

COMMISSION REGULATION (EC) No 618/2000

of 22 March 2000

imposing a provisional countervailing duty on imports of stainless steel fasteners originating in Malaysia and the Philippines

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community.

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾, and in particular Article 12 thereof,

After consulting, the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) In June 1999 the Commission announced by a notice (hereinafter referred to as 'notice of initiation') published in the *Official Journal of the European Communities* ⁽²⁾ the initiation of an anti-subsidy proceeding with regard to imports into the Community of stainless steel fasteners (hereinafter referred to as 'SSF') originating in Malaysia, Singapore, Thailand and the Philippines and commenced an investigation.
- (2) The proceeding was initiated as a result of a complaint lodged by the European Industrial Fasteners Institute (EIFI) on behalf of Community producers representing a major proportion of Community production of SSF. The complaint contained evidence of subsidisation of the said product, and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) Prior to the initiation of the proceeding and in accordance with Article 10(9) of Regulation (EC) No 2026/97 (hereinafter referred to as the 'basic Regulation'), the Commission notified to the Governments of Malaysia, Singapore, Thailand and the Philippines that it had received a properly documented complaint alleging that subsidised imports of SSF originating in Malaysia, Singapore, Thailand and the Philippines are causing material injury to the Community industry. These Governments were invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. The Governments of Malaysia and the Philippines accepted the offers of consultation which were held with the Commission on 5 June 1999 with the Government of Malaysia and on 7 June 1999 with the Government of the Philippines. Due note was taken of the comments made in regard to the allegations contained in the

complaint regarding subsidised imports and material injury being suffered by the Community industry.

- (4) The Commission officially advised the Community producers, exporting producers, importers, raw material suppliers, users known to be concerned and the representatives of the exporting countries of the initiation of the proceeding. The parties concerned had the opportunity to make their views known in writing and to request a hearing.
- (5) The Commission sent questionnaires to all parties known to be concerned and received replies from the Governments of Malaysia, Singapore, Thailand and the Philippines, from the complaining Community producers, from seven raw material suppliers and from two exporting producers in Malaysia, one in Singapore, four in Thailand and two in the Philippines.
- (6) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination and carried out investigations at the premises of the following companies and government institutions:
 - (a) *Complaining Community producers*
 - Bulnava srl, Milano (Italy)
 - Inox Viti snc di Cattinori Enrico & Bruno, Grumello Del Monte (Italy)
 - Tevi (Trafilerie e Viterie Italiane srl), Ponte Dell'Olio (Italy)
 - Torbesa (Tornilleria del Besos, SA), Barcelona (Spain)
 - Ugivis SA, Belley (France)
 - (b) *Government of Malaysia (GOM)*
 - Bank Negara Malaysia, Kuala Lumpur
 - Customs and Excise Department, Kuala Lumpur
 - Inland Revenue Board, Kuala Lumpur
 - Local Customs Offices, Ipoh and Penang
 - Malaysia External Trade Development Corporation, Kuala Lumpur
 - Malaysian Industrial Development Authority, Kuala Lumpur
 - Ministry of International Trade and Industry, Kuala Lumpur
 - Ministry of Taxation, Kuala Lumpur
 - (c) *Exporting producers in Malaysia*
 - Tigges Stainless Steel Fasteners Sdn. Bhd., Ipoh
 - Tong Heer Fasteners Co. Sdn. Bhd., Penang

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

⁽²⁾ OJ C 181, 26.6.1999, p. 29.

- (d) *Government of Singapore (GOS)*
 — Central Bank of Singapore
 — Economic Development Board, Ministry of Trade and Industry
 — Ministry of Taxation
 — Trade Development Board, Ministry of Trade and Industry
- (e) *Exporting producer in Singapore*
 — Szu-I Fasteners, Ltd, Singapore
- (f) *Government of Thailand (GOT)*
 — Board of Investment, Bangkok
 — Customs Department, Bangkok, Samutprakarn
 — Department of Foreign Trade, Bangkok
 — EAGAT and Provincial Electricity Authority, Bangkok
 — Excise Department, Bangkok
 — Industrial Estate Authority of Thailand, Bangkok, Samutprakarn
 — Industrial Finance Corporation, Bangkok
 — Revenue Department, Bangkok
- (g) *Exporting producers in Thailand*
 — A.B.P. Stainless Fastener Co., Ltd, Ayutthaya
 — Chiao Pao Metal Co., Ltd (related company of Dura Fasteners Co., Ltd), Samutprakarn
 — Dura Fasteners Co., Ltd, Samutprakarn
 — Taiyo Fastener (Thailand) Co., Ltd (related company of Dura Fasteners Co., Ltd), Samutprakarn
- (h) *Government of the Philippines (GOP)*
 — Bureau of Custom, Manila
 — Bureau of Internal Revenue, Manila
 — Bureau of Investment, Manila
 — Department of Finance, Manila
 — Philippine Economic Zone Authority, Manila, Cavite
- (k) *Exporting producers in the Philippines*
 — Lu Chu Shin Yee Works (Philippines), Ltd, Cavite
 — Pilshin Works Corporation, (related company of Lu Chu Shin Yee Works Ltd), Cavite.
- (7) The investigation of subsidisation covered the period from 1 April 1998 to 31 March 1999 (hereinafter referred to as the 'investigation period' or 'IP'). The examination of injury covered the period from 1 January 1996 to 31 March 1999 (hereinafter referred to as the 'period considered').
- (8) For the purpose of this investigation, and in accordance with established policy and practice in this area, in case a company received a benefit under a given scheme below 0,01 %, it is considered that such a company did not benefit from such scheme. In the case of the Philippines, which is a developing country included in the list contained in Annex VII of the WTO Agreement on Subsidies and Countervailing Measures, this threshold is raised to 0,3 %, unless the subsidisation level of the programmes below that threshold collectively exceeds 0,6 %. Furthermore, the benefit received by the exporting companies is expressed as a percentage of the denominator applicable to the subsidy scheme in ques-

tion, in accordance with Article 7 of the basic Regulation.

- (9) Definitive anti-dumping measures are currently in force concerning imports of SSF originating, inter alia, in Malaysia and Thailand by means of Council Regulation (EC) No 393/98⁽³⁾. An anti-absorption investigation concerning these measures was initiated on 6 May 1999⁽⁴⁾.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (10) The product under consideration is stainless steel fasteners, i.e. bolts, nuts and screws of stainless steel which are used to mechanically join two or more elements. The products described above fall within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30.
- (11) Screws are fastener products with an external threading on the shank. They can either be used without any other part and fixed into wood (wood screws) or metal sheets (self-tapping screws) or be combined with a nut and washers to form a bolt. Screws may have a variety of head shapes (cup, socket, flat, hexagonal. etc.), shank lengths and diameters. The shank may be totally or partially threaded.
- (12) SSF are used by a variety of user industries and in a wide range of final applications where resistance to both atmospheric and chemical corrosion is necessary and where hygiene may also be essential, such as equipment for processing and storing food products, plants in the chemical industry, manufacture of medical equipment, public lighting equipment, shipbuilding, etc.
- (13) There are many types of SSF, each one being defined by its specific physical and technical characteristics and by the grade of stainless steel from which it is made. However, all the products under consideration which fall under the general definition of fasteners have the same basic physical characteristics and the same uses and are distributed via the same distribution channels. No clear

⁽³⁾ OJ L 50, 20.2.1998, p. 1.

⁽⁴⁾ OJ C 125, 6.5.1999, p. 12.

dividing line exists between the many types of SSF. They are consequently considered as forming one single category of product for the purpose of the present investigation. It was however decided that, for technical investigation requirements, it would be appropriate to divide the product under consideration into 'types' and to gather and handle the data collected on the basis of those types. To this end, five criteria were considered ⁽⁵⁾. Each combination of these criteria, which is referred to as 'product control number' (hereafter 'PCN'), corresponds to a specific type of SSF.

- (14) In the course of the investigation, it was alleged that nuts (CN code 7318 16 30) should be excluded from the scope of the investigation given that no production of nuts existed in the Community. It should be noted, however, that the fact that a specific product type would not or no longer be produced by the Community industry is not in itself sufficient to determine whether it should be excluded from the scope of the anti-subsidy proceeding. The Commission found, in any event, that although a sizeable proportion of the Community consumption of nuts was imported, in particular from the countries concerned, the Community industry had also some production of nuts.
- (15) The part of the Community industry which has maintained a capacity for production of nuts may increase its production of nuts once a reasonable price level has been re-established on the Community market. In these circumstances it was not considered justifiable to remove nuts from the scope of the investigation.

2. Like product

- (16) The Commission found that SSF produced and sold on the respective domestic markets in Malaysia, Singapore, Thailand and the Philippines, and those exported to the Community from the countries concerned as well as those produced and sold by the Community industry in the Community market have the same physical characteristics and uses. It was therefore concluded that all are like products within the meaning of Article 1(5) of the basic Regulation.

C. SUBSIDIES

I. MALAYSIA

1. Introduction

- (17) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following alleged subsidy schemes were investigated:

⁽⁵⁾ These criteria are the following: (1) CN code; (2) type of raw material used; (3) DIN number, i.e. code number under which the product is classified within the 'DIN' nomenclature; (4) diameter in millimetres; (5) length in millimetres.

1. double deduction of business expenses:
 - (a) promotion of exports
 - (b) export credit premiums
 - (c) approved training
2. double deduction of insurance premiums for exporters
3. pioneer status
4. tax exemption on the value of increased exports
5. sales tax exemption on raw materials, machinery and equipment
6. export credit refinancing
7. industrial building allowance
8. import duty exemption
9. drawback of excise duties and sales tax
10. incentives for strategic projects
11. reinvestment allowance
12. capital allowance on capital expenditure in the provision of plant and machinery
13. infrastructure allowance
14. incentives for the promotion of Malaysian brand names.

2. Subsidy programmes that have been used by the exporting producers

Double deduction of business expenses for the promotion of exports

A. Legal basis

- (18) This programme is regulated by Section 41 of the Promotion of Investment Act (Act 327) of 1986 and Rule 4(2) of the Income Tax Rules of 1986, Chapter on the Promotion of Exports.

B. Eligibility

- (19) The double deduction is available to Malaysian manufacturing or agricultural companies, in respect of expenses incurred for the promotion of Malaysian products abroad. In order to obtain the benefit of the double deduction of expenses, a company has to exhibit Malaysian made products in an international trade fair which is recognised by the Malaysian authorities, and thereafter submit an application.

C. Amount

- (20) Any eligible company which incurred eligible expenses is allowed to deduct the double of the expenses from its income tax. In case the company is loss-making, the benefit may be carried over during the next four years. There is no fixed rate of deduction or a minimum or maximum amount.

D. Practical implementation

- (21) In order to obtain the benefit, a company makes a claim by completing an application form with the Ministry of International Trade and Industry (MITI). The applicant has to submit a cover letter, space rental invoice, photocopy of trade fair brochure and a letter from the Malaysian Trade Development Corporation. The letter of approval from MITI is submitted with the company's application to the inland revenue. The deduction from income tax can be claimed in the year following the fiscal year in which the trade fair took place.

E. Countervailability

- (22) The scheme constitutes a subsidy as the financial contribution by the Government of Malaysia (GOM) in the form of double deduction of expenses confers a benefit upon exporting producers i.e. a reduced tax liability.
- (23) The scheme constitutes a countervailable subsidy in the sense of Article 3(4)(a) of the basic Regulation. The double deduction constitutes a subsidy which is contingent upon export performance since the programme is available only with regard to expenses incurred in marketing products for export.

F. Calculation of the benefit

- (24) The benefit to the exporting producers should be calculated on the basis of the effect of the double deduction of costs on the taxes payable by exporting producers during the investigation period (i.e. the difference between the amount of tax paid with the benefit of the scheme and the amount that would have been paid without the benefit of the scheme). The amount of benefit should be allocated over the export turnover during the investigation period. Since subsidies under this scheme are equivalent to one-time grants, in order to encompass the full benefit to the recipient, the amount has been adjusted by adding the average commercial interest during the investigation period, i.e. 11,5 %. This average interest rate was calculated on the basis of the monthly average lending rates by commercial banks during the investigation period.
- (25) One company benefited from this scheme and obtained a subsidy of 0,01 %.

Double deduction of insurance premiums for exporters

A. Legal basis

- (26) This programme is regulated by Subsection 154 of the Income Tax Act of 1967 and the Income Tax Rules of 1995.

B. Eligibility

- (27) The double deduction is available for Malaysian manufacturing or agricultural companies in respect of premiums payable for insurance of cargo exported by that person or company, provided that the insurer is a company incorporated in Malaysia.

C. Amount

- (28) Any eligible company which incurred eligible expenses is allowed to deduct the double of the amount of the expenses incurred from its income tax. In case the company is loss making, the benefit may be carried over during the next four years. There is no fixed rate of deduction or a minimum or maximum amount.

D. Practical implementation

- (29) In order to obtain the benefit, a company makes a claim in its income tax return in the year of assessment after the expenditure has been incurred. Original receipts and a detailed calculation of the double expenses are to be attached to the income tax return.

E. Countervailability

- (30) The double deduction of insurance premiums for exporting producers constitutes a subsidy as there is a financial contribution by the GOM in the form of double deduction of expenses (i.e. a reduced tax liability) which confers a benefit upon exporting producers.
- (31) The scheme constitutes a countervailable subsidy in the sense of Article 3(4)(a) of the basic Regulation. The double deduction constitute a subsidy which is contingent upon export performance — and therefore deemed to be specific — since the programme is only available to exporting producers engaged in export transactions.

F. Calculation of the benefit

- (32) The benefit to the exporting producers corresponds to the effect of the double deduction of costs from the income tax payable by exporting producers during the investigation period (i.e. the difference between the amount of tax paid with the benefit of the scheme and the amount that would have been paid without the benefit of the scheme). The benefit should be allocated over the export turnover during the investigation period. Since subsidies under this scheme are equivalent to one-time grants, in order to encompass the full benefit to the recipient, the amount has been adjusted by adding the average commercial interest during the investigation period, i.e. 11,5 %.
- (33) One company benefited from this scheme and obtained a subsidy of 0,34 %.

Pioneer status**A. Legal basis**

- (34) The pioneer status or investment tax allowance was established by the Promotion of Investments Act of 1986. The first schedule to the Promotions of Investment Order of 1994 contains the list of promoted activities and promoted products. The list of promoted activities was expanded in a second schedule in 1995. The Promotion of Investments Order of 1995 contains special rules for promoted products for high technology companies.

B. Eligibility

- (35) The investment tax allowance is available to all companies producing a 'promoted' product (manufacturing sector) or engaging in a 'promoted' activity (service sector). Promoted products are products which are listed in the schedule to the Promotion of Investments Act. Pursuant to Section 4 of the Act, the Minister of International Trade and Industry 'shall from time to time determine such activities or products as he may deem fit to be promoted activities or promoted products'. According to the Act, in order to promote a certain product, the Minister will take into consideration three criteria: (a) whether the production on a commercial scale is suitable to the economic requirements or development of Malaysia; (b) favourable prospects for further development; and (c) the national and strategic requirements of Malaysia. In practice, the Action Committee on Industries, a committee composed of representatives of MITI and the Department of Treasury evaluates if the proposed product will satisfy at least two of four criteria: (a) value added; (b) local content; (c) industrial linkage; and (d) technology measures by way of an increase in the number of managerial and technical employees in the company.

C. Amount of benefit

- (36) Any company which was granted pioneer status enjoys a tax exemption on 70 % of its statutory income. These exemptions are granted for a five-year period. In principle, no extension for the benefits are given except where the Minister decides that the activity is of national and strategic importance to Malaysia. Finally, companies which produce promoted products for high technology will obtain a 100 % tax exemption for a period of 10 years.

D. Practical implementation

- (37) In order to obtain the pioneer status, a company makes an application to the Malaysian Industrial Development Authority (MIDA), an agency under the Ministry of International Trade and Industry. MIDA will verify whether the future production falls within the list of

promoted products. If a company is granted the pioneer status, it submits a claim to the Inland Revenue Board together with the annual tax return containing the calculation of the claim for the tax incentive. The company can claim the first tax exemption in the tax year following the year of commencement of production.

E. Countervailability

- (38) The tax exemptions under the Promotion of Investments Act constitute countervailable subsidies in the sense of Article 3(2)(a) of the basic Regulation. The GOM has limited the access to the subsidy to enterprises which make a promoted product. Since the GOM has made the incentive available for the production of a limited number of products, it automatically limits the access to these enterprises which produce the products as defined in the Act. The product under consideration has been listed as a promoted product.
- (39) Furthermore, the GOM has wide discretion in the designation of promoted products. The criteria i.e. the suitability to the economic development of Malaysia, favourable prospects for further development and the national and strategic requirements of Malaysia, under which products can be classified as a promoted product are vague and cannot be considered as objective criteria in the meaning of Article 3(2)(b) of the basic Regulation. In this respect, it was established that there is no further definition of these criteria.
- (40) Finally, the GOM has provided for differentiated rates of tax exemption depending on the type of promoted product. As a consequence, the GOM favours certain enterprises over other enterprises because of the production of a 'more' promoted product.

- (41) Therefore, the scheme constitutes a subsidy as the financial contribution by the GOM in the form of tax exemption confers a benefit. It is a subsidy which is specific to certain enterprises in Malaysia pursuant to Article 3(2)(a) of the basic Regulation.

F. Calculation of the benefit

- (42) The benefit to the exporting producers should be calculated on the basis of the corporate income tax exemption and the resulting tax saving that was effectively granted to the exporting producers during the investigation period. The amount of benefit should be allocated over the total turnover during the investigation period. Since subsidies under this scheme are equivalent to one-time grants, in order to encompass the full benefit to the recipient, the amount has been adjusted by adding the average commercial interest during the investigation period, i.e. 11,5 %.

(43) Although the product under consideration was de-listed as a promoted product in the last amendment to the Promotion of Investments Act, one company producing the product under consideration is still eligible to claim the tax exemption for a period of five years. One company benefited from this scheme and obtained a subsidy of 1,87 %.

Sales tax exemptions

A. Legal basis

(44) The legal basis of the scheme is found in Sections 4 and 11 of the Free Zones Act of 1990.

B. Eligibility

(45) The sales tax exemption is available for companies which are located in free zones. The exemption is given to all imported machinery, equipment and raw materials used directly in the manufacturing process for the production of finished goods destined for export. The programme is under the responsibility of the Minister of International Trade and Industry.

(46) Malaysia has a sales tax system with three different rates: 5 %, 10 % or 15 %. About 90 % of the goods are subject to a sales tax of 10 %. A few basic products such as books, food and certain types of machinery are exempted from sales tax.

C. Amount of benefit

(47) Any company meeting the criteria, enjoys a 100 % exemption of sales tax on the value of the imported goods inclusive of the import duty (if paid).

D. Practical implementation

(48) In order to obtain the benefit of this programme, a company makes an application to the State Director of Customs (From D). The application should contain the description of the goods, the country of origin and the specific function in the manufacturing process. The State Director will verify whether the imported good meets the criteria of Sections 4 and 11 of the Free Zones Act and if so, will approve the sales tax exemption.

E. Countervailability

(49) The sales tax exemption appears to constitute a subsidy pursuant to Article 2(1) of the basic Regulation since it involves a revenue foregone for the GOM. It has been advanced by the GOM that this programme falls within the criteria of footnote 1 to Article 1(1)(a)(1)(ii) of the

WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), which refers to the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption. However, exporting companies located outside the free zones do not benefit from a general sales tax exemption. As a result, the sales tax exemption programme does not appear to fulfil the criteria necessary to apply footnote 1.

(50) This programme is contingent upon export performance since it is limited to machinery, equipment and materials used directly in the manufacturing process for the production of finished goods destined for export and, in addition to, companies located in the free zones, are required to export at least 80 % of their production. As a result, the sales tax exemption constitutes a countervailable subsidy pursuant to Article 3(2)(a) and 3(4)(a) of the basic Regulation.

F. Calculation of the benefit

Raw materials

(51) The majority of products in Malaysia have a sales tax rate of 10 %, except for certain products such as books, food and certain types of machinery. The normal payable sales tax for stainless steel wires used in the production of the product under consideration is 10 %.

(52) The amount of subsidy is the difference between the amount of sales tax actually paid on raw materials and the amount of sales tax which would normally be payable (at the standard sales tax rate of 10 %) without the benefit of the exemption during the period of investigation. This amount should be allocated over the total export sales during the period of investigation. Since the benefits from sales tax exemptions are obtained regularly during the investigation period, they are equivalent to a series of grants made between the first and the last day of the investigation period. In these cases, it is normal practice to assume that an average grant he received at the mid-point of the investigation period. Hence, the interest to be added is on the whole amount of non-paid duties over a period of six months, by using the average commercial lending rate of 11,5 %.

(53) Both companies benefited from this scheme and obtained subsidies between 2,13 % and 6,71 %

Machinery and equipment

(54) The machinery used by the two companies does not belong to the types of machinery generally exempted of sales tax. The normal sales tax rate payable for machinery is 10 %.

(55) The amount of subsidy is the difference between the amount of sales tax actually paid on machinery and the amount of sales tax which would normally be payable (at the standard sales tax rate of 10 % on that machinery) without the benefit of the exemption. The benefit should be allocated over the normal lifetime of the machinery which is 10 years for this industry in Malaysia. This amount should be allocated over total export sales during the period of investigation. Since subsidies under this scheme are equivalent to one-time grants, in order to encompass the full benefit to the recipient, the amount has been adjusted by adding the average commercial interest during the investigation period. i.e. 11,5 %.

(56) Both companies benefited from this scheme and obtained subsidies between 0,03 % and 0,40 %.

Industrial Building Allowance

A. Legal basis

(57) The Industrial Building Allowance (IBA) is provided for under Schedule 3 of the Income tax Act 1967.

B. Eligibility

(58) A company is eligible for IBA if the company incurred qualifying building expenses provided that the applicant was the owner of the building and the building was in use for the purpose of the business. Pursuant to the Finance Act of 1983, the IBA is also applicable for buildings which are used as warehouses for the storage of goods for export or for storage of imported goods which will be processed and re-exported.

C. Practical implementation

(59) A company which has incurred eligible expenses can claim the IBA directly in the annual tax return. The amount of allowance claimed is verified by the Inland Revenue Board at the time of the regular tax audits.

D. Amount of benefit

(60) Pursuant to the Income Tax Act, the rates for IBA differ between constructed and purchased buildings. For constructed buildings, the rates are an initial allowance and an annual allowance of 10 % and 2 % respectively of the building expenditure. Purchased buildings are only given annual allowances equivalent to a permitted fraction of the purchase price.

E. Countervailability

(61) The standard IBA does not constitute a subsidy. Since the IBA complies with international accountancy standards on depreciation, it cannot be considered to constitute a financial contribution in the form of revenue foregone in the sense of Article 2(1)(a)(ii) of the basic

Regulation. In addition, the standard IBA forms a part of the standard depreciation practice for buildings used for production. It is applicable for the entire manufacturing and services sector without differentiating between industries. However, no assessment has been made of the 'special' IBA for warehouses for storage of goods since this IBA was not used by the exporting producers of the product under consideration.

Import Duty Exemption

A. Legal basis

(62) Pursuant to Section 11 of the Free Zones Act 1994, imported raw materials used directly in manufacturing are exempted from import duties. The same provisions allow importing machinery and equipment without the payment of import duties.

B. Eligibility

(63) In order to qualify for the import duty exemption on raw materials, machinery and equipment, a company must be located in a free zone and manufacture an approved product which is exported to a third market. It is also important to mention that any company which is located in a free zone has an obligation to export at least 80 % of its production.

C. Practical implementation

(64) As regards the imported raw materials, an application is made to the State Director of Customs using Form D which verifies whether the input can be directly used in the finished product. After approval, the imports made under this scheme are declared through Customs Form 8 to the customs authorities. The imports are registered and examined if they are in compliance with the declaration made in with the approval by the State Director of Customs. The verification of the customs department revealed that every entry of goods into the free industrial zone is verified to establish whether it constitutes an input which can be used in the production of a finished product. The imported machinery and equipment are automatically exempted.

D. Countervailability

Raw materials

(65) The import duty exemption appears to involve a subsidy pursuant to Article 2(1) of the basic Regulation. The GOM alleges that the import duty exemption does not constitute a subsidy pursuant to footnote 1 to Article 1(1)(a)(1)(ii) of the WTO Agreement on Subsidies and Countervailing Measures, which refers to the exemption of an exported product from duties or taxes borne by

the like product when destined for domestic consumption. The GOM has not been able to prove that it has in place and applies effectively a system or procedure to confirm whether raw materials imported in the free trade zone are consumed in the production of the exported products and in what amounts, as required by Annex II of the basic Regulation. The system put in place and administered by the GOM only ensures that a duty is charged on sales from the free zones to the domestic market, calculated on the basis of the duty rate applicable to the finished product. This leaves open the question of whether and to what extent the quantity of raw materials imported in a given period corresponds to the quantity incorporated in the exported finished products. Firstly, a duty charged on finished products does not necessarily, as claimed by the GOM, equal or exceed the duty paid on the corresponding amount of raw materials incorporated therein. There is no evidence that duty rates on finished products always exceed those on raw materials and moreover the result of such equation could not be predicted in case of a multi-product manufacturing process combining a plurality of inputs. Secondly, the system does not allow a proper verification of the correspondence between imported and exported quantities within the period. It fails to verify whether stocks are accumulated by the company during the investigation period, and furthermore it does not keep track of duty-free sales of goods within the export processing zone (EPZ) or between EPZs.

- (66) The incentive is therefore a subsidy since it provides a financial contribution by the GOM in the form of import duties foregone that are otherwise due and it confers a benefit on the recipient. As it is limited to companies located in certain areas and furthermore contingent upon export performance, it is specific within the meaning of Articles 3(2)(a) and 3(4)(a) of the basic Regulation.

Machinery and equipment

- (67) The incentive constitutes a subsidy under Article 2(1) of the basic Regulation, since it provides a financial contribution by the GOM in the form of import duties foregone that are otherwise due and it confers a benefit to the recipient. The incentive does not involve and exemption concerning inputs that are consumed in the production process. As it is limited to companies located in certain areas and furthermore contingent upon export performance, it is specific within the meaning of Article 3(2)(a) and 3(4)(a) of the basic Regulation.

F. Calculation of the benefit

Raw materials

- (68) The amount of subsidy is the difference between the amount of import duties actually paid on raw materials and the amount of import duties tax which would normally be payable without the benefit of the exemption during the period of investigation. This amount

should be allocated over export sales. Since the benefits from import duty exemptions are obtained regularly during the investigation period, they are equivalent to a series of grants made between the first and the last day of the investigation period. In these cases, it is normal practice to assume that an average grant be received at the mid-point of the investigation period. Hence, the interest to be added is on the whole amount of non-paid duties over a period of six months, by using the average commercial lending rates of 11,5 %.

- (69) Both companies benefited from this scheme and obtained subsidies between 1,47 % and 2,54 %

Machinery and equipment

- (70) The amount of subsidy is the difference between the amount of import duties tax actually paid on machinery and the amount of import duties which would normally be payable without the benefit of the exemption. The benefit should be allocated over the normal lifetime of the machinery which is on average 10 years in Malaysia. The amount pertaining to the investigation period should be allocated over export sales. Since subsidies under this scheme are equivalent to one-time grants, in order to encompass the full benefit to the recipient, the amount has been adjusted by adding the average commercial interest during the investigation period, i.e. 11,5 %.
- (71) Both companies benefited from this scheme and obtained subsidies between 0,03 % and 0,55 %.

Reinvestment allowance

A. Legal basis

- (72) The reinvestment allowance is given under schedule 7a of the Income Tax Act of 1967 (Act 53).

B. Eligibility

- (73) In order to qualify for the reinvestment allowance a company needs to have been in operation for at least 12 months, to have incurred capital expenditure on a factory, plant or machinery used in Malaysia for the purpose of a qualifying project and to have achieved a level of productivity as prescribed by the Minister of Finance (process efficiency standard). Subsection 8 of Act 451 defines a qualifying project as a project by a manufacturing company to expand its existing business that is approved by the Minister of Trade and Industry under the Industrial Coordination Act 1975. The reinvestment allowance is not available for companies enjoying pioneer status or receiving an investment tax credit.

C. Practical implementation

- (74) An application is made to the State Director of Taxation using a special application form in which the project is described in detail. The company also has to indicate whether an increase in productivity has occurred, whether the company is located in a promoted area and whether the process efficiency ratio for the product is positive or negative. Finally, the application has to be signed by the applicant and an external qualified auditor. When the application for reinvestment allowance is approved, the company can claim the benefit in its annual tax return. The benefit of the reinvestment allowance can be carried forward during five years.

D. Amount of benefit

- (75) The amount of benefit is normally 60 % of the eligible incurred expenses for the qualifying project which can be offset against up to 70 % of the statutory income. If the company is located in a promoted area or has achieved a prescribed level of productivity, 60 % of eligible expenses can be offset against up to 100 % of the statutory income.

E. Countervailability

- (76) The reinvestment allowance for companies non located in promoted areas does not constitute a countervailable subsidy in the sense of Article 3 of the basic Regulation. The GOM has not limited the access to the subsidy to certain enterprises and applies objective criteria in the granting of the subsidy. Since none of the exporting producers is located in promoted areas, the countervailability of this subsidy scheme for these areas has not been assessed.

3. Subsidy programmes not used by the exhorting producers

- (77) The complainant alleged that the exporting producers of the product under consideration benefited from a number of other subsidy programmes. The questionnaire response and the verification revealed that the exporting producers did not use the below listed programmes.
- double deduction of export credit premiums
 - double deduction of expenses on approved training
 - tax exemption on the value of increased exports
 - export credit refinancing
 - drawback of excise duties and sales tax
 - incentives for strategic projects
 - capital allowance on capital expenditure in the provision of plant and machinery
 - infrastructure allowance
 - incentives for the promotion of Malaysian brand names.
- (78) Therefore, the Commission has not made an assessment as regards these programmes.

4. Amount of countervailable subsidy

- (79) It was established that the level of cooperation in this proceeding has been very high. Cooperating exporting producers covered virtually all exports from Malaysia to the Community during the investigation period, as shown by the comparison of import figures provided by Eurostat with export figures supplied by the cooperating exporting producers.
- (80) The country-wide weighted average margin for subsidisation is above the applicable *de minimis* level.

(%)

	Double deductions	Pioneer status	Sales tax exemptions	Import duty exemptions	Total
Tong Heer Fasteners	0,01	1,87	7,11	2,57	11,56
Tigges Stainless Steel Fasteners	0,34	0	2,16	2,02	4,52

II. SINGAPORE

- (81) On the basis of the information contained in the complaint and in the replies to the Commission's questionnaires, the following programmes were investigated:

- double deduction for overseas investment
- double deduction for research and development
- double tax deduction scheme
- pioneer status
- investment allowance
- expansion incentive
- development and expansion incentive

- approved royalties incentive
- approved foreign loan scheme
- preferential financing scheme.

- (82) During the verification of the replies of the Government of Singapore and the exporting producer, the Commission established that none of the alleged subsidies has been used by the cooperating exporting producer. The Commission also verified whether other producers of the product under consideration exported the product under consideration. The Commission found that one other producer exported the product under consideration to the European Union. However, evidence was provided that this exporting producer did not benefit from the alleged subsidies.

- (83) For these reasons, it is considered appropriate not to make an assessment as regards the countervailability of the alleged subsidies.

III. THAILAND

1. Introduction

- (84) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission services investigated the following schemes, which allegedly involve the granting of countervailable subsidies:

- schemes available under the Investment Promotion Act:
 - exemption or reduction on duties on imports of machinery
 - exemption from corporate income tax
 - additional incentives for enterprises in special investment promotion zones
 - exemption of import duties on raw and essential materials,
- schemes available under the Industrial Estate Authority Act (IEAA):
 - import duty exemption
 - exemption of payment of surcharge under the law for promotion of investment
 - value added tax exemption
 - exemption of excise tax on machinery, equipment and spare parts,
- reduced electricity rates,
- loans at preferential interest rates.

- (85) It was established that, during the investigation period, the cooperating exporting producers availed themselves only of schemes under the IEAA.

2. Subsidy programmes used by cooperating exporting producers

- (86) It was found that one exporter benefited from import duty exemptions on imported machinery (IEAA Section 48) which are granted only to companies located in an EPZ. An EPZ is an area which, from a customs point of view, is separate from the rest of Thailand. In order to be granted permission under the IEAA to establish a factory in an EPZ, a company has to fulfil, *inter alia*, an export requirement.

- (87) This scheme was found to be a subsidy as defined under Article 2 of the basic Regulation since it involves a financial contribution by the Government in the form of import duties forgone and a benefit is thereby conferred. The use of the scheme is limited to companies located in certain zones and is therefore specific under Article

3(2)(a) of the basic Regulation. Additionally, this scheme is contingent upon export performance and is thus specific under the provisions of Article 3(4)(a) of the basic Regulation.

3. Subsidy programmes not used by the exporting producers

- (88) The Commission established that, during the investigation period, the cooperating exporters did not avail themselves of any other subsidy programmes alleged in the complaints, i.e.:

- schemes under the Investment Promotion Act
- schemes under the Industrial Estate Authority Act others than import duty exemptions
- reduced electricity tariffs
- loans at preferential rates.

4. Amount of countervailable subsidies

- (89) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers is as follows.

Company	IEAA section 48 (%)
Dura Fasteners Co., Ltd/Taiyo Fasteners (Thailand) Co., Ltd/Chiao Pao Metal Co., Ltd	0,24
A.B.P. Stainless Fastener Co., Ltd	0

- (90) It was established that the level of cooperation in this proceeding has been very high. Cooperating exporting producers covered virtually all exports from Thailand to the Community during the investigation period, as shown by the comparison of import figures provided by Eurostat with export figures supplied by the cooperating exporting producers.

- (91) The weighted average country wide margin for all the exporting producers that cooperated in the investigation is *de minimis*, i.e. under 2 %. Under these circumstances, the subsidy margin for Thailand has to be considered negligible.

IV. PHILIPPINES

1. Introduction

- (92) On the basis of the information in the complaint and of the replies to the questionnaires, the following schemes were investigated, which allegedly involve the granting of countervailable subsidies:

- schemes available under the Omnibus Investment Code (OIC):
 - income tax holiday
 - additional deduction for incremental labour expenses
 - tax credit on domestic capital equipment
 - tax credit for import duties and taxes on raw materials
 - import tax and duty exemption of raw materials
 - import tax and duty exemption on machinery
 - import duty exemption and supplies and spare parts,
 - schemes available under the Special Economic Zones Act (SEZA):
 - income tax holiday
 - exemption from national and local taxes (gross income tax or 5 % special rate)
 - tax credit for training expenses
 - additional deduction for incremental labour expenses
 - tax credit on domestic capital equipment
 - tax credit for import substitution
 - import tax and duty exemption of raw materials
 - import tax and duty exemption on machinery
 - import duty exemption on supplies and spare parts
 - exemption from wharfage dues and export tax, duty, impost and fee
 - reduced rental and construction rates.
- (93) There are currently two SSF producers in the Philippines, Lu Chu Shin Yee Works (Philippines) Ltd, incorporated in 1988 (Lu Chu) and Pilshin Works Corporation, incorporated in 1997 (Pilshin). Both are subsidiaries of a Taiwanese company, Lu Chu Shin Yee Works (Taiwan) Ltd, a company that is subject to the anti-dumping measures currently in force. They are related companies and will therefore be regarded as one company (Lu Chu/Pilshin) in the following analysis.
- (94) During the verification visits it was established that, during the investigation period, the cooperating exporting producers only availed themselves of benefits under the SEZA.

economic zones (ecozones) in the Philippines, establishing for this purpose the Philippine Economic Zone Authority (PEZA). On 17 May 1999 PEZA issued implementing rules (PEZA Rules) relating to SEZA.

(96) Ecozones are limited areas determined as such by the Government of the Philippines (GOP). They can be publicly or privately owned and/or operated. There are different types of ecozones, such as industrial estates, free trade zones, export processing zones and tourist recreational zones. As regards export processing zones, they are delimited areas which are not considered as part of the national custom territory. They are reserved for export-oriented companies.

(97) In order to benefit from PEZA incentives, companies must obtain a registration with PEZA, which includes authorisation to operate within one of the ecozones in the country. There are several types of registration, e.g. export enterprises (must export more than 50 % of their turnover. 70 % if foreign ownership is above 40 %), domestic market enterprises, free trade enterprises, pioneer enterprises and service enterprises. Registered PEZA companies become automatically eligible for the various incentives available under the SEZA. Export enterprises located in EPZ have generally the right to additional incentives.

(98) The exporting producer concerned is a PEZA registered export enterprise located in the Cavite EPZ. In the investigation period, it made use of the following schemes.

Gross income tax (5 % special rate) (Section 24 SEZA)

(99) The gross income tax (GIT) consists of an option given to companies to pay a special income tax corresponding to 5 % of the gross income and be thus exempted from payment of all national and local taxes. Lu Chu availed itself of this incentive during the investigation period.

2. Subsidy programmes that have been used by the exporting producers

General

(95) SEZA (Republic Act No 7916 (1995)) provides for the creation, operation and administration of special

A. Eligibility

(100) The GIT is available to companies registered with PEZA, except to enterprises providing certain services (e.g. custom services, freight forwarding, banking and insurance) within ecozones.

B. Practical implementation

- (101) PEZA companies may elect to apply GIT on its annual income tax return. The income tax form includes the option for the company to determine the amount due for the fiscal year by applying the special 5 % rate on gross income instead of the usual rate (33 % according to the last amendment to the Internal Revenue Code) on the company's net income. According to Rule XX of PEZA Rules, the gross income to be determined for purposes of computing the GIT refers to net revenues derived from the business within the ecozone net of a list of allowable deductions corresponding to the costs directly imputable to the production, including depreciation and financial charges associated with fixed assets.
- (102) Applicant's tax return is firstly submitted to PEZA, which verifies and states the company's entitlement to the GIT, and subsequently to the Bureau of Internal Revenue which carries out the ordinary tax review.
- (103) By opting for the GIT, the company is automatically exempted from ordinary income tax, which for years 1998 and 1999 was respectively 34 % and 33 % of net income. Moreover, the GIT incentive implies exemption from all local taxes. These taxes vary by jurisdiction and include, *inter alia*, real property, business, local franchise, professional, community taxes.

C. Countervailability

- (104) The GIT incentive constitutes a subsidy under Article 2 of the basic Regulation because it involves a financial contribution by the GOP in the form of income taxes and local taxes foregone that are otherwise due, and it confers a benefit on the recipient. Since access to this incentive is limited to companies that are authorised by the GOP to locate and operate in certain areas (ecozones), it is deemed to be specific within the meaning of Article 3(2)(a) of the basic Regulation.

D. Calculation of the subsidy amount

- (105) The benefit to Lu Chu/Pilshin has been calculated on the basis of data referring to the tax year 1998, that is the most recent period for which a tax return was available.
- (106) The benefit to Lu Chu/Pilshin is the difference between the amount of tax actually paid for the year 1998 and the amount that would have been paid at the normal rate of tax. The latter includes the national income tax at the ordinary rate of 34 % and some local taxes normally collected within the jurisdiction in which Lu Chu/Pilshin is located: community tax, real property tax and municipal licence tax. Since this subsidy is equivalent to a one-time grant, the benefit calculated in this way is

increased by the interest rate calculated over the investigation period, at the average commercial lending rate of the period. i.e. 15.1 %. Allocated over the total sales during the investigation period, the subsidy obtained by Lu Chu/Pilshin amounts to 0,58 %.

Import duty exemption on machinery, raw materials, supplies and spare parts (Sections 4(c) and 23 SEZA)

Introduciton

- (107) Rule XV of PEZA Rules provides that machinery, raw materials, supplies and spare parts brought into an EPZ by an export enterprise to be employed in its manufacturing process shall, under certain conditions, be exempted from import duties.
- (108) As explained above. EPZ are not part of the customs territory of the country. Traffic from and to the area is restricted and subject to the control of PEZA and Bureau of Customs.

Exemption on imports of machinery

A. Eligibility

- (109) Export enterprises located in an EPZ may avail themselves of this incentive.

B. Practical implementation

- (110) In order to avail itself of the import duty exemption on imported machinery, an EPZ located company must submit an application for import permit to the PEZA. Permission is granted by PEZA, upon checking that the machinery is related to the production of the company.

C. Countervailability

- (111) The incentive constitutes a subsidy under Article 2(1) of the basic Regulation, since it provides a financial contribution by the GOP in the form of import duties foregone that are otherwise due and it confers a benefit to the recipient. The incentive does not involve an exemption concerning inputs that are consumed in the production process. As it is limited to companies located in certain areas and furthermore contingent upon export performance, it is specific within the meaning of Article 3(2)(a) and 3(4)(a) of the basic Regulation.

D. Calculation of the subsidy amount

- (112) The benefit to the exporting producer, i.e. Lu Chu, has been calculated on the basis of unpaid customs duty due on imports of capital goods by spreading this

amount across a period which reflects the normal depreciation of such assets in the industry concerned. This period has been established at 10 years, which is considered to reflect the normal service life of this type of machinery in this industry in the Philippines. The amount pertaining to the investigation period should be allocated over export sales. Since subsidies under this scheme are equivalent to one-time grants, in order to encompass the full benefit to the recipient, the amount has been adjusted by adding the average commercial interest during the investigation period, i.e. 15,1 %. The resulting amount has been allocated over total exports during the investigation period, giving an amount of subsidy of 0,05 %. Since this amount of subsidy is below 0,3 %, and the Philippines is all Annex VII country, it is considered that no benefit was received by the exporting producer in accordance with recital 8 above.

Exemption on imports of raw materials

A. Eligibility

- (113) Export enterprises located in an EPZ may avail themselves of this incentive.

B. Practical implementation

- (114) Companies located in EPZ wishing to benefit from duty exemption on imported raw materials must submit an application to PEZA — including details concerning shipper, import and goods imported — in order to obtain the permit to tranship the cargo from the port of entry into the EPZ. Officials of PEZA and the Bureau of Customs cross-check the imported goods at the port of entry and make sure that they are delivered into the EPZ. PEZA keeps a company file in which it registers the individual imports.
- (115) A comparable procedure is applied when companies export their finished products. They must request an export permission from the PEZA. PEZA officials check the cargo prior to leaving the zone and make sure it is delivered as such to the port of shipment, where it will be cross-checked by the Bureau of Customs. The export is registered in the company's file kept by PEZA. In case a company wants to sell a part of its production domestically, it has to obtain authorisation by PEZA. Only authorised local sales can leave the PEZA.
- (116) According to the GOP, companies selling goods domestically are required to pay the import duty on the corresponding quantity of raw materials imported, to be calculated by PEZA and the Bureau of Customs on the basis of a pre-defined formula of manufacturing. However, the GOP did not provide any evidence on

whether and how this formula is actually established and applied.

- (117) The GOP also submitted that PEZA carries out, at regular intervals, a verification of the companies raw material stock in order to ensure that goods are re-exported within the six months. In the negative, companies are required to pay the import duty on the raw materials which have not been re-exported. However, the GOP did not provide any evidence on whether and how this verification is actually carried out.

C. Countervailability

- (118) The incentive appears to involve a subsidy as defined under Article 2(1) of the basic Regulation. The GOP has not been able to prove that it has in place and applies effectively a system or procedure to confirm whether raw materials imported in the EPZ are consumed in the production of the exported products and in what amounts, as required by Annex II of the basic Regulation. The GOP did not provide any evidence to support its claim that a formula of manufacturing is applied to establish the link between exports of finished products and imports of raw materials. Moreover, the GOP did not submit any evidence on whether and how it actually carries out verifications of the company's stock.
- (119) The incentive constitutes a subsidy since it provides a financial contribution by the GOP in the form of import duties foregone that are otherwise due and it confers a benefit to the recipient. As it is limited to companies located in certain areas and furthermore contingent upon export performance, it is specific within the meaning of Articles 3(2)(a) and 3(4)(a) of the basic Regulation.
- (120) Lu Chu has a relatively straight forward production process: the only raw material used is stainless steel wire rod which is processed (cut and shred) into fasteners, i.e. Lu Chu's only finished products. In the course of the investigation, the GOP and the Commission conducted and examination of the actual inputs involved in accordance with Annex II to the basic Regulation. During the investigation period, Lu Chu imported the totality of the raw materials and exported the totality of the finished products (i.e. it did not purchase or sell on the domestic market). No significant difference was found between import and export quantities during the investigation period, nor did the company's stock at the end of the period reach an anomalous level.
- (121) The Commission considers that there is sufficient evidence that, during the IP, raw materials imported by Lu Chu in exemption from import duties have been actually consumed in the production of the exported

products. Furthermore, given the commercial structure and operation of this company, there are no indications that this situation will change in the coming years. Consequently, it is provisionally found that Lu Chu/Pilshin did not obtain a subsidy under this programme.

Exemption on imports of spare parts and supplies

A. Eligibility

- (122) Export enterprises located in an EPZ may avail themselves of this incentive.

B. Practical implementation

- (123) In order to benefit from the import duty exemption on imported spare parts and supplies, companies located in the EPZ must submit an application for import permit to the PEZA. Permission is granted by PEZA, upon checking that the goods are related to the production of the company.

C. Countervailability

- (124) The incentive constitutes a subsidy under Article 2(1) of the basic Regulation, since it provides a financial contribution by the GOP in the form of import duties foregone that are otherwise due and it confers a benefit to the recipient. There is no evidence that the exemption involved concerns inputs that are consumed in the production process. As it is limited to companies located in certain areas and furthermore contingent upon export performance, it is specific within the meaning of Articles 3(2)(a) and 3(4)(a) of the basic Regulation.

D. Calculation of the subsidy amount

- (125) The benefit to the exporting producer has been calculated on the basis of unpaid customs duty due on the total imports of supplies and spare parts. In order to establish the full benefit to the recipient under this scheme, this amount has been adjusted by adding interest during the investigation period. Since the benefits from import duty exemptions are obtained regularly

during the investigation period, they are equivalent to a series of grants made between the first and the last day of the investigation period. In these cases, it is normal practice to assume that an average grant be received at the mid-point of the investigation period. Hence, the interest to be added is on the whole amount of non-paid duties over a period of six months, by using the average commercial lending rate of 15,1%. The resulting amount has been allocated over total exports during the investigation period, giving an amount of subsidy of 3,33%.

3. Subsidy programmes not used by the exporting producers

- (126) The Commission established that, during the investigation period, the cooperating exporters did not avail themselves of any other subsidy programmes alleged in the complaints, i.e.:

- other incentives under the SEZA,
- reduced rental and construction rates,
- incentives under the OIC, the only exception being the import tax and duty exemption on raw materials, which was used by the company Pilshin. However, since the amount of subsidy it received under this scheme is below 0,3%, and the Philippines is an Annex VII country, it is considered that no benefit was received, as explained in recital 8 above.

4. Amount of countervailable subsidies

- (127) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producer Lu Chu/Pilshin is 3,91%.

- (128) It was established that the level of cooperation in this proceeding has been very high. The cooperating exporting producer covered virtually all exports from the Philippines to the Community during the investigation period, as shown by the comparison of import figures provided by Eurostat with export figures supplied by the cooperating exporting producer.

(%)

Company	Gross Income Tax	Import duty exemption	Total
Lu Chu Shin Yee Works, Ltd/Pilshin Works Corporation	0,58	3,33	3,91

D. COMMUNITY INDUSTRY

1. Community Producers

- (129) In the Community, SSF are manufactured by the following companies:

- producers who lodged the complaint and cooperated in the investigation:

- Bulnava srl, Milan, (Italy)
- Inox Viti snc di Cattinori Enrico & Bruno, Grumello Del Monte (Italy)
- Tevi (Trafilerie e Viterie Italiane srl), Ponte Dell'Olio (Italy)
- Torbesa (Tornillería del Besos. SA), Barcelona (Spain)
- Ugivis SA, Belley (France),

- other producers who were not complainants but did not oppose to the proceeding.
- (130) It was found that, during the IP, certain complaining Community producers had purchased SSF from various sources outside the Community, including the countries concerned. However, the volume of these purchases represented a negligible share of total production (i.e. less than 2 %). It was therefore considered that these purchases were in accordance with standard commercial practice of producers who had to supplement their own range of products with small purchases of imported SSF.
- (131) Based on the above, the output of all these companies constitute the Community production within the meaning of Article 9(1) of the basic Regulation.

2. Community industry

- (132) It was examined whether the complainant Community producers represented a major proportion of total Community production of SSF and arrived at the conclusion that they produced 70 % of the total Community production during the IP. It has therefore been concluded that the complainants constitute the Community industry within the meaning of Articles 9(1) and 10(8) of the basic Regulation. They are hereinafter referred to as the 'Community industry'.

E. INJURY

1. Preliminary remarks

- (133) The analysis of injury should be seen in the light of the anti-dumping measures provisionally imposed on the product under consideration through Commission Regulation (EC) No 1732/97 ⁽⁶⁾ and confirmed by Regulation (EC) No 393/98 ⁽⁷⁾. The latter imposed a definitive anti-dumping duty on imports of SSF originating in the People's Republic of China, India, the Republic of Korea, Malaysia, Taiwan and Thailand.
- (134) Furthermore, since the investigation has concluded that the exporting producers in Singapore did not benefit from the alleged subsidies and given that the subsidy margin for Thailand has been found to be negligible, the injury analysis has been limited to imports of SSF originating in Malaysia and the Philippines.

2. Community consumption

- (135) Community consumption was based on the questionnaire replies (volume of sales of the Community industry), Eurostat information (volume of imports) and the complaint (non-complaining Community producers volume of sales).

- (136) On the above basis, the apparent Community consumption increased from 79 388 tonnes in 1996 to 80 080 tonnes in 1997, it decreased to 60 977 tonnes in 1998 and to 58 680 tonnes in the IP, which represents all overall decrease of 26 %. Consumption increased slightly (by 1 %) from 1996 to 1997, but it registered a sharp decline in 1998 (24 % over the previous year) and an additional decrease of 4 % in the IP.
- (137) It should be noted that the development of apparent consumption is largely influenced by the behaviour of the stockholders on the Community market given that they act as intermediaries between all producers of SSF, both Community producers and exporting producers. The apparent consumption figures therefore reflect the purchases made by the stockholders during the period considered and not necessarily those made by users.

- (138) In the previous anti-dumping proceeding it was found that consumption had massively increased between 1994 and 1995 due to the purchases made by stockholders (from 59 900 to 86 500 tonnes). In this context, the abrupt decrease between 1997 and 1998 (from 80 080 to 60 977 tonnes, followed by an additional decrease in the IP to 58,680) coincides with the imposition of the anti-dumping measures mentioned above and brought the level of imports to that of 1994. This development indicated that imports before the imposition of the above mentioned anti-dumping measures were well above the purchases made by users.

3. Cumulation

- (139) It was examined whether imports of SSF originating in Malaysia and the Philippines should be assessed cumulatively in accordance with Article 8(4) of the basic Regulation.
- (140) In this respect it was found that the amount of counter-vailable subsidies was more than *de minimis* as defined in Article 14(5) of the basic Regulation and the volume of imports from each of these countries was not negligible.
- (141) As mentioned above, it was also found that SSF imported from both countries concerned as well as SSF produced and sold by the Community industry were alike in all respects. It should be noted that imports of SSF from both countries are produced to the same quality standards as Community products, usually a DIN standard or an ISO standard, they are interchangeable and were marketed in the Community during the same period through comparable sales channels and under similar commercial conditions. The imported SSF were considered therefore to compete with each other and with the SSF produced in the Community.

⁽⁶⁾ OJ L 243, 5.9.1997, p. 17.

⁽⁷⁾ See footnote 3.

(142) In the light of the above, it was considered that all the criteria set out in Article 8(4) of the basic Regulation were met by imports originating in Malaysia and the Philippines, i.e. the countervailable subsidies from each of these countries were more than *de minimis*, the volume of imports was not negligible, and a cumulative assessment of the effects of the imports was appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community products. The imports from Malaysia and the Philippines were therefore examined cumulatively.

4. Volume and market share of subsidised imports

(143) The volume of the subsidised imports into the Community of SSF originating in the countries concerned increased by 16 % during the period considered. They increased from 6 280 tonnes in 1996 to 7 433 tonnes in 1997, 7 917 tonnes in 1998 and fell to 7 293 tonnes in the IP.

(144) The market share held by these countries increased from 7,9 % in 1996 to 9,3 % in 1997 and 13 % in 1998, reaching 12,4 % in the IP, which represents an increase of 4,5 percentage points over the period considered, with a particular increase since 1997.

5. Prices of the subsidised imports

Price evolution

(145) The prices of imports from the countries concerned, per kg, as reported by Eurostat decreased from EUR 2,91 in 1996 to EUR 2,7 in 1997 and EUR 2,73 in 1998, further decreasing to EUR 2,58 in the IP. It should be noted that the prices of the imports from the countries concerned have been consistently and significantly lower than the Community industry's prices during the period considered.

Price undercutting

(146) As regards price undercutting, the SSF imported from the countries concerned and those produced and sold by the Community industry on the Community market were categorised by PCN (i.e. type of SSF). For each type of SSF, a comparison was made between the exporting producers' and the Community industry's average selling prices net of all rebates and taxes, calculated on the basis of sales to the first unrelated customer duly adjusted, when appropriate, to take into account the differences in distribution channels. The difference was then expressed as a percentage of the Community industry's prices.

(147) In order to arrive at a comparable level of trade with the sales of the Community industry, the import prices from the countries concerned were adjusted to take into account customs duty payable (including the anti-dumping duty in the case of Malaysia), post-importation

costs (including handling, financing and transport costs) and repackaging costs in accordance with Article 28 of the basic Regulation. The adjustments for post-importation costs and repackaging costs were based on facts available, i.e. information received from importers during the previous anti-dumping investigation.

(148) Based on the above methodology, undercutting margins, expressed as a percentage of the Community industry's weighted average price, have been found for both countries, ranging from 10 % to 20 %, in the case of Malaysia and reaching 31 % in the case of the Philippines.

6. Situation of the Community industry

Volume of sales and market share

(149) The Community industry's sales on the Community market increased by 31 % over the period considered, going from 14 131 tonnes in 1996 to 18 758 tonnes in 1997, to 19 216 tonnes in 1998 and decreasing to 18 520 tonnes in the IP.

(150) The market share held by the Community industry increased over the period considered, rising from 17,8 % in 1996 to 23,4 % in 1997, 31,5 % in 1998 and to 31,6 % in the IP. The overall increase in market share can be attributable to an increase of sales while consumption declined following the imposition of anti-dumping duties. Major exporters to the Community other than the countries subject to anti-dumping duties also increased their market shares for the same reason.

Prices

(151) The weighted average selling price of SSF sold by the Community industry on the Community market showed an overall 17 % decrease during the period considered. Prices decreased from EUR 3,65/kg in 1996 to EUR 3,22/kg in 1997, EUR 3,23/kg in 1998 and EUR 3,02/kg in the IP.

(152) It should be noted that, according to the information provided by the co-operating raw material suppliers, the price of the raw materials concerned decreased by 5,6 % between 1998 and the IP, while the Community industry's prices of SSF incorporating this raw material fell by 6,3 %. As the cost of raw material purchases represented 56,7 % of the Community industry's full cost in the IP, it has been found that the Community industry's prices of SSF have decreased well above the decline in the costs of raw materials. This situation can thus be characterised as one of price depression.

Profitability

(153) The Community industry's return on sales went from 0,1 % in 1996 to 2,3 % in 1997, to 1,8 % in 1998 and to a loss of -0,8 % in the IP.

(154) If this downward trend were to persist, the selling prices of the producers in the Community industry would soon be close to their marginal costs, as in a highly competitive and transparent market it is not possible to maintain profits, even at the expense of market share, by unilaterally charging higher prices. The weighted average loss of -0.8 % in the IP represents the worst result since 1996.

Production, capacity and capacity utilisation

(155) The production of the Community industry increased by 21 % over the period considered, going from 15 620 tonnes in 1996 to 18 857 tonnes in 1997 and 20 272 tonnes in 1998 falling to 18 857 tonnes in the IP.

(156) Capacity of the Community industry increased by 22 % in the period considered. It should be noted, however, that a large part of this increase took place in 1997, at a time when the Community industry expected an increase in sales due to the imposition of anti-dumping duties in the above mentioned proceeding. Between 1998 and the IP capacity remained stable.

(157) Capacity utilisation increased from 60 % to 62 % between 1996 and 1997. It further increased to 63 % in 1998, but it fell to 59 % in the IP.

Stocks

(158) The Community industry's stocks increased 30 % over the period considered, rising from 3 331 tonnes in 1996 to 4 435 tonnes at the end of the IP.

Investments

(159) Investments increased overall by 32 %, going from EUR 1,6 million in 1996 to EUR 2,1 million in the IP. Investment fluctuated over the period considered (EUR 8,8 million in 1997 and EUR 4,09 million in 1998). A reasonable level of investment in machinery is needed in the SSF industry in order to maintain competitiveness as well as to comply with environmental requirements.

Employment

(160) Employment increased from 386 persons in 1996 to 453 in the IP, i.e. 17 % over the period considered. The increase in employment took place mostly in 1997 (438 employees against 386 in the previous year) and coincided with changes in the structure of some companies during 1997 as well as with an increase in capacity.

Productivity

(161) Productivity of the Community industry, measured in tonnes per employee, improved 10 % over the period considered. It improved substantially between 1996 and 1997 (by 8 %), it continued to improve between 1997

and 1998 (by 8 %) and it fell by 5 % between 1998 and the IP.

7. Conclusion on injury

(162) It is concluded that the Community industry suffered significant price pressure from the subsidised imports originating in the countries concerned over the period considered, which were found to considerably undercut the Community industry's prices in the IP and which significantly increased in terms of import volume. As a consequence, the Community industry was unable to increase or even maintain the level of its selling prices despite the restored, effective competition from the countries subject to anti-dumping duties.

(163) In this context, the Community industry's financial situation deteriorated, reaching a weighted average loss of -0,8 % in the IP, and could not be redressed due *inter alia* to the ability of the countries concerned to depress prices.

(164) Following the imposition of provisional anti-dumping measures in 1997, the situation of the Community industry improved between 1997 and 1998 in terms of production and sales. However, between 1998 and the IP the situation of the Community industry deteriorated in terms of production (a 7 % decrease in the volume produced), sales (a 3,6 % decrease in the volume sold), and profitability (from 1,8 % to -0,8 %). In view of the above, it has been provisionally concluded that the Community industry has suffered material injury within the meaning of Article 8(2) of the basic Regulation.

F. CAUSATION OF INJURY

(165) In order to reach its conclusion on the cause of the injury suffered by the Community industry, the Commission examined the impact of all known factors and their consequences on the situation in that industry. Such analysis ensures that any injury caused by factors other than subsidised imports is not attributed to the subsidised imports.

1. Effects of the subsidised imports

(166) There is a clear coincidence between the significant price undercutting found during the IP and the deterioration of the prices of the Community industry and its profitability in the same period. The significant price pressure from the subsidised imports between 1998 and the IP coincided with a severe decrease in the prices of the Community industry, leading to losses of -0,8 % during the IP.

(167) Following the imposition of the anti-dumping measures mentioned above, the Community industry was able to increase its production, sales and to improve profitability. However, the increase of imports from the countries concerned between 1997 and 1998 and the sharp

decrease in the sales prices, in particular between 1998 and the IP, coincided with a deterioration of the situation of the Community industry, namely with regard to its profitability. The Community industry was unable to benefit either from its spare capacity or the re-establishment of effective competition following the imposition of anti-dumping measures. The pressure from subsidised imports did not allow the Community industry to improve its profitability.

- (168) It has therefore been concluded that the increase in imports reaching a significant level of the Community market during the IP, the depressed prices and the deteriorating situation of the Community industry, in particular in terms of financial losses, can be attributed to the persistent low prices of the imports from the countries concerned.

2. Effect of other factors

- (169) The Commission examined whether the injury suffered by the Community industry could have been caused by factors other than the subsidised imports. In particular, the Commission examined the development of consumption, the evolution and impact of imports from third countries, and the effect of changes in the cost of raw materials.

Consumption

- (170) It was considered whether the development of consumption was a material cause in the deterioration of the situation of the Community industry, namely as regards its profitability.
- (171) It should be noted that while consumption strongly decreased between 1996 and the IP (by 26 %), the volume of sales of the Community industry during the same period increased by 31 % and its share of the Community market increased over the same period by 13,8 percentage points. Despite this increase in sales, the Community industry's prices have seriously decreased between 1996 and the IP with the consequent deterioration of its profitability.
- (172) In view of the above, it is unlikely that the contraction in demand has contributed to the deterioration of the situation of the Community industry.

Imports from other third countries

- (173) As regards imports from other third countries, it was found that these imports lost a significant share of the Community market, which declined from 64,8 % in 1996 to 42,3 % in the IP.

Singapore

- (174) As mentioned above, the investigation has shown that exporting producers in Singapore did not benefit from the alleged subsidies. Although imports from this country have registered a significant increase during the period considered (167 %), the prices of those imports

based on Eurostat were higher than the selling prices of the Community industry over the period considered. In view of the above, it does not appear that imports from Singapore have materially contributed to the injury suffered by the Community industry.

Thailand

- (175) As mentioned above, the investigation has shown that the subsidy margin for Thailand is negligible. Imports from Thailand have kept an increased presence in the Community market at prices below those charged by the Community industry. It should be noted that the anti-dumping measures concerning imports of SSF from Thailand are based on the dumping margins found in the previous anti-dumping proceeding.
- (176) It is therefore considered that imports from Thailand might have also contributed to the injury suffered by the Community industry.

Other third countries

- (177) It was found that the total market share held by other third countries decreased during the period considered by 29 percentage points mainly due to the decrease in imports from the countries subject to anti-dumping duties.
- (178) It was therefore considered that these imports did not contribute to the injury suffered by the Community industry to all extent that could break the causal link between the subsidised imports and the injury suffered by the Community industry.

Raw materials

- (179) It was examined whether the injury suffered by the Community industry could be attributed to an increase in the costs of raw materials.
- (180) It was found that the price of the raw material commonly used in the production of SSF, i.e. stainless steel wire rod, charged by the raw material suppliers responding to the questionnaires decreased during the period considered. This trend was accompanied by a fall in the price of nickel, the main input of stainless steel wire rod. It should be noted that the cooperating raw material suppliers represented a major proportion of the total purchases of stainless steel wire rod made by the Community industry.
- (181) In view of the above, it is considered that the price of the raw material did not contribute to the injury suffered by the Community industry.

3. Conclusion on causation

- (182) In the light of the above, it is concluded that the imports from the two countries concerned taken in isolation have caused material injury to the Community industry.

G. COMMUNITY INTEREST

1. General considerations

- (183) On the basis of the information submitted it has been provisionally examined, whether despite the subsidy and injury findings, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to impose measures in the present case.
- (184) In order to assess the impact of possible measures, Community interest questionnaires were sent to all interested parties in the upstream and downstream industries known to the Commission at the time of the initiation of the proceeding. Information on Community interest was also requested from the Community industry. Only seven raw-material suppliers, one non-complainant Community producer and the Community industry responded to the questionnaires.

2. The supplier industry

Situation of the raw material suppliers

- (185) The raw material used in the production of SSF is stainless steel wire rod. This raw material is produced by the major stainless steel makers in Europe who supply the entirety of the raw materials consumed by the Community industry.
- (186) There are a number of different grades of stainless steel wire rod that can be used in this type of production, Nevertheless, the two most commonly used grades, by both the Community industry and the producers in the countries concerned, are austenitic steel type A2 (AISI 304 grade) and A4 (AISI 316). These grades of steel are mainly used on account of their heat and corrosion resistance and their superior strength.
- (187) On the basis of the information supplied by the cooperating raw material suppliers, it was found that they employed 14 520 people in the IP, of which approximately 625 were specifically concerned by the production of the raw material concerned. Their total turnover in the IP was EUR 3,3 billion of which EUR 135 million related to the raw materials concerned. Their total turnover decreased by 20 % between 1996 and the IP. Sales in the Community of the raw material concerned decreased by 2,6 % in the same period from EUR 103,2 million in 1996 to EUR 100,6 million in the IP.
- (188) As regards the profitability on the sales of the raw materials concerned in the Community, a weighted average loss of -6,9 % was found in the IP.

Effect of imposition/non-imposition of measures

- (189) Although the companies producing the raw materials concerned do supply other non-Community markets and may, theoretically, be able to redirect their sales to these markets, any major decline in the sales on the Community market, which represents 77,5 % of their

total sales in volume of the raw material concerned, is likely to have a substantial effect on them. It should also be noted that some of these non-Community markets are highly protected.

- (190) Taking into account that the total Community production of the raw materials concerned represents more than a negligible proportion of the total turnover and employment of the companies concerned, and the fact that the total turnover of these companies decreased during the period considered, it can be considered that in the event of the imposition of measures they could benefit from a higher sales volumes and an improvement on their negative profitability level registered in the IP.
- (191) On the other hand, should measures not be imposed, the downward trend in the companies' turnover would be more difficult to reverse, as sales of the raw material concerned are likely to decline. In addition to this, the loss of further employment would be inevitable if the Community industry reduces its purchases of the raw material concerned.

3. The Community industry

Nature and structure of the Community industry

- (192) The Community industry is composed of small and medium-sized companies located in France, Spain and Italy. Production is capital intensive and highly automated. It should be noted that SSF are finished products which do not undergo any further transformation, and are mainly consumed by end-user industries that incorporate SSF into various applications.
- (193) The range of SSF is highly standardised and both the Community industry and the exporting producers in the countries concerned produce SSF to agreed norms (DIN or ISO standards). Given this high degree of standardisation and the bargaining power of the major stockholders in the Community, which act both as importers of SSF produced in third countries and wholesalers of SSF produced in the Community, prices of SSF, and in particular the most common SSF types, are extremely sensitive to dumped or subsidised imports.

Effects of the imposition/non-imposition of measures on the Community industry

- (194) Given that the injury found has taken the form of a severe price depression caused by the price undercutting, which resulted in a deterioration of the profitability of the Community industry, it is expected that, following the imposition of countervailing duties, the volume of SSF sold by the Community industry will increase and, more importantly, the prices of SSF on the Community market will also rise. This increase in prices would enable the Community industry to reach an acceptable level of profitability, allowing the companies to continue trading and make the necessary investments.

(195) Should measures not be imposed, it is likely that the negative trend of the Community industry will continue, leading in the long term to the closure of at least some companies. The Community industry is particularly marked by a low capacity utilisation and a negative financial situation. In this context, a future loss of employment is probable.

(196) In conclusion, and taking into account that the analysis of the Community industry showed that it is structurally viable, it is expected that measures would give the industry the opportunity to recover from the injury suffered. It is expected that prices and its volumes sold in the Community will increase, allowing the Community industry to regain profitability. Therefore, it is considered to be in the interest of the Community industry to impose measures.

4. Importers and traders

(197) The distribution of SSF in the Community is characterised by a significant number of importers/traders who hold large stocks of the product under consideration. In essence, the importers/traders act between producers (Community and third-country) and users and their behaviour on the market strongly influences the prices of SSF. It was found that the Community industry still relies on the well-established distribution network of importers/traders for a large percentage of its sales.

(198) No response to the Community interest questionnaire was received from any importer/trader concerned. The Commission has therefore based its analyses on facts available as well as on substantiated arguments made by certain importers/traders concerned.

(199) The previous anti-dumping investigation found that importers/traders could control the levels of supply and thus prices through both their access to dumped imports before the imposition of duties and their bargaining power over third countries and the Community industry. This has been confirmed in the current investigation as the information provided by a major importer/trader showed that its overall level of stocks decreased in 1996, increased in 1997 (the provisional anti-dumping duty was imposed on 4 September 1997) and declined in 1998 (the definitive anti-dumping duty was imposed on 16 February 1998).

(200) An importer has claimed that the imposition of countervailing duties will have as an effect the closure of the Community market to the traditional suppliers from the Far East. It was also claimed that since the Community industry is incapable of meeting all the Community demand of SSF, importers/trade who act as stockists will suffer substantial economic damages.

(201) As regards the closure of the Community market to imports, it should be mentioned that the exporting countries already subject to anti-dumping duties have generally continued to supply the Community market after the imposition of those measures. Furthermore, a number of alternative sources of supply exist not subject to measures which represented around 19 % of the Community consumption during the IP (excluding Malaysia and the Philippines).

(202) The Commission also examined the impact of any countervailing measure on the economic situation of importers/traders in the light of the measures already imposed in the previous anti-dumping proceeding. In this context, it is worth noting that no importer/trader has completed the questionnaire in the present proceeding, which could indicate that the anti-dumping measures imposed in 1998 did not have a significant impact on them.

(203) In any event, the impact of any countervailing duty on the situation of importers/traders should also be seen in the light of the fact that these parties trade in a multitude of products. Indeed, the Commission found in the previous anti-dumping investigation that the product under consideration represented an average around 30 % of the importers/traders' total turnover.

(204) Should countervailing measures be imposed, it is considered that prices of SSF on the Community market will increase. Although the prices of the subsidised imports will in all likelihood increase to the full extent of the duty, prices of the Community products may not increase to the same extent. This increase in prices is likely to have a negative impact on importers and traders who may see their margins reduced. However, it should be noted that the importers, who also act to a large extent as traders, may choose to increase their purchases from the Community industry and obtain discounts for larger volumes. Indeed, the investigation has shown that, subsequently to the imposition of anti-dumping measures in the previous proceeding, the Community industry increased its sales of SSF to importers/traders.

(205) In the light of the above, it is considered that if measures are imposed, it is unlikely that the situation of importers/traders will significantly be affected.

5. Users

Nature and structure of user industries

(206) Firstly, it should be mentioned that no user of the product under consideration has cooperated in the present proceeding. Furthermore, no information has been provided by users showing that the analysis carried out in the previous anti-dumping investigation on imports of SSF was inaccurate as regards the impact of those measures on users.

(207) Secondly, information gathered in the course of the investigation shows that SSF are to a large extent sold to users through the intermediate of importers/traders acting as stockists.

(208) Thirdly, SSF are used in a wide variety of applications: foodstuffs, catering, pharmaceutical, medical equipment, household appliances (white goods), automobile, maritime and shipbuilding, building and construction, environment, energy, chemical and petrochemical, and transport. In view of the type of user industry involved, it is not incorrect to conclude that the SSF represent a very small percentage of the costs of the final products. Therefore any countervailing measure imposed on SSF imported from the countries concerned is not likely to substantially increase the cost of the final product for the user.

Effect of imposition/non-imposition of measures

(209) Given the lack of cooperation from users in the present proceeding, the supply channels and the type of users concerned, the impact of any countervailing duty on users is likely to be very marginal as the prices of SSF stand for a marginal proportion of the cost of production of the final product.

(210) Furthermore, should countervailing measures be imposed, it is unlikely that supply constraints would occur, given the existence of alternative sources of supply not covered by measures. including the Community industry.

6. Conclusion on Community interest

(211) The investigation has shown that the imposition of measures can be expected to allow the Community industry to increase prices and volumes and therefore to restore profitability, with consequent beneficial effects on the competitive conditions on the Community market. The imposition of countervailing duties is also expected to benefit raw material suppliers.

(212) Whilst any negative effects are likely to ensue for the importers/traders from the likely price increase, the extent of these may be reduced by decreasing margins or by increasing the prices charged to the user industry. The user industry, in turn, is unlikely to suffer serious consequences from such an increase given the low incidence of SSF on their final products.

(213) In the light of the above. the Commission considers that no compelling reasons exist for not imposing measures in the present case. Consequently, the imposition of countervailing duties would not be against the interest of the Community.

H. PROVISIONAL MEASURES

(214) On the basis of the conclusions on subsidisation, injury, causal link and Community interest, the Commission considered it necessary to adopt provisional countervailing measures.

1. Injury elimination level

(215) For the purpose of determining the level of these measures, the Commission took account of the subsidy margins found and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

(216) To that effect, the Commission considered that the removal of such injury requires that the industry should be in a position where the prices of the imports of the product concerned originating in the countries concerned should be increased to a non-injurious level.

(217) For the purposes of calculating the necessary price increase. i.e. the injury margin, the Commission considered that the prices of subsidised imports had to be compared with the actual sales prices of the Community industry plus a reasonable level of profit which the industry might be expected to obtain in the absence of injurious subsidisation from the countries concerned.

(218) On this basis, the weighted average export prices for those products used in the determination of price undercutting were compared, on a cif Community frontier level, adjusted to take account of customs duty paid and allowance in respect of post-importation costs and repackaging costs, with the actual weighted average selling prices charged by the Community industry, increased, where appropriate, to reach a reasonable pre-tax profit margin on turnover, in this case established at 5 %. This profit margin is an appropriate minimum which the Community industry could be expected to obtain in the absence of injurious subsidisation. This profit margin is the same as that used in the previous anti-dumping investigation concerning imports of the same product originating in the People's Republic of China, India, the Republic of Korea, Malaysia, Taiwan and Thailand.

(219) Based on the above methodology, substantial injury elimination levels have been found for both countries.

2. Provisional measures

(220) In view of the wide diversity of product types, an *ad valorem* duty appears to be the most appropriate measure. In accordance with Article 12(1) of the basic Regulation the duty rate should correspond to the amount of subsidy, unless the injury margin is lower.

- (221) As regards Malaysia, for both exporting producers anti-dumping duties are currently in force, at the rates of 7,0 % and 5,7 % respectively. The level of the duty imposed within this proceeding shall therefore take into account the totality of the domestic subsidy plus the excess of export subsidy amount over the existing anti-dumping duty. As summarised in the table below, one Malaysian exporting producer should be subject to a provisional countervailing duty (in addition to the existing anti-dumping duties) of 4,5 %. As for the second exporting producer, the countervailing duty should be nil, since the existing anti-dumping duty exceeds the export subsidy amount.
- (222) Given that the companies cooperating in the proceeding covered virtually all imports from this country, the residual duty should be set equal to the highest level found for co-operating companies. Thus, the residual countervailing duty should be set at 4,5 %, in addition to the existing residual anti-dumping duty of 7,0 %.

(%)

Company	Total subsidy	Export subsidy	Existing AD duty	Proposed CVD
Tong Heer Fasteners	11,56	9,69	7,0	4,5
Tigges Stainless Steel Fasteners	4,52	4,52	5,7	0
Others			7,0	4,5

- (223) The following rates of duty should therefore apply for the Malaysian cooperating producers:
- Tong Heer Fasteners: 4,5 %
- Tigges Stainless Steel Fasteners: 0 %.
- (224) As regards the Philippines, the following rates of duty should apply for the cooperating producer:
- Lu Chu Shin Yee Worla, Ltd/Pilshin Works Corporation: 3,9 %.
- (225) In order to avoid granting a bonus for non-cooperation, it was considered appropriate to establish the duty rate for the non-cooperating companies as the highest rate established for any cooperating exporting producer, i.e. 4,5 % for Malaysia and 3,9 % for the Philippines.
- (226) The individual company countervailing duty rates specified in this Regulation were established on the basis of the provisional findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (227) Any claim requesting the application of these individual company countervailing duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission⁽⁸⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the advisory committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

⁽⁸⁾ European Commission
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B-1019 Brussels.

I. FINAL PROVISION

- (228) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing duty is hereby imposed on imports of stainless steel fasteners and parts thereof falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30 and originating in Malaysia and the Philippines.

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

Malaysian producers	Rate of duty (%)	TARIC additional code
Tong Heer Fasteners	4,5	A104
Tigges Stainless Steel Fasteners	0	A105
All other companies	4,5	A999

Philippines producers	Rate of duty (%)	TARIC additional code
Lu Chu Shin Yee Works, Ltd/Pilshin Works Corporation	3,9	A106
All other companies	3,9	A999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.
4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to a security, equivalent to the amount of the provisional duty.

Article 2

Interested parties which made themselves known within the time limit specified in the notice of initiation of this investigation may make known their views in writing and apply to be heard orally by the Commission within a period of time fixed pursuant to Article 30 of Regulation (EC) No 2026/97.

Pursuant to Article 31(4) of Regulation (EC) No 2026/97, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of four months.

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

Done at Brussels, 22 March 2000.

For the Commission
Pascal LAMY
Member of the Commission
