Commission Regulation (EU) No 1247/2009 of 17 December 2009 imposing a provisional anti-dumping duty on imports of certain molybdenum wires originating in the People's Republic of China

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THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 23 February 2009, the European Commission (Commission) received a complaint concerning imports of certain molybdenum wires, originating in the People's Republic of China ('the PRC' or 'the country concerned').

(2) The complaint was lodged pursuant to Article 5 of the basic Regulation 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 Community production of molybdenum wires.

(3) The complaint contained *prima facie* evidence of dumping and of material injury caused by such dumping which was considered sufficient to justify the opening of a proceeding.

(4) On 8 April 2009, a proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union*[(2)].

1.2. Parties concerned by the proceeding

(5) The Commission officially advised the exporting producers in the PRC, importers, traders, users and associations in the Community known to be concerned, the authorities of the PRC, the complainant Community producer and other Community producers known to be concerned by the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a

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hearing within the time limit set in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

(6) In order to allow exporting producers to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned and to the authorities of the PRC. Only one group of companies, consisting of Jinduicheng Molybdenum Co., Ltd. and its related company Jinduicheng Molybdenum Mining Guangming Co., Ltd. ('Jinduicheng group'), came forward and requested IT.

(7) In view of the apparent high number of exporting producers in the PRC and importers in the Community, the Commission indicated in the notice of initiation that sampling might be applied in accordance with Article 17 of the basic Regulation.

(8) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all known exporting producers in the PRC and importers in the Community were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned.

(9) Given the limited number of responses to the sampling exercise, it was decided that sampling was not necessary for the Chinese exporting producers or for the Community importers.

(10) Specific questionnaires were sent to all parties known to be concerned, namely the known exporting producers in the PRC, the Community producers, importers, traders and users in the Community. Replies were received from one group of exporting producers in the PRC, the complainant Community producer, one importer/trader and one user.

(11) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

(a) *Exporting producers in the PRC*

Jinduicheng Group:

— Jinduicheng Molybdenum Co., Ltd, Xi'an,

— Jinduicheng Molybdenum Mining Guangming Co., Ltd, Zibo;

(b) *Producer in the Community*

— Plansee Metall GmbH, Reutte, Austria;

(c) *User in the Community*

— Praxair Surface Technologies Srl, Fornovo Taro, Italy.

(12) In view of the need to establish a normal value for exporting producers in the PRC, none of which requested MET, a verification to establish normal value on the

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basis of data from an analogue country, the USA in this case, took place at the premises of the following company:

— Global Tungsten & Powders Corp, Towanda.

1.3. **Investigation period**

(13) 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 relevant for the assessment of injury covered the period from March 2005 to the end of the investigation period ('period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product concerned**

(14) The product concerned 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 PRC ('the product concerned' or 'molybdenum wire'), currently falling within CN code ex 8102 96 00.

(15) Molybdenum wire is mainly used in the automotive sector for metal coating by thermal spraying of motor parts that are subject to heavy wear, such as piston rings, synchroniser rings or transmission components, to increase their abrasion resistance.

2.2. **Like product**

(16) No differences were found between the product concerned and the molybdenum wire produced by the Community industry and sold on the Community market. Given that the PRC is an economy in transition and that no exporter requested MET, as mentioned in recital (6), normal value had to be established on the basis of information obtained in a market economy third country, the USA. According to the information available, molybdenum wire produced and sold on the US domestic market as well as molybdenum wire exported from the USA to other markets, has the same basic physical and chemical characteristics as the molybdenum wire produced in the PRC and exported to the Community.

(17) It is therefore provisionally concluded that all types of molybdenum wire are alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. **Market economy treatment (MET)**

(18) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(19) However, as explained in recital (6) above, the Jinduicheng group only requested Individual Treatment ('IT'). These criteria were therefore not investigated.

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3.2. **Individual treatment (IT)**

(20) As a general rule, pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation and therefore qualify to be granted IT.

(21) Briefly, and for ease of reference only, these criteria are set out in a summarised form below:

(a) In the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;

(b) Export prices and quantities, and conditions and terms of sales are freely determined;

(c) The majority of the shares belong to private persons. State officials appearing on the board of Directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference

(d) Exchange rate conversions are carried out at the market rate.

(e) State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

(22) As regards criterion (c), it was found that the mother company, Jingduicheng Molybdenum Co., Ltd, was state-owned. Indeed, it emerged that during the IP only 20 % of the shares belonged to private persons and that these shares only represented 2,4 % of the voting rights. The remaining 80 % of the shares, with 97,6 % of the voting rights, belonged to state-owned enterprises.

(23) On the basis of the above findings, it was provisionally established that the Jinduicheng group could not be granted IT as set forth in Article 9(5) of the basic Regulation.

3.3. **Normal value**

(24) It was envisaged in the notice of initiation using the USA as an analogue country. A US producer, Global Tungsten & Powders Corp (‘Global Tungsten’), agreed to co-operate and provided all the necessary information for the purpose of establishing normal value for the PRC. The Jinduicheng group contested this choice and proposed producers located in Mexico and India. However, the companies which were contacted in these countries either denied to cooperate, as in the case of India, or indicated that they did not produce the like product. Hence, the USA was confirmed as a suitable analogue country for the purpose of establishing normal value for the PRC.

(25) Pursuant to Article 2(7)(a) of the basic Regulation, it should be noted since that the analogue country producer made only marginal sales on the domestic US market, it was found unreasonable to use such sales data for the purposes of

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determining or constructing normal value. Consequently, the normal value for the PRC was provisionally established on the basis of export prices from the USA to other third countries, including the Community.

3.4. **Export price**

(26) As explained in recital (9), only one group of companies, the Jinduicheng group, representing between 60 to 75 %[3] of imports from the PRC to the Community, co-operated with the investigation. On this basis, the level of co-operation was deemed to be low. As a consequence, export prices for all Chinese exporters were provisionally established on the basis of the figures reported by the cooperating group, complemented with Eurostat import data, duly adjusted as explained in recital (34) below.

3.5. **Comparison**

(27) The comparison between normal value and export price was made on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, allowances for transport costs, ocean freight and insurance costs, handling, loading and ancillary costs and indirect taxation have been made where applicable and justified.

3.6. **Dumping margin**

(28) As explained in recital (23) above, the Jinduicheng group did not fulfil the requirements for IT as set forth in Article 9(5) of the basic Regulation. As a consequence, a country-wide dumping margin was established for the PRC.

(29) The country-wide level of dumping for the PRC was provisionally established at 68,4 % of the CIF Community frontier price, duty unpaid.

4. **INJURY**

4.1. **Community production**

(30) The investigation established that there are two producers in the Community which manufacture the like product for the non-captive market. One producer expressed its neutral position regarding this proceeding and supplied general data on its production and sales. The other producer, on whose behalf the complaint was lodged, co-operated fully with the investigation and submitted a full questionnaire reply. Therefore, in order to protect the business confidential information of that producer, all the figures related to sensitive data provided below have been indexed or given in a range. Bracketed figures relate to negative figures.

(31) In view of the above, the volume of Community production for the purpose of Article 4(1) of the basic Regulation was calculated by adding to the production of the fully cooperating Community producer the production volume provided by the other Community producer.