) The figures below represent the Union industry's sales to independent customers in the Union based (in volume and value) on the whole information available:

⁽¹⁾ 'Review of the Anti-Dumping Measures in Force on Imports of Fasteners Originating in the PRC Hearing', Hearing organised by the Hearing Officer with the Chinese Fasteners Industry Association (CCME), 11 July 2012.

Total Union industry	2003	2004	2005	2006	IP
Sales of the Union industry in the Union (thousand EUR)	990 540	1 050 039	1 102 684	1 198 794	1 289 940
<i>Index</i>	100	106	111	121	130
Sales of the Union industry in the Union (MT)	445 769	494 307	468 892	506 752	507 750
<i>Index</i>	100	111	105	114	114
Unit selling price of the Union industry in the Union (EUR/MT)	2 222	2 124	2 351	2 365	2 540
<i>Index</i>	100	96	106	106	114
Market share of Union Industry (%)	N/A	28 %	27 %	24 %	22 %
<i>Index</i>	N/A	100	96	86	80

- (122) The revised data reported in the above table confirms the findings outlined in recitals 137 to 140 of the definitive Regulation in so far as all the injury trends are confirmed. Union industry's sales volumes increased by 14 % during the period considered, instead of 12 % found in the original investigation and by 30 % in value, instead of 21 %. Trends are in fact found to be very similar as in the original investigation. The same drop in sales volumes between 2004 and 2005 confirms the conclusion mentioned in recital 139 of the definitive Regulation that the Union industry was unable to take advantage of the increase in Union consumption and thus the market share of the Union producers declined by 20 % in less than three years.

4.3. Employment and productivity

- (123) The evolution of employment and productivity in the Union industry was as follows:

Total Union industry	2003	2004	2005	2006	IP
Number of employees	7 530	8 340	8 559	8 549	8 581
<i>Index</i>	100	111	114	114	114
Productivity (MT/employee)	65	63	58	61	63
<i>Index</i>	100	97	89	93	96

4.4. Conclusion on injury

- (124) In the light of the above, the conclusions mentioned in recitals 153 to 161 of the definitive Regulation were confirmed.

5. Volume of dumped imports

- (125) As indicated in the Notice of Initiation, the Commission took into account the conclusions of the DSB Reports suggesting that the EU acted inconsistently with Articles 3.1 and 3.2 of the WTO Anti-Dumping Agreement with respect to the consideration of the volume of dumped imports in the fasteners original investigation.

- (126) Consequently, the Commission re-examined its injury assessment in light of the fact that some exporting producers were found not to be dumping in the IP. It is recalled that in the original investigation, two Chinese exporting producers were not dumping. As mentioned in recital 105 above, one further exporting producer was found not to be dumping in this review. The total import volume from these three exporting producers accounted for only between 0,01 % and 0,40 % of total imports of the product concerned from the PRC in the IP. The injury analysis regarding the evolution of imports from the PRC which has been carried out on the basis of the volume of dumped imports excluding the non-dumped imports shows insignificant changes in the trends described in recital 121 of the definitive Regulation.

	2003	2004	2005	2006	IP
Import volumes from PRC (MT)	216 085	295 227	387 783	485 435	577 811
Index	100	137	179	225	267
Market share PRC	N/A	17 %	22 %	23 %	25 %

Source: Eurostat.

6. Causation — export performance of the Union industry

- (127) As indicated in the Notice of Initiation, the Commission reassessed its causation analysis in order to take into account the conclusions of the Reports suggesting that the EU acted inconsistently with Articles 3.1 and 3.5 of the WTO Anti-Dumping Agreement by taking into account the overall export statistical data reported by Eurostat instead of the EU industry's specific export performance.
- (128) The export performance of the Union industry was analysed in recital 175 of the definitive Regulation. It was found that exports to third countries represented only 11 % of the total Union industry's production of the like product in 2006. However, as pointed out in the DSB Reports, the data used related to exports of all producers in the Union and was based on Eurostat data and not to exports of the Union industry. Following the DSB Reports, the Commission reassessed its causation analysis by examining whether the export performance of the newly defined Union industry could have been a factor of the injury suffered. It was found that exports to third countries represented only 3,7 % of the newly defined Union industry's production of the like product in the IP, rather than 11 % as mentioned in recital 175 of the definitive Regulation. These exports increased by about 4 % between 2003 and the IP. Furthermore, these exports were consistently made at prices significantly above sales prices on the Union market.

Total Union industry	2003	2004	2005	2006	IP
Union Exports to the Rest of the World for the PC (MT)	19 599	23 613	21 098	20 967	20 400
Index	100	120	108	107	104
Union Exports to the Rest of the World for the PC (thousand EUR)	47 261	55 657	52 958	58 831	55 477
Index	100	118	112	124	117
Unit Price: (EUR/MT):	2 411	2 357	2 510	2 806	2 719

- (129) It can thus be concluded that the export performance to third countries of the Union industry was not a source of material injury. Furthermore, the final conclusion as stated in recital 184 of the definitive Regulation that the dumped imports originating in the PRC have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation is confirmed.

7. Treatment of confidential information

- (130) As indicated in the Notice of Initiation, the Commission undertook to reassess the conclusions based on the rulings of the Reports suggesting that the EU acted inconsistently with Articles 6.5 and 6.5.1 of the WTO Anti-Dumping Agreement with respect to the treatment of confidential information.
- (131) Following the Reports, the Commission invited the two relevant Union producers to provide appropriate statements of the reasons why confidential information was not susceptible of non-confidential summary. The two producers provided additional information in a non-confidential manner or, if certain information was not susceptible of summary, they stated why that was the case. The information so provided by these producers was sent to all interested parties. One association representing European Union importers argued that the information provided by the two Union producers was incomprehensible and would not allow cross-checking with data publicly available on Eurostat. In regard to this argument, it is noted that given that the information provided by these two producers is company-specific information, it is unlikely that any public sources exist which would allow for cross-checking.
- (132) The Chinese Chamber of Commerce and EFDA argued that the additional information provided was incomplete in so far as some elements in Tables 22, 23 and 32 to 34 were still missing and therefore not in accordance with the way the DSB findings should have been applied. No other comments were received following the disclosure of this additional non-confidential information. Since Tables 32 to 34 contain details of the sales and the costs incurred by the company concerned, this information which is by nature confidential was summarised as to provide some information regarding its content, without disclosing confidential information. The other information mentioned as missing in Table 22 (types of raw materials supplied and volumes of raw material purchased) and Table 23 (only indexed figures of pre-tax profit margin are provided and no separate figures for sales inside the EU and outside), was resubmitted by the Union company concerned in order to allow a good understanding of the information and the response was added to the file for inspection by interested parties. In conclusion, it is considered that the recommendations of the Reports on this matter were fully complied with.
- (133) In addition, EFDA claimed that Table 24 provided by the Union producer did not allow the conclusion that this company had suffered significant injury as it showed steady increases in profit, utilisation and output.

However, the Commission made once again the injury assessment including data for the six sampled EU producers and concluded that material injury was suffered as confirmed in recital 124 above. The claim is therefore unfounded.

- (134) Finally, as mentioned in point 6 of the Notice of Initiation, following the finding regarding Articles 6.5 and 6.5.1 of the WTO Anti-Dumping Agreement with respect to the treatment of confidential information, on 30 May 2012, the Commission disclosed the Eurostat data on total EU production of fasteners as originally presented.

8. Other recommendations and rulings

- (135) As mentioned in the Notice, the Commission undertook to consider comments by parties in the fasteners investigation who claim to have been adversely affected by the disclosure of findings with regard to market economy treatment or with respect to any other DSB recommendations or rulings. The Commission granted IT to one company in accordance with the recommendations concerning Article 9(5) of the basic Regulation in the DSB reports.

F. DISCLOSURE

- (136) All parties were informed of the abovementioned findings. They were also granted a period to submit comments and claims subsequent to disclosure. Several comments were received following disclosure.
- (137) It follows from the above that the anti-dumping measures applicable to imports of certain iron or steel fasteners originating in the People's Republic of China imposed by Regulation (EC) No 91/2009 should be maintained and that imports from Bulten Fasteners China should be made subject to a duty of 0 %.

G. CONCLUSION

- (138) On the basis of the above reassessment, it is concluded that the injurious dumping determined in the original investigation is confirmed. However, one exporting producer was granted IT in accordance with the recommendations concerning Article 9(5) of the basic Regulation in the DSB reports. Therefore, Article 1(2) of the definitive Regulation should be amended accordingly. The same article should also be amended to take account of the revised anti-dumping duties calculated for some of the companies listed in the table in Article 1(2) of the definitive Regulation as below:

Exporting producer in the PRC	Dumping margin	Injury margin	Definitive measures
Biao Wu Tensile Fasteners Co., Ltd	43,4 %	99,9 %	43,4 %
Kunshan Chenghe Standard Components Co., Ltd	63,7 %	79,5 %	63,7 %
Ningbo Jinding Fastener Co., Ltd	64,3 %	64,4 %	64,3 %
Ningbo Yonghong Fasteners Co., Ltd	69,7 %	78,3 %	69,7 %
Changshu City Standard Parts Factory and Changshu British Shanghai International Fastener Co., Ltd	38,3 %	65,3 %	38,3 %
CELO Suzhou Precision Fasteners Co., Ltd	0,0 %	0,3 %	0,0 %
Golden Horse (Dong Guan) Metal Manufactory Co., Ltd	22,9 %	133,2 %	22,9 %
Yantai Agrati Fasteners Co., Ltd	0,0 %	0,0 %	0,0 %
Cooperating exporting producers not selected to form part of the sample	54,1 %	77,5 %	54,1 %
All other companies	74,1 %	85,0 %	74,1 %

HAS ADOPTED THIS REGULATION:

Article 1

The table indicating the rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products manufactured by the companies listed in Article 1(2) of Regulation (EC) No 91/2009 is replaced by the following table:

Company	Duty (%)	TARIC additional code
Biao Wu Tensile Fasteners Co., Ltd, Shanghai	43,4 %	A924
CELO Suzhou Precision Fasteners Co., Ltd, Suzhou	0,0 %	A918
Changshu City Standard Parts Factory and Changshu British Shanghai International Fastener Co., Ltd, Changshu	38,3 %	A919
Golden Horse (Dong Guan) Metal Manufactory Co., Ltd, Dongguan City	22,9 %	A920
Kunshan Chenghe Standard Components Co., Ltd, Kunshan	63,7 %	A921
Ningbo Jinding Fastener Co., Ltd, Ningbo City	64,3 %	A922
Ningbo Yonghong Fasteners Co., Ltd, Jiangshan Town	69,7 %	A923
Yantai Agrati Fasteners Co., Ltd, Yantai	0,0 %	A925
Bulten Fasteners (China) Co., Ltd, Beijing	0,0 %	A997
Companies listed in Annex I	54,1 %	A928
All other companies	74,1 %	A999'

Article 2

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 all Member States.

Done at Luxembourg, 4 October 2012.

For the Council
The President
S. CHARALAMBOUS
