Commission Implementing Regulation (EU) 2019/1267 of 26 July 2019 imposing a definitive anti-dumping duty on imports of tungsten electrodes originating in the People's Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1267

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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)], and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) In March 2007, following an anti-dumping investigation ('the original investigation'), the Council imposed by Regulation (EC) No 260/2007[(2)] ('the definitive Regulation'), a definitive anti-dumping duty on imports of certain tungsten electrodes currently falling under CN codes ex 8101 99 10 and ex 8515 90 80 (TARIC codes 8101 99 10 10 and 8515 90 80 10) and originating in the People's Republic of China ('the PRC').

(2) The definitive Regulation imposed an anti-dumping duty at rates ranging between 17,0 % and 41,0 % on imports from the sampled cooperating exporting producers and a duty rate of 63,5 % on imports of all other exporting producers in the PRC.

(3) Following an expiry review (the 'previous expiry review'), the Council decided, by means of Implementing Regulation (EU) No 508/2013[(3)], to maintain the anti-dumping duty in force.

1.2. Initiation of an expiry review

(4) On 2 September 2017, the Commission published a notice of impending expiry of the anti-dumping measures in force on the imports of tungsten electrodes originating in the PRC in the *Official Journal of the European Union*[(4)].

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/1267. (See end of Document for details)*

(5) On 27 February 2018, two Union producers (Gesellschaft für Wolfram Industrie mbH and Plansee SE) ('the applicants'), representing 100 % of the total production of tungsten electrodes in the European Union ('the Union'), lodged a request for review ('the Request') under Article 11(2) of the 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[5] ('the basic Regulation').

(6) The applicants based their Request on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and injury to the Union industry.

(7) Having determined that sufficient evidence existed for the initiation of an expiry review, on 31 May 2018 the Commission published a notice of initiation in the *Official Journal of the European Union*[6] ('the Notice of Initiation').

1.3. **Review investigation period and period considered**

(8) The investigation of the likelihood of continuation or recurrence of dumping and injury covered the period from 1 April 2017 to 31 March 2018 ('the review investigation period' or 'RIP').

(9) The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2014 to the end of the review investigation period ('the period considered').

1.4. **Interested parties**

(10) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicants, known importers and users of tungsten electrodes in the Union, the authorities in the PRC and known producers in the PRC about the initiation of the expiry review and invited them to cooperate.

(11) All interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. No comments on the initiation or requests for a hearing were received.

1.5. **Sampling**

(12) In its Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.5.1. *Sampling of unrelated importers*

(13) The Commission invited in the Notice of Initiation importers to make themselves known and to provide specific information necessary to decide whether sampling was necessary and, if so, to select a sample.

(14) From the 46 unrelated importers that were contacted, five companies made themselves known. Two of them, however, did not import tungsten electrodes originating in the PRC during the review investigation period and the three remaining ones claimed to be users, not importers, and only one of them wanted to be an interested party. One additional importer came forward at a later stage of the investigation and it was accorded the status of an interested party. Thus, no sample of importers was selected.

1.5.2. *Sampling of producers in the PRC*

(15) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all known producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the PRC to the European Union to identify and/or contact other producers in the PRC, if any, that could be interested in participating in the investigation.

(16) Three producers in the PRC provided the requested information and agreed to be included in the sample. In view of the low number of cooperating producers, the Commission decided that sampling was not necessary and requested all Chinese producers that submitted sampling replies to complete the questionnaire.

1.6. **Users**

(17) The Commission invited in the Notice of Initiation the users to make themselves known and cooperate. As explained in recital (14) three users came forward, but only one wanted to be registered as an interested party.

1.7. **Replies to the questionnaires**

(18) The Commission sent questionnaires to the two Union producers, to the three producers in the PRC which made themselves known in the sampling exercise and to the Government of the People's Republic of China (‘GOC’). Replies to the questionnaires were received only from the two Union producers and one Chinese company Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd. This company used to be a producer of the product under review as defined in recital (32), but with currently suspended production engaged in trading activities only.

(19) Therefore, there was no cooperation by the GOC or producers[7] of the product under review in the PRC, irrespective of whether or not they exported. The Commission informed the producers of the consequences of the lack of cooperation; yet, no producer cooperated in the investigation.

1.8. **Verification visits**

(20) The Commission sought and verified all the information deemed necessary for determination of a likelihood of continuation or recurrence of dumping and injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers

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— Gesellschaft für Wolfram Industrie mbH, Traunstein, Germany,

— Plansee SE, Reutte, Austria;

Exporter in the PRC

— Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd, Baoji, Shaanxi, PRC.

1.9. **Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation**

(21) In view of the sufficient evidence available at the initiation of the investigation tending to show the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the investigation on the basis of Article 2(6a) of the basic Regulation.

(22) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all known producers in the PRC to provide the information requested in Annex III to the Notice of Initiation regarding the inputs used for producing the product under review. Two Chinese producers provided information in this regard.

(23) In order to obtain information it deems necessary for its investigation with regard to the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, as explained in recital (18) the Commission also sent a questionnaire to GOC. No reply was received from the GOC.

(24) In the Notice of Initiation, the Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of this Notice in the *Official Journal of the European Union*. No submissions or additional evidence were received in that respect from the GOC or the producers in the PRC.

(25) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.

(26) On 8 November 2018, the Commission made available a first note for the file ('Note of 8 November 2018') seeking the views of the interested parties on the relevant sources that the Commission may use for the determination of the normal value. The Note of 8 November 2018 provided a list of all factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers. In addition, taking into account the criteria guiding the choice of undistorted prices or benchmarks, the Commission services identified, at that stage, Brazil, Mexico, Russia and Turkey as a potential representative countries. The note of 8 November 2018 further indicated the intention to use international benchmarks for the cost of the main raw material.

(27) All interested parties were given the opportunity to comment, within 10 days. Comments were received from the two Union producers. In particular the Union industry submitted that costs in Turkey provide a better basis than Mexico, Brazil or Russia.

(28) The Commission addressed the comments received by the two Union producers in the Second note on the sources for the determination of the normal value of 6 March 2019 ('the Note of 6 March 2019'). In the Note of 6 March 2019, based on the information available at that stage, Turkey was identified as the most appropriate representative country under Article 2(6a)(a), first indent of the basic Regulation. The Note of 6 March 2019 further indicated that in respect of the labour and electricity costs, the Commission intended to use the data published by the Turkish Statistical Institute. It was further indicated that, based on the information available, it would appear that there was no production of the product under review outside the PRC and the Union. Therefore, the Commission indicated that it intended to use the publicly available data from the two cooperating Union producers for manufacturing overhead costs, SG&A and profits. For the net price of the raw material (tungsten oxide included in the ammonium paratungstate ('APT')), the international benchmark of Platts Metals Week as published by the National Minerals Information Center of the U.S. Geological Survey would be used.

(29) All interested parties were given the opportunity to comment, within 10 days, but no comments were received.

1.9.1. *Subsequent procedure*

(30) On 6 May 2019, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties ('final disclosure'). All parties were granted a period within which they could make comments on the disclosure and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(31) One party submitted comments, highlighting issues already duly explained in this regulation. No requests for a hearing were received.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

(32) The product under review is the same as in the original investigation, namely 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, currently falling under CN codes ex 8101 99 10 and ex 8515 90 80 (TARIC codes 8101 99 10 10 and 8515 90 80 10) ('the product under review').

(33) The product under review is used in welding and similar processes, including tungsten inert gas (TIG) shielded arc welding, plasma arc welding and cutting. These processes are operated in a wide variety of industrial sectors such as construction,