

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.7.2009
COM(2009) 396 final

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 1890/2005 imposing a definitive anti-dumping duty on imports of certain stainless steel fasteners and parts thereof originating, inter alia, in Vietnam

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation') in the proceeding concerning imports of stainless steel fasteners originating, *inter alia*, in Vietnam.

General context

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

Existing provisions in the area of the proposal

The measures currently in force were imposed by Council Regulation (EC) No 1890/2005 imposing a definitive anti-dumping duty on imports of certain stainless steel fasteners and parts thereof originating, *inter alia*, in Vietnam.

Consistency with the other policies and objectives of the Union

Not applicable.

CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

On 13 August 2008, the Commission initiated an interim review of the measures in force in respect of stainless steel fasteners originating in Vietnam further to a request made by a Vietnamese exporting producer. The request was based on *prima facie* evidence that the circumstances on the basis of which measures were established have changed; i.e. that the company now fulfils the criteria for market economy treatment

(MET) and therefore the continued imposition of measures at the existing levels would no longer be necessary to offset dumping.

The attached proposal for a Council Regulation is based on the findings of the investigation carried out which is limited in scope to the examination of dumping and as far as the applicant is concerned.

The investigation showed that the company fulfilled the criteria to be granted MET and that no dumping took place during the investigation period. It was also found that the circumstances during the current investigation period were of a lasting nature.

It is therefore proposed that the Council adopt the attached proposal for a Regulation that would amend the anti-dumping measures currently in force.

Legal basis

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

Subsidiarity principle

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

Choice of instruments

Proposed instruments: Amending Regulation.

Other means would not be adequate for the following reason: The above-mentioned basic Regulation does not foresee alternative options.

BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 1890/2005 imposing a definitive anti-dumping duty on imports of certain stainless steel fasteners and parts thereof originating, *inter alia*, in Vietnam

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community¹ ('the basic Regulation'), and in particular Article 11(3) thereof,

Having regard to Council Regulation (EC) No 1890/2005 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam and terminating the proceeding on imports of certain stainless steel fasteners and parts thereof originating in Malaysia and the Philippines²,

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

Whereas:

A. PROCEDURE

1. MEASURES IN FORCE

- (1) By Regulation (EC) No 1890/2005, the Council imposed a definitive anti-dumping duty on imports of stainless steel fasteners and parts thereof ('SSF') originating, *inter alia*, in Vietnam. This regulation will hereinafter be referred to as 'the original Regulation' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

2. REQUEST FOR A REVIEW

- (2) A request for a partial interim review ('the present review') pursuant to Article 11(3) of the basic Regulation was lodged by Header Plan Co., Ltd., a Vietnamese exporting producer of SSF ('the applicant' or 'HPV'). The request was limited in scope to dumping and to the applicant company.
- (3) The applicant provided *prima facie* evidence that the continued application of the measure at its current level was no longer necessary to offset dumping. In particular, the applicant provided *prima facie* evidence showing that it meets the criteria for market economy treatment and individual treatment. Furthermore, in the absence of

¹ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

² OJ L 302, 19.11.2005, p. 1.

domestic sales, a comparison of its costs of production and export prices to the Community indicated that the dumping margin appeared to be substantially lower than the current level of the measure.

3. INVESTIGATION

- (4) Having determined, after consulting the Advisory Committee, that the request contained sufficient prima facie evidence, the Commission announced on 13 August 2008 the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation by a notice of initiation published in the Official Journal of the European Union³.
- (5) The review was limited in scope to the examination of dumping in respect of the applicant. The investigation of dumping covered the period from 1 July 2007 to 30 June 2008 ('the review investigation period' or 'RIP').
- (6) The Commission officially informed the applicant, the representatives of the exporting country and the association of Community producers about the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (7) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (8) In order to obtain the information deemed necessary for its investigation, the Commission sent a market economy treatment ('MET') and individual treatment ('IT') claim form and a questionnaire to the applicant and received replies within the deadlines set for that purpose.
- (9) The Commission sought and verified all information deemed necessary for the determination of dumping. The Commission carried out verification visits at the premises of the applicant and its related company:
 - Header Plan Co. Ltd. ('Header Plan'), Binh Hoa County, Vietnam,
 - Header Plan Inc, Taipei, Taiwan.
- (10) In view of the possible need to establish some elements (SG&A cost and profit rate) of the normal value as explained in recitals (22) to (25) below, verification visits to establish these rates on the basis of data from another country, in this case Taiwan, took place at the premises of the following companies:
 - Jin Shing Stainless Ind. Co. Ltd, Taoyuan,
 - Yi Tai Shen Co. Ltd, Tainan.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. PRODUCT CONCERNED

- (11) The product concerned by the present review is the same as that in the original investigation, i.e. certain SSF and parts thereof ('the product concerned'). It is currently classifiable within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70. There are many types of SSF (the most common ones are bolts and screws), each one being defined by its specific physical and technical characteristics and by the grade of stainless steel from which it is made.

³ OJ C 206, 13.8.2008, p. 12.

2. LIKE PRODUCT

- (12) The investigation revealed that the applicant did not sell the product concerned on the Vietnamese domestic market. It also showed that SSF produced and sold on the Taiwanese domestic market and those exported to the Community from Vietnam have the same physical, chemical and technical characteristics and uses. It is therefore concluded that all are like products within the meaning of Article 1(4) of the basic Regulation. Since the present review was limited to the determination of dumping as far as the applicant is concerned, no conclusions were reached with regard to the product produced and sold by the Community industry on the Community market.

C. RESULTS OF THE INVESTIGATION

1. MARKET ECONOMY TREATMENT (MET)

- (13) In anti-dumping investigations concerning imports originating in Vietnam, normal value shall be determined in accordance with paragraphs 1 to 6 of Article 2 of the basic Regulation for those producers which were found to meet the criteria laid down in Article 2(7)(c).
- (14) Briefly, and for ease of reference only, the criteria in Article 2(7)(c) of the Basic Regulation, fulfilment of which the applicant companies have to demonstrate, are set out in summarised form below:
- business decisions and costs are made in response to market conditions, and without significant State interference;
 - accounting records are independently audited in line with international accounting standards and applied for all purposes;
 - there are no significant distortions carried over from the former non-market economy system;
 - legal certainty and stability are provided by bankruptcy and property laws;
 - currency exchanges are carried out at the market rate.
- (15) The applicant requested market economy treatment pursuant to Article 2(7)(b) of the basic Regulation and submitted a claim form for exporting producers. The Commission sought and verified at the premises of the applicant all information submitted in the company's request and deemed necessary.
- (16) The present investigation revealed that the situation of the applicant changed since the original investigation. It was found that the applicant now meets all five MET criteria. In particular, the reasons why MET was denied in the original investigation were found to be no longer applicable and no other circumstances were found which could lead to a rejection of the MET claim. Therefore, after consulting the Advisory Committee, the applicant was granted MET.
- (17) Both the applicant and the Community industry were given an opportunity to comment on the above findings.
- (18) The Community industry objected to the above findings by claiming that there would be a risk of circumvention by channelling exports from Taiwan via Vietnam.
- (19) It should first be noted that there is no link between granting MET to the applicant and any potential circumvention from Taiwan, since this may even be possible in case no MET is granted to the applicant. Secondly, the Community industry did not come forward with any underlying evidence supporting the allegations made. Finally, it is

underlined that the Community industry did not object to the above findings, i.e. that the applicant fulfilled the criteria listed in Article 2(7)(c) of the basic Regulation, which are the only relevant criteria to assess whether the company fulfilled the conditions to be granted MET. The claims of the Community industry had therefore to be rejected.

2. DUMPING

2.1 Normal value

- (20) The applicant had no domestic sales in Vietnam of the product concerned. Whenever domestic prices cannot be used in order to establish normal value, another method has to be applied. In accordance with Article 2(3) of the basic Regulation the Commission instead calculated a constructed normal value, as follows.
- (21) Normal value was constructed by adding to the applicant's manufacturing costs a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit.
- (22) Since the applicant had no domestic sales of the product concerned or of the same general category of product, and because the investigation was limited to one company, SG&A costs and profits could not be established pursuant to the methods set out in Article 2(6)(a) and Article 2(6)(b) of the basic Regulation. Instead, another reasonable method had to be found based on Article 2(6)(c) of the basic Regulation.
- (23) In the event that the applicant would be granted market economy treatment, it was foreseen in point 5(d) of the notice of initiation, to also use findings concerning the normal value established in an appropriate market economy country, e.g. for the purpose of replacing any unreliable cost or price elements in Vietnam which are needed in establishing the normal value, if reliable required data are not available in Vietnam. It was found reasonable to use the SG&A costs and profit rates of exporting producers of the like product in another country, in this case Taiwan, according to Article 2(6)(c) of the basic Regulation.
- (24) The domestic sales of the Taiwanese producers were found to have been made in the ordinary course of trade. Consequently, the SG&A costs and profit rates were calculated on their proportion to the total turnover for each product type.
- (25) The weighted average SG&A costs and profit rate of the Taiwanese companies were added to the manufacturing cost of the applicant to establish the constructed normal value.

2.2 Export price

- (26) All sales of the products concerned to the Community during the investigation period were made by a related company in Taiwan. Export prices were established in accordance with Article 2(9) of the basic Regulation, i.e. using the prices actually paid or payable to the related company by the first independent buyer in the Community in the RIP.

2.3 Comparison

- (27) The comparison between normal value and export price was made on an ex-factory basis.
- (28) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price and price comparability in accordance with Article 2(10) of the basic Regulation.

Accordingly, adjustments were made for differences in transport, packing, credit cost, bank charges, commissions, rebates and insurance where applicable and supported by verified evidence. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

2.4 Dumping margin

- (29) The dumping margin was established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(11) of the basic Regulation.
- (30) The comparison as described above showed the existence of no dumping.

3. LASTING NATURE OF THE CIRCUMSTANCES PREVAILING DURING THE RIP

- (31) In accordance with Article 11(3) of the basic Regulation, it was examined whether the circumstances on the basis of which the current dumping margin was based have changed and whether such change was of a lasting nature.
- (32) Firstly it should be noted that the applicant was able to prove that it should be granted MET, and was therefore eligible for its own individual dumping margin. There was no indication that this situation would change in the foreseeable future.
- (33) The price of the product concerned charged to the Community and to third countries did not differ significantly and followed the same trend between 2005 and the IP.
- (34) The investigation showed that the behaviour of the applicant, including the circumstances that led to the initiation of the present review, were unlikely to change in the foreseeable future in a manner that would affect the findings of the present review. This would therefore suggest that the changes concerned were of a lasting nature and therefore the conclusions of the review were long-lasting.

D. AMENDMENT OF THE MEASURES

- (35) In view of the findings of no dumping as well as the lasting nature of the changed circumstances, it is considered that the continued imposition of the measure on imports from the applicant is not necessary to offset dumping. Therefore the measures imposed by Council Regulation (EC) No 1890/2005 on imports of SSF originating in Vietnam should be repealed for HPV by amending that Regulation accordingly.
- (36) The applicant as well as the other parties concerned were informed of the facts and considerations on the basis of which it was intended to propose the repeal of the measures. No comments were received which would warrant a change in the above conclusions.

HAS ADOPTED THIS REGULATION:

Article 1

1. The part of the table in Article 1, paragraph 3 of Regulation (EC) No 1890/2005 concerning the definitive anti-dumping duty applicable on imports of certain stainless steel fasteners and parts thereof originating in Vietnam shall be replaced by the following:

Country	Exporting producer	Rate of duty (%)	TARIC additional code
Vietnam	Header Plan Co. Ltd.	0	A958

	All other companies	7,7	A999
--	---------------------	-----	------

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

Article 2

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

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

Done at Brussels, [...]

For the Council
The President