Council Implementing Regulation (EU) No 508/2013 of 29 May 2013 imposing a definitive anti-dumping duty on imports of certain tungsten electrodes originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 508/2013

of 29 May 2013

imposing a definitive anti-dumping duty on imports of certain tungsten electrodes originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

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 9(4) and 11(2), (5) and (6) thereof,

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

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) Following an investigation (the 'original investigation') the Council, by Regulation (EC) No 260/2007[(2)], imposed a definitive anti-dumping duty on imports of certain tungsten electrodes originating in the People's Republic of China ('the PRC') (the 'original measures'). The measures took the form of an *ad valorem* duty of 63,5 % for all companies except three Chinese exporting producers to whom individual duties were granted.

2. **Initiation of an expiry review**

(2) On 9 March 2012, the Commission announced by a notice ('Notice of initiation')[(3)], published in the *Official Journal of the European Union*, the initiation of an expiry review of the anti-dumping measures applicable to imports of certain tungsten electrodes originating in the PRC.

(3) The review was initiated following a substantiated request lodged by Eurométaux ('the applicant') on behalf of a Union producer representing more than 50 % of the Union production of certain tungsten electrodes.

(4) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping and injury to the Union industry.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 508/2013. (See end of Document for details)*

3. Investigation

3.1. *Review investigation period and the period considered*

(5) The investigation of continuation or recurrence of dumping covered the period from 1 January 2011 to 31 December 2011 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2008 to the end of the RIP ('the period considered').

3.2. *Parties concerned by the investigation*

(6) The Commission officially advised the applicant, the other known Union producer, exporting producers in the PRC, unrelated importers and users known to be concerned, producers in the potential analogue countries and the representatives of the PRC of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out 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 view of the apparently large number of exporting producers in the PRC and unrelated importers in the Union involved in the investigation, sampling was envisaged in the Notice of initiation, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the publication of the Notice of initiation and to provide the Commission with the information requested in the Notice of initiation.

(9) Three importers made themselves known. None of them, however, imported certain tungsten electrodes originating in the PRC during the RIP.

(10) As only two exporting producers from the PRC came forward with the requested information it was not necessary to select a sample of exporting producers.

(11) The Commission sent questionnaires to all parties known to be concerned and to those who made themselves known within the deadlines set in the Notice of initiation. Replies were received from two Union producers, two exporting producers in the PRC and one producer in the USA.

(12) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following companies:

(a) *Union producers*

— Plansee SE, Austria

— Gesellschaft für Wolfram Industrie mbH, Germany

(b) *Exporting producers in the PRC*

— Shandong Weldstone Tungsten Industry Co., Ltd, Zibo

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

(c) *Related company to one cooperating exporting producer in the PRC*

— Shanghai Weldstone Asia Co., Ltd, Shanghai

(d) *Related companies to one cooperating exporting producer in the European Union*

— Weldstone GmbH, Wilnsdorf, Germany

— Binzel Benelux bvba, Eke – Nazareth, Belgium

(e) *Analogue Country*

— Global Tungsten & Powders Corp, Towanda, USA.

B. PRODUCT UNDER REVIEW AND LIKE PRODUCT

(13) The product concerned is the same as that covered by Regulation (EC) No 260/2007, 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, originating in the PRC ('TE' or 'the product under review'), currently falling within CN codes ex 8101 99 10 and ex 8515 90 00.

(14) The product under review is used in welding and similar processes. TE are used in a wide variety of industrial sectors such as construction, shipbuilding, automobile manufacturing, marine, chemical and nuclear engineering, aerospace as well as oil and gas pipelines. Based on the physical and chemical characteristics and the substitutability of the different types of the product from the perspective of the user, all TE are considered to constitute a single product for the purpose of this proceeding.

(15) The investigation confirmed that, as in the original investigation, the product under review and that manufactured and sold on the domestic market of the PRC, as well as that produced and sold by the Union industry on the Union market and that produced and sold on the analogue country market have the same basic physical and technical characteristics and the same basic uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR A RECURRENCE OF DUMPING

1. Preliminary remarks

(16) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

(17) As explained above, it was not necessary to select a sample of exporting producers in the PRC. The two cooperating companies covered the imports of product

concerned from the PRC to the Union in a range of 80 % to 85 % during the RIP. On this basis, it was concluded that cooperation was high.

(18) One of the cooperating exporting producers benefited from market economy treatment ('MET') in accordance with Article 2(7)(c) of the basic Regulation, while the second benefited from individual treatment ('IT') in accordance with Article 9(5) of the basic Regulation, granted to them during the original investigation. It is recalled that in the context of investigations in accordance with Article 11(2) of the basic Regulation, MET and IT are not reconsidered. A third company, who did not cooperate in the current expiry review, was granted IT in the original investigation.

2. Dumping of imports during the RIP

2.1. *Analogue country*

(19) Since the PRC is an economy in transition and in accordance with the provisions of Article 2(7)(a) of the basic Regulation, normal value for exporting producers not granted market economy treatment has to be determined on the basis of the price or constructed value in an appropriate market economy third country ('analogue country').

(20) As in the original investigation, the USA was proposed as analogue country in the Notice of initiation for the purpose of establishing normal value. Interested parties were given the opportunity to comment on the appropriateness of this choice. No comments were received in this regard.

(21) The Commission also examined whether other countries could be a reasonable choice of an analogue country and identified other third countries from which imports of tungsten electrodes were recorded in Eurostat. Potential known producers in these countries were contacted and invited to cooperate in the investigation. However, no cooperation was obtained.

(22) It was considered that the USA was representative as a reference market, especially in view of the openness and competitiveness of their domestic market. The USA was used also as an analogue country in the original investigation. No new or changed circumstances which would justify a change appeared to exist nor were any such circumstances communicated to the Commission.

(23) Therefore, the USA has been used as an analogue market economy country for the purpose of this review. The only known USA producer was contacted and agreed to cooperate, to reply to the questionnaire and to accept a verification visit. The verified sales and production figures of this company have been used for the determination of the normal value for companies not granted MET during the original investigation.

2.2. *Normal value*

(24) For the company granted MET in the original investigation, normal value has been established based on its data. In accordance with Article 2(2) of the basic Regulation, it was examined whether the domestic sales of TE to independent customers

were representative during the RIP, i.e. if the sales volume of the product intended for domestic consumption represented 5 % or more of their exports of the product under review to the Union.

(25) It was subsequently examined whether the domestic sales of the like product could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers on the domestic market.

(26) For the types of the product concerned where the domestic sales were representative and made in the ordinary course of trade, normal value was established on the prices paid by independent customers in the exporting country. For the remaining types of the product under review the normal value had to be constructed in accordance with Article 2(3) of the basic Regulation. Therefore, the established normal value was calculated using the company's cost of manufacturing and adding selling, general and administrative costs (SG&A) and profit achieved on the domestic sale made in the ordinary course of trade in accordance with Article 2(6) of the basic Regulation.

(27) Following disclosure, one party argued that the methodology used to determine SG&A expenses was different from the one used in the original investigation which may have had an impact on the determination of the profit margin used to calculate the constructed normal value in accordance with Article 2(6) of the basic Regulation. Further to the information already previously submitted in the investigation the party did not substantiate its claim by any evidence. It is noted that in accordance with Article 2(5) of the basic Regulation SG&A expenses were allocated on turnover basis and that this methodology was also used in the original investigation.

(28) Profit used in the initial investigation was not from the OCOT test (ordinary course of trade) as none of the exported types of the product concerned were sold on the domestic market in the ordinary course of trade. The current expiry review showed that some types of the product concerned were profitable and therefore, in compliance with Article 2(3) and (6) of the basic Regulation, profit of these profitable transactions was used for constructing the normal value.

(29) As far as the company not granted MET in the original investigation is concerned, pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of information collected from the cooperating producer in the analogue country. Domestic sales of the producer in the analogue country were found to be made in sufficient quantities and in the ordinary course of trade and could thus be used as a basis to determine normal value for the company not granted MET.

2.3. *Export price*

(30) Regarding the company granted MET, all export sales to the Union were made via related importers and subsequently resold to related and unrelated companies in the Union. The export price was therefore constructed, pursuant to Article 2(9) of the basic Regulation, on the basis of the price at which the imported products were first resold to an independent buyer, duly adjusted for all costs incurred between importation and