Council Implementing Regulation (EU) No 511/2010 of 14 June 2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain molybdenum wires originating in the People's Republic of China

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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 9 thereof,

Having regard to the proposal submitted by the European Commission (Commission) after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission, by Regulation (EC) No 1247/2009[(2)] (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of certain molybdenum wires originating in the People's Republic of China ('PRC' or 'country concerned').

(2) The proceeding was initiated following a complaint lodged by the European Association of Metals (EUROMETAUX) ('the complainant') on behalf of a producer representing a major proportion, in this case more than 25 %, of the total Union production of molybdenum wires.

(3) As set out in recital 13 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 April 2008 to 31 March 2009 ('investigation period' or 'IP'). The examination of the trends for the assessment of injury covered the period from March 2005 to the end of the IP ('period considered').

1.2. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures ('provisional disclosure'), several interested parties made written submissions making

their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain molybdenum wires originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). They were also granted a period within which they could make representations subsequent to this disclosure.

2. PRODUCT CONCERNED AND LIKE PRODUCT

(6) In the absence of any comments concerning the product concerned and the like product, recitals (14) to (17) of the provisional Regulation are hereby confirmed.

3. DUMPING

3.1. Market Economy Treatment (MET) — Individual Treatment (IT)

(7) In the absence of any comments concerning the MET and IT findings, recitals (18) to (23) of the provisional Regulation are hereby confirmed.

3.2. Normal value

(8) Following the disclosure of the provisional findings, the cooperating exporting producer contested the use of the export prices from the USA to other countries (including the Union) as a basis for the determination of the normal value for the PRC. Instead, it proposed to use the price actually paid or payable in the Union for the like product because it considered that normal value determined on this basis would yield a lower dumping margin for the PRC.

(9) The same producer claimed that the normal value should be adjusted downwards in order to account for the efficiencies it enjoys as a vertically integrated producer in comparison with the complainant or the analogue country producer which do not have mining facilities for the main raw material, the molybdenum ore.

(10) Regarding the first claim it is noted that the use of prices paid or payable in the Union is an option provided for in Article 2(7)(a) of the basic Regulation to be used only when the other options provided for in the same Article cannot be applied. Since in this proceeding cooperation was obtained from a third country producer, and it was thus possible to use the option of a price from the market economy third country to other countries, there is no legal justification to apply the residual option of Article 2(7)(a). The claim was therefore, rejected.

(11) Regarding the second claim it is noted that that the cooperating producer did not provide any evidence to demonstrate that the level of integration of producers is a factor that affects prices and price comparability. The claim was therefore rejected.

(12) Certain parties questioned the choice of the analogue country producer in view of the fact that this company in the USA is a daughter company of the complainant. In this regard it is noted that the fact that a company in the proposed analogue country is a related company of the complainant did not preclude that the information obtained was reliable and verifiable.

(13) In the absence of any other comments concerning the normal value, which would alter the provisional findings, recitals (24) to (25) of the provisional Regulation are hereby confirmed.

3.3. **Export price**

(14) In the absence of any comments concerning the export price, recital (26) of the provisional Regulation is hereby confirmed.

3.4. **Comparison**

(15) It is noted that the indirect taxation adjustment mentioned in recital (27) of the provisional Regulation is 5 % and represents the difference between the VAT payable on domestic sales and that payable on the export sales transactions due account being taken of the VAT refund rate on export sales. The cooperating exporting producer contested the manner in which this adjustment was applied and claimed that it should rather be calculated as a factor decreasing the export price.

(16) Regarding this claim it is noted that the adjustment was based on the provisions of Article 2(10)(b) of the basic Regulation which provides for an adjustment to normal value for import charges and indirect taxes — a category which includes VAT. On this basis the claim was rejected.

(17) In the absence of any other comments concerning the comparison, which would alter the provisional findings, recital (27) of the provisional Regulation is hereby confirmed.

3.5. **Dumping margins**

(18) Based on the above, the country-wide dumping established in recitals (28) to (29) of the provisional Regulation at 68,4 % is hereby confirmed.

4. **INJURY**

4.1. **Union production**

(19) It is recalled that in order to protect the business confidential information of the sole Union producer that fully cooperated, all the figures related to sensitive data provided below have been indexed or given in a range.

(20) In the absence of any comments concerning the Union production recitals (30) to (31) of the provisional Regulation are hereby confirmed.

4.2. **Definition of the Union industry**

(21) In the absence of any comments concerning the definition of the Union industry, recital (32) of the provisional Regulation is hereby confirmed.

(22) Regarding recital (33) of the provisional Regulation it is noted that on the basis of comments received by one interested party a clerical error was detected. The fiscal year ('FY') 2005 of the Union producer covers the period from 1 March 2005 to 28 February 2006 and not the period from 1 March 2004 to 28 February 2005 as indicated in that recital. Hence, the starting point of the injury assessment was effectively March 2005.

4.3. **Union consumption**

(23) It is recalled that the Union consumption was established by adding to the sales volume of the known producers in the Union all the imports from third countries extracted from Eurostat. It is also recalled that since the CN code under which the product concerned is declared also includes other products which fall outside the scope of this investigation and given that there are no specific import statistics available only for the product concerned, the Eurostat data was adjusted in accordance with the method suggested in the complaint. This methodology is based on a comparison of the import values from the PRC with the Union producer's sales values.

(24) However, at provisional stage the import data used corresponded to the calendar years whereas the sales volume of the known producers were based on the fiscal years. One interested party contested this discrepancy in the period used for the determination of consumption and claimed that the imports should also be based on the fiscal years.

(25) This claim was considered to be valid and, therefore, Eurostat data was adjusted to correspond to the same periods, namely fiscal years. As a result, the Union consumption figures provided in table 1 of the provisional Regulation were amended; the new figures being as provided in Table 1 herein:

Table 1

Union Consumption	**2005**	**2006**	**2007**	**2008**	**IP**
Tonnes	403	396	430	396	358
Index 2005 = 100	*100*	*98*	*107*	*98*	*89*

(26) Overall, the Union consumption of molybdenum wires decreased by 11 % over the period considered. The demand decreased slightly by 2 % in 2006 and went up in 2007 by 9 % after which it dropped in 2008 and in the IP, in connection with the negative impact of the economic crisis.

4.4. **Imports into the European Union from the PRC**

4.4.1. *Volumes and market share of the imports from the PRC*

(27) Following the acceptance of the argument mentioned in recital (25), the table below shows the revised total import volumes, market shares and prices of Chinese molybdenum wires into the Union market during the period considered. It is noted that this revision did not affect the import volumes from the country concerned in the IP.

Table 2

All imports from the PRC	**2005**	**2006**	**2007**	**2008**	**IP**
Tonnes	42	56	87	100	97
Index 2005 = 100	*100*	*133*	*207*	*238*	*231*
Market share *Index 2005 = 100*	100	136	194	243	261
Prices (EUR/tonne)	53 202	62 198	56 046	51 512	50 892
Index	*100*	*117*	*105*	*97*	*96*

Source: Eurostat and complaint data

(28) The revised figures in Table 2 showed that overall the trends of import volumes and market shares from the country concerned presented in the table of recital (36) of the provisional Regulation remained unchanged. The dumped imports from the PRC increased significantly from 42 tonnes in 2005 to 100 tonnes in 2008, i.e. more than doubled. Following a peak in 2008, these imports decreased during the IP in line with the evolution of the Union consumption. Moreover, the market share of the dumped imports more than doubled over the period considered.

(29) The revised figures concerning the average import prices, however, now show a declining trend between 2005 and the IP. It was found that over the period considered the average import prices from the PRC decreased by 4 %.

4.4.2. *Price undercutting*

(30) In the absence of any comments concerning price undercutting, recitals (39) and (40) of the provisional Regulation are hereby confirmed.

4.5. **Economic situation of the Union industry**