Commission Regulation (EU) No 477/2011 of 17 May 2011 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 511/2010 on imports of certain molybdenum wires originating in the People's Republic of China by imports of certain molybdenum wires consigned from Malaysia and Switzerland, whether declared as originating in Malaysia and Switzerland or not, and making such imports subject to registration

COMMISSION REGULATION (EU) No 477/2011

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THE EUROPEAN COMMISSION,

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 Articles 13(3), 14(3) and 14(5) thereof,

After having consulted the Advisory Committee in accordance with Articles 13(3) and 14(3) of the basic Regulation,

Whereas:

A. **REQUEST**

(1) The European Commission (the Commission) has 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 imports of certain molybdenum wires originating in the People's Republic of China and to make imports of certain molybdenum wires consigned from Malaysia and Switzerland, whether declared as originating in Malaysia and Switzerland or not, subject to registration.

(2) The request was lodged on 4 April 2011 by the European Association of Metals (Eurometaux) on behalf of a Union producer of certain molybdenum wires.

B. **PRODUCT**

(3) The product concerned by the possible circumvention is 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, currently falling within CN code ex 8102 96 00 (the product concerned).

(4) The product under investigation is the same as that defined in the previous recital, but consigned from Malaysia and Switzerland, whether originating in Malaysia and Switzerland or not, currently falling within the same CN code as the product concerned.

C. EXISTING MEASURES

(5) The measures currently in force and possibly being circumvented are anti-dumping measures imposed by Council Implementing Regulation (EU) No 511/2010[2].

D. GROUNDS

(6) The request contains sufficient prima facie evidence that the anti-dumping measures on imports of certain molybdenum wires originating in the People's Republic of China are being circumvented by means of the transhipment via Malaysia and Switzerland.

The evidence submitted is as follows:

The request shows that a significant change in the pattern of trade involving exports from the People's Republic of China, Malaysia and Switzerland to the Union has taken place following the imposition of measures on the product concerned, and that there is insufficient due cause or justification other than the imposition of the duty for such a change.

This change in the pattern of trade appears to stem from the transhipment of certain molybdenum wires originating in the People's Republic of China via Malaysia and Switzerland.

Furthermore, the request contains sufficient prima facie evidence that the remedial effects of the existing anti-dumping measures on the product concerned are being undermined in terms of quantity. Significant volumes of imports of the product under investigation appear to have replaced imports of the product concerned. In addition, the Commission is in possession of sufficient evidence that imports of the product under investigation are made at prices well below the non-injurious price established in the investigation that led to the existing measures, adjusted for the decrease in the prices of the raw material costs.

Finally, the request contains sufficient prima facie evidence that the prices of the product under investigation are dumped in relation to the normal value previously established for the product concerned, adjusted for the decrease in the prices of the raw material costs.

Should circumvention practices via Malaysia and Switzerland covered by Article 13 of the basic Regulation, other than transhipment, be identified in the course of the investigation, the investigation may also cover these practices.

E. PROCEDURE

In the light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13 of the basic Regulation

and to make imports of the product under investigation, whether declared as originating in Malaysia and Switzerland or not, subject to registration, in accordance with Article 14(5) of the basic Regulation.

(a) Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the known exporters/producers and to the known associations of exporters/producers in Malaysia and Switzerland, to the known exporters/producers and to the known associations of exporters/producers in the People's Republic of China, to the known importers and to the known associations of importers in the Union and to the authorities of the People's Republic of China, Malaysia and Switzerland. Information, as appropriate, may also be sought from the Union industry.

In any event, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 of this Regulation, and request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.

The authorities of the People's Republic of China, Malaysia and Switzerland will be notified of the initiation of the investigation.

(b) Collection of information and holding of hearings

All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) Exemption of registration of imports or measures

In accordance with Article 13(4) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if the importation does not constitute circumvention.

Since the possible circumvention takes place outside the Union, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to producers in Malaysia and Switzerland of certain molybdenum wires that can show that they are not related[(3)] to any producer subject to the measures[(4)] and that are found not to be engaged in circumvention practices as defined in Article 13(1) and (2) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3(3) of this Regulation.

F. **REGISTRATION**

Pursuant to Article 14 (5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied retroactively from the date of registration of such imports consigned from Malaysia and Switzerland.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 477/2011. (See end of Document for details)*

G. **TIME LIMITS**

In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— producers in Malaysia and Switzerland may request exemption from registration of imports or measures,

— interested parties may make a written request to be heard by the Commission.

Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits mentioned in Article 3 of this Regulation.

H. **NON-COOPERATION**

In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available. If an interested party does not cooperate or cooperates only partially and findings are therefore based on the facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

I. **SCHEDULE OF THE INVESTIGATION**

The investigation will be concluded, according to Article 13(3) of the basic Regulation, within nine months of the date of the publication of this Regulation in the *Official Journal of the European Union*.

J. **PROCESSING OF PERSONAL DATA**

It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(5)].

K. **HEARING OFFICER**

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of Directorate-General for Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to the file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details, interested parties may consult the Hearing Officer's web pages on the website of Directorate-General for Trade (http://ec.europa.eu/trade),

HAS ADOPTED THIS REGULATION: