Council Implementing Regulation (EU) No 871/2013 of 2 September 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China to imports of molybdenum wire, containing by weight at least 97 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China

COUNCIL IMPLEMENTING REGULATION (EU) No 871/2013

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Article 13 thereof,

Having regard to the proposal from the European Commission after having consulted the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) In December 2009, the European Commission ('the Commission'), by Regulation (EU) No 1247/2009[(2)] ('the provisional anti-dumping Regulation'), imposed a provisional anti-dumping duty on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China ('PRC').

(2) In June 2010, the Council, by Implementing Regulation (EU) No 511/2010[(3)], imposed a definitive anti-dumping duty of 64,3 % on the same imports. These measures will hereinafter be referred to as 'the measures in force' and the investigation that led to the measures in force will be hereinafter referred to as 'the original investigation'.

(3) In January 2012, following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, by Implementing Regulation (EU) No 14/2012[4] the Council extended the measures in force to imports of the product concerned consigned from Malaysia, whether declared as originating in Malaysia or not.

1.2. **Request**

(4) In November 2012, the Commission received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on certain molybdenum wires originating in the PRC by imports of certain slightly modified molybdenum wires, containing by weight 97 % or more but less than 99,95 % of molybdenum, originating in the PRC, and to make such imports subject to registration.

(5) The request was lodged by Plansee SE ('Plansee'), a Union producer of certain molybdenum wires that participated in the original investigation.

(6) The request contained sufficient prima facie evidence that the anti-dumping measures on imports of certain molybdenum wires originating in the PRC are being circumvented by means of imports of a certain slightly modified molybdenum wires, containing by weight 97 % or more but less than 99,95 % of molybdenum, originating in the PRC.

1.3. **Initiation**

(7) Having determined, after the consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission initiated an investigation by Regulation (EU) No 1236/2012[5] ('the initiating Regulation') of the possible circumvention of anti-dumping measures imposed on imports of certain molybdenum wires originating in the PRC and also directed the customs authorities to register imports into the Union of molybdenum wire, containing by weight 97 % or more but less than 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm and currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 30), originating in the PRC, as from 21 December 2012.

1.4. **Product concerned and product under investigation**

(8) The product concerned is the same as defined in the original investigation, namely molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm ('pure molybdenum') originating in the PRC currently falling within CN code ex 8102 96 00.

(9) The product under investigation, namely the product allegedly circumventing, is the same as that defined in recital 7 containing by weight 97 % or more but less than

99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm originating in the PRC.

1.5. **Investigation and parties concerned by the investigation**

(10) The Commission officially advised the authorities of the PRC of the initiation of the investigation and sent questionnaires to the exporting producers in the PRC and importers in the Union known to be concerned. Interested parties were given the opportunity to make themselves and their views known in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being based on facts available.

(11) Two exporting producers submitted a questionnaire reply to the Commission. One of these companies, who also cooperated during the original investigation, is a genuine exporting producer of the product under investigation. As regards the second one, this company did not report any sales of the product under investigation. Therefore, its submission was disregarded.

(12) Four importers submitted a questionnaire reply to the Commission. One of them did not report any imports of the product under investigation and turned out to be a user of molybdenum wire.

(13) The Commission carried out on-spot investigations at the two premises of the cooperating Chinese exporting producer:

— Jinduicheng Molybdenum Co., Ltd, No 88, Jinye 1st Road, Hi-Tech Industry Developing Zone, Xi'an, Shaanxi Province, P.R. China ('JDC'),

— Jinduicheng GuangMing Co., Ltd, No 104 Mihe Road, Zhoucun District, Zibo City, P.R. China,

and at the premises of the following Union importer:

— GTV Verschleißschutz GmbH, Vor der Neuwiese 7, D-57629 Luckenbach, Germany ('GTV').

(14) The three other importers were not visited, but their submissions were duly examined in the course of the investigation.

1.6. **Investigation and reporting periods**

(15) The investigation period was set from 1 January 2008 to 30 September 2012 ('IP') in order to investigate the alleged change in the pattern of trade. The reporting period ('RP') covered the period from 1 October 2011 to 30 September 2012 in order to investigate if the imports are made at prices below the non-injurious price established in the investigation that led to the existing measures 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 possible circumvention practices was made by analysing successively:

(1) whether there was a change in pattern of trade between the PRC and the Union;

(2) if 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;

(3) if there was evidence of injury or that remedial effects of the duty were being undermined in terms of the prices and/or quantities of the product under investigation; and

(4) whether there was evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2.2. **Slight modification and essential characteristics**

(17) The investigation has shown that the product under investigation is a wire made of molybdenum (between 99,6 % and 99,7 %) and usually lanthanum (La) (between 0,25 % and 0,35 %). This alloy contains also other chemicals elements and is known as a 'doped molybdenum' or 'MoLa' or 'ML'. The product concerned and the product under investigation both currently fall under CN code 8102 96 00. As explained below, the investigation did not find any difference in the production process of the product under investigation and the product concerned, other than the addition of a low percentage of lanthanum to pure molybdenum at the blending step. In addition, the cooperating exporting producer confirmed that the cost of production of the product under investigation is similar to the cost of the product concerned. This implies that there is no economic benefit for the exporting producer to produce the product under investigation other than avoidance of the measures in force. Furthermore, it was found that the users of the product concerned switched to the product under investigation after the imposition of the provisional measures, which implies that there is no difference between the product concerned and the product under consideration for the users.

(18) As mentioned in recital 15 of the provisional anti-dumping Regulation, the product concerned is mainly used as coating in the manufacturing of automotive parts (i.e. gear boxes), aircraft parts or as electrical contacts. The most traded diameters of the product concerned are 2,31 mm and 3,17 mm, used for flame or arc spraying.

(19) Three parties argued that the product under investigation and the product concerned have different essential characteristics. At the request of two of them, a confrontational hearing with GTV, JDC and Plansee, chaired by the Hearing Officer, took place in April 2013. As explained in detail below, during the hearing the main focus was on the alleged technical differences between the product concerned and the product under investigation, and the economic justification for importation of the latter into the Union market.

(20) GTV and JDC argued during the hearing and in writing that the product under investigation has different essential physical characteristics which differ significantly from the product concerned. More specifically, they claimed that the ductility, namely the ability of the material to be drawn out longitudinally to a reduced section without fracture under the action of a tensile force, the elongation parameters and the coating properties of the product under investigation are especially improved compared to the product concerned.

(21) In support of this claim, the two parties submitted a number of articles and studies which aimed to show that alloying molybdenum and lanthanum leads to a product with better resistance to brittle failure and better elongation than the product concerned. These parties also claimed that information published on the Plansee's web site provides evidence that the product under investigation has improved properties compared to the product concerned.

(22) Regarding the product's characteristics, in order to evaluate whether the product under investigation and the product concerned have different essential characteristics, Plansee proposed to mandate an independent institute to compare the product concerned and the product under investigation.

(23) After the hearing, the above request was assessed on the basis of the evidence collected during the investigation, in particular the purchase orders sent by importers to the exporting producer, the explanations provided by the exporting producer about its production process, the chemical content and elongation and tensility characteristics mentioned on certificates of qualities, the commercial invoices issued by the exporting producer and the absence of any commercial information related to the improved characteristic of the product under investigation compared to the product concerned sent to any customer. All the information confirmed that better properties were not requested by the customers nor provided by the producer of the product under investigation. Therefore, it was concluded that an expert's opinion is not necessary. In consequence, this request was rejected.

(24) In this aspect, the investigation has confirmed that the improved qualities mentioned above in recital 20 depend on the content of lanthanum and on whether an optimised production processes is being used. However, the cooperating exporting producer did not demonstrate that it put in place the optimised production processes for the product under investigation exported to the Union during the IP. The claim was therefore rejected as unfounded.

(25) One party claimed that the product under investigation has improved coating properties. However, the party did not submit sufficient evidence to support this statement. The claim was therefore rejected as unfounded.

(26) Two parties claimed that fracture toughness is improved for the product under investigation. This means that the wire never breaks when unrolled inside a spraying machine. However, these parties were asked to provide supporting documentation