Commission Implementing Regulation (EU) 2020/1249 of 2 September 2020 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2019/1267 on imports of tungsten electrodes originating in the People's Republic of China to imports of tungsten electrodes consigned from Laos and Thailand, whether declared as originating in Laos and Thailand or not, and terminating the investigation in respect of imports consigned from India, whether declared as originating in India or not

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1249

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)] ('the basic Regulation'), and in particular Articles 13(3) and 14(5) thereof,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) By Council Regulation (EC) No 260/2007[(2)] ('the original Regulation'), the Council imposed a definitive anti-dumping duty on imports of tungsten electrodes ('TE') originating in the People's Republic of China ('China'). The individual anti-dumping duties in force range from 17 % to 41 %. All other exporting producers are subject to a definitive anti-dumping duty of 63,5 %. These measures will hereinafter be referred to as 'the original measures' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

(2) By Council Implementing Regulation (EU) No 508/2013[(3)] the Council, following an expiry review (the 'first expiry review'), imposed a definitive anti-dumping duty on imports of TE originating in China.

(3) In 2019, by Commission Implementing Regulation (EU) 2019/1267[(4)], the Commission following another expiry review (the 'last expiry review'), imposed a definitive anti-dumping duty on imports of TE originating in China at the level of the original measures. These measures will be referred to as 'the measures in force'.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/1249. (See end of Document for details)*

1.2. ***Ex officio* initiation**

(4) The Commission had at its disposal sufficient evidence that the anti-dumping measures on imports of TE originating in China were being circumvented by imports of TE consigned from India, Laos and Thailand, whether declared as originating in India, Laos and Thailand or not.

(5) The data reported by the Member States in accordance with Article 14(6) of the basic Regulation showed a significant change in the pattern of trade involving exports from China, India, Laos and Thailand to the Union following the original investigation, suggesting it might be caused by the imposition of measures on TE. This change appeared without sufficient due cause or economic justification other than the imposition of the measures. Indeed, the change appeared to stem from the transhipment of the product concerned originating in China via India, Laos and Thailand to the Union since, according to the findings in the last expiry review[(5)], there are no facilities to produce TE in any of the alleged circumventing countries.

(6) Furthermore, according to the data available to the Commission, the remedial effects of the measures in force were being undermined in terms of both quantities and prices.

(7) Finally, according to the data available to the Commission, TE consigned from India, Laos and Thailand were dumped in relation to the normal value established in the last expiry review.

(8) Having determined, after having informed the Member States, that sufficient evidence existed for the initiation of an investigation pursuant to Article 13(3) of the basic Regulation, and to make imports of TE consigned from India, Laos and Thailand, whether declared as originating in India, Laos and Thailand or not, subject to registration in accordance with Article 14(5) of the basic Regulation, the Commission initiated an investigation by Commission Implementing Regulation (EU) 2019/2171[(6)] ('the initiating Regulation').

1.3. **Investigation**

(9) The Commission informed the authorities of China, India, Laos and Thailand, the exporting producers and traders in those countries, the importers in the Union and the Union industry, of the initiation of the investigation. In addition, it asked the missions of India, Laos and Thailand to the European Union to confirm that there is no production of TE in those countries or to provide the Commission with the names and addresses of any exporting producers and/or representative associations that could be interested in participating in the investigation.

(10) Exemption claim forms for the producers/exporters in India, Laos and Thailand, questionnaires for the producers/exporters in China, and questionnaires for unrelated importers in the Union were made available on DG Trade's website.

(11) Interested parties were given the opportunity to present their views in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that the non-submission of all relevant information or the submission of incomplete, false or misleading information might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.

(12) One unrelated importer in the Union requested a hearing that took place on 2 July 2020.

(13) A producer/exporter from Laos submitted a reply to the exemption claim form ('questionnaire reply').

(14) One unrelated importer in the Union also provided a questionnaire reply and another unrelated importer in the Union made a written submission without filling-in a questionnaire.

1.4. Investigation period and reporting period

(15) The investigation period ('IP') covered the period from 1 January 2006 to 30 September 2019. Data were collected to investigate, inter alia, the change in the pattern of trade following the imposition of measures. For the period of 1 October 2018 to 30 September 2019 ('the reporting period' or 'the RP'), more detailed data was collected in order to examine the possible undermining of the remedial effect of the measures in force, and the existence of dumping.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

(16) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was made by analysing successively whether:

— there was a change in the pattern of trade between third countries (China, India, Laos and Thailand) and the Union,

— this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty,

— there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the like product, and

— there was evidence of dumping in relation to the normal values established in the last expiry review for the like product, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2.2. Product concerned and product under investigation

(17) The product concerned is tungsten welding electrodes, including tungsten bars and rods for welding electrodes, containing 94 % or more by weight of tungsten, other than those obtained simply by sintering, whether or not cut to length, originating in China ('the product concerned')currently falling under CN codes ex 8101 99 10 and

ex 8515 90 80 (TARIC codes 8101 99 10 11, 8101 99 10 12, 8101 99 10 13, 8101 99 10 20, 8515 90 80 11, 8515 90 80 12, 8515 90 80 13, 8515 90 80 20). The measures in force apply to this product.

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

(19) The investigation showed that TE exported by China to the Union and those consigned from India, Laos and Thailand to the Union share the same basic physical and technical characteristics and uses, and are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

2.3. **Level of cooperation**

(20) None of the Chinese, Indian or Thai producers/exporters submitted questionnaire replies.

(21) One company from Laos, which covered around 100 % of the total imports from Laos to the Union in the RP as reported in 14(6) database, submitted a request for exemption in accordance with Article 13(4) of the basic Regulation. This company is related to a Chinese exporting producer of TE. The cooperation of this company was found to be insufficient for the following reasons:

(a) The company did not provide the information required in the exemption form. The company was requested to do so in two deficiency letters. In particular, the company did not provide the required audited financial statements or the financial statements filed with the relevant tax authority or company register. The company in fact did not provide any financial statements at all, making it impossible to cross check any information provided to the Commission in its exemption claim form. Additional important elements that were not provided comprised stock levels and a list of fixed assets.

(b) Its parent company in China did not submit an exporters' questionnaire or an exemption form as required.

(c) It has supplied incoherent or contradicting information: First, the cost of tungsten rods purchased from its Chinese parent company in the RP was reported differently in several exhibits. Second, the quantities of tungsten rods purchased and sold in the RP were reported differently in different exhibits. Third, no detailed information regarding reported depreciation and labour costs was provided. The investigation established that the allocation of depreciation costs to the manufacturing of TE was inconsistent with the production capacity of TE and artificially increased the value of the manufactured TE. Asked to clarify the criteria on which it based the calculation of its depreciation costs, the company merely replied having reported the depreciation costs of the parent company. However, as said

above, the parent company did not submit a questionnaire or fill the exemption form, and the Laos exporter did not provide any evidence to support its claim.

(d) It did not provide sufficient detail on the operations performed on the tungsten rods purchased from its parent Chinese supplier.

(e) It reported not to have an accounting system.

(f) It did not provide the relevant working sheets and other supporting documents necessary for the verification of the information provided in the exemption form.

(22) Therefore, in accordance with Article 18(4) of the basic Regulation, on 11 May 2020, the Commission granted the company a time limit to provide a number of listed elements and informed of the intention to rely on facts available should these not be submitted.

(23) In line with the Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations, the Commission decided not to carry out verification visits at the premises of the companies that requested an exemption due to the COVID-19 outbreak. In the light of the company's reply failing to submit the listed essential documents and to address the highlighted substantial contradictions, the Commission decided not to go ahead with the remote cross-checking initially considered.

(24) Given all the above, the information provided by the company was deemed incomplete and unreliable. The Commission therefore disregarded the information submitted by the company, and findings were based on facts available pursuant to Article 18 of the basic Regulation.

(25) In its comments after disclosure, the company explained that it was in the process of transferring production facilities from China to Laos during the investigating period, and this process had been curtailed due to the virus lockdown. It further submitted that the virus lockdown explained the shortfalls in the standard of information supplied by the company. Moreover, it added that once the situation normalises '(…) *all stages of production will be carried out in Laos* (…)'. The Commission notes that despite the virus lockdown, the company and its parent company in China were given sufficient time and opportunities, within the legal deadlines of the investigation, to submit the missing information, as explained in recitals 21 and 22. As to the parent company in particular, no questionnaire reply was ever submitted despite the fact that the Commission specifically asked for it in the exemption claim form and both deficiency letters.

(26) After disclosure, the Mission of the Lao People's Democratic Republic to the Union submitted its disappointment about the findings of the investigation that, according to the Mission, was conducted without sufficient information and verification. The Commission notes that despite the COVID-19 outbreak and its consequences on anti-dumping and anti-subsidy investigations, all interested parties, in