Council Implementing Regulation (EU) No 14/2012 of 9 January 2012 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of certain molybdenum wires originating in the People's Republic of China to imports of certain molybdenum wires consigned from Malaysia, whether declared as originating in Malaysia or not and terminating the investigation in respect of imports consigned from Switzerland

COUNCIL IMPLEMENTING REGULATION (EU) No 14/2012

of 9 January 2012

extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of certain molybdenum wires originating in the People's Republic of China to imports of certain molybdenum wires consigned from Malaysia, whether declared as originating in Malaysia or not and terminating the investigation in respect of imports consigned from Switzerland

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 submitted by the European Commission ('the Commission') after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Existing measures

(1) By Implementing Regulation (EU) No 511/2010[(2)] ('the original Regulation'), the Council imposed a definitive anti-dumping duty of 64,3 % on imports of certain molybdenum wires as defined in Article 1(1) of the said Regulation ('the product concerned') originating in the People's Republic of China ('PRC' or 'country concerned'). These measures will hereinafter be referred to as 'the measures in force' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

2. Request

(2) On 4 April 2011, the Commission received a request pursuant to Article 13(3) of the basic Regulation to investigate the alleged circumvention of the measures in force. The request was submitted by the European Association of Metals (Eurometaux) on behalf of a Union producer of certain molybdenum wires ('the applicant').

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 14/2012. (See end of Document for details)*

(3) The request alleged that following the imposition of the measures in force, there had been a significant change in the pattern of trade between PRC, Malaysia and Switzerland on the one hand and the Union on the other. The applicant claimed that this change was due to transhipment of molybdenum wires via Malaysia or Switzerland.

(4) The request concluded that there was insufficient due cause or economic justification for the transhipment other than the existence of the measures in force.

(5) Finally, the applicant alleged that the remedial effects of the measures in force were being undermined both in terms of quantities and prices and that the prices of molybdenum wires from Malaysia and Switzerland were dumped when related to the normal value established in the original investigation.

3. Initiation

(6) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission initiated an investigation by Regulation (EU) No 477/2011[3] ('the initiating Regulation'). Pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of the product concerned consigned from Malaysia or Switzerland, whether declared as originating in Malaysia or Switzerland or not, as of 19 May 2011.

4. Investigation

(7) The Commission officially advised the authorities of the PRC, Malaysia and Switzerland, the exporting producers and traders in those countries, the importers in the Union known to be concerned as well as the Union producers of the initiation of the investigation.

(8) Questionnaires were sent to the producers/exporters in Malaysia, Switzerland and the PRC as well as to Union importers known to be concerned and/or mentioned in the request. Interested parties were given the opportunity to make 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 the facts available.

(9) One Union importer contacted the Commission, declaring that it had never purchased any molybdenum wires from outside the Union.

(10) Two Malaysian companies submitted that during the IP referred to in recital (14) they neither manufactured nor exported to the Union any molybdenum wires.

(11) One Swiss company declared that they were not involved in producing or selling the molybdenum wires over the past three years.

(12) One PRC producer replied to the questionnaire indicating that, from 2009 onwards, they exported molybdenum wires neither to the Union nor to Malaysia or Switzerland.

(13) The Commission received no comments from the PRC, Malaysian or Swiss authorities.

5. **Investigation Period**

(14) The investigation period covered the period from 1 April 2010 to 31 March 2011 ('the IP'). Data was collected for the period from 2007 to the end of the IP ('period considered') to investigate the alleged change in the pattern of trade.

B. **RESULTS OF THE INVESTIGATION**

1. **General considerations/degree of cooperation**

(15) As mentioned in recital (10), only two companies in Malaysia cooperated but they did not export the product concerned to the Union during the IP. As mentioned in recital (11), only one Swiss company submitted information according to which they were not involved in producing or selling the product concerned over the past three years. Consequently, findings in the present investigation had to be based on facts available in accordance with Article 18 of the basic Regulation.

(16) In accordance with Article 13(1) of the basic Regulation, the assessment of possible circumvention practices was made by analyzing successively: (1) whether there was a change in the pattern of trade between PRC, Malaysia and Switzerland on the one hand and the Union on the other; (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 the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the like product; 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. **Product concerned and like product**

(17) The product concerned is as defined in the original investigation, i.e. 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, currently falling within CN code ex 8102 96 00.

(18) The product under investigation is the same as that defined in recital (17) but consigned from Malaysia or Switzerland, whether declared as originating in Malaysia or Switzerland or not.

(19) As far as imports declared as originating in Switzerland are concerned, it was established, on the basis of data from Surveillance II database, that there were no imports of the product concerned to the Union during the IP.

(20) As far as imports declared as originating in Malaysia are concerned, in the absence of cooperation, the comparison of molybdenum wires exported to the Union from PRC against molybdenum wires consigned from Malaysia to the Union was based on information available in accordance with Article 18 of the basic Regulation, including information provided in the request. No information obtained during the present investigation suggested that molybdenum wires exported to the Union from the PRC and molybdenum wires consigned from Malaysia to the Union would not have the same basic physical characteristics and the same uses. Therefore, they are considered as like products within the meaning of Article 1(4) of the basic Regulation. No submissions to the contrary were made during the investigation.

3. Change in the pattern of trade
Imports of molybdenum wires into the Union

3.1. *PRC and Malaysia*

(21) Due to lack of cooperation from the PRC exporting producers, in order to assess the level of imports for the year 2010 and the IP different statistical sources have been compared. Those included both publicly available sources like Eurostat as well as other sources like the database pursuant to Article 14(6) of the basic Regulation and Surveillance II database.

(22) As stated in recital (27) of the original Regulation, imports from the PRC amounted to 87 tonnes in 2007, 100 tonnes in 2008 and 97 tonnes in the original IP (1 April 2008 to 31 March 2009).

(23) The imports of the product concerned from the PRC dropped significantly after the imposition of the measures (from 97 tonnes in the original IP to below 10 tonnes in the IP). On the other hand Malaysian imports increased from none in 2009 to around 6 tonnes in the IP.

3.2. *PRC and Switzerland*

(24) According to the Eurostat data, i.e. data at the CN code level, the imports from Switzerland increased from virtually none in 2009 and preceding years to 5 tonnes in both 2010 and 2011. However, the investigation established that no imports of the product concerned from Switzerland, declared as originating in Switzerland, into the Union were made during the IP. Furthermore, no such imports were made in the whole year 2010 while original provisional measures were in force since December 2009.

3.3. *Imports from the PRC into Malaysia and Switzerland*

(25) The PRC statistical sources indicate that exports of the product concerned to Malaysia started in 2010, while only negligible quantities were exported in 2009 and 2008.

(26) The Swiss statistical sources show that imports from the PRC into Switzerland started in 2010 and continued in 2011 although negligible quantities were imported in 2009 and 2008. However, this import data relates at the level of CN code and hence has

a scope broader than the definition of the product concerned in the present investigation. As noted above it was established that there were no exports of the product concerned from Switzerland, declared as originating in Switzerland, to the Union. Consequently, the investigation could not establish any transhipment practices of molybdenum wires originating in the PRC via Switzerland.

3.4. *Conclusion on the change of pattern of trade*

Malaysia

(27) The overall decrease of exports of the product concerned from the PRC to the Union as from 2010 and the parallel increase of exports from Malaysia and of exports from the PRC to Malaysia after the imposition of the original measures constituted a change in the pattern of trade between the above mentioned countries on the one hand and the Union on the other hand.

Switzerland

(28) As far as Switzerland is concerned, no change in the pattern of trade between the PRC, Switzerland and the Union could be established with regard to imports of the product concerned. Consequently, the investigation of possible circumvention of anti-dumping measures by imports of molybdenum wires consigned from Switzerland should be terminated.

4. **Nature of the circumvention practice and insufficient due cause or economic justification**

(29) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes, inter alia, the consignment of the product subject to measures via third countries.

(30) The comparison of trade flows between the PRC and Malaysia on the one hand and Malaysia and the Union on the other hand indicates the existence of transhipment practices. The allegation in the request has not been contested by any operator; neither those from the PRC or Malaysia nor from the Union. It is recalled that no producers of molybdenum wires from Malaysia cooperated with this investigation.

(31) The investigation did not bring to light any other due cause or economic justification for the transshipment than the avoidance of the measures in force. No elements were found, other than the avoidance of the payment of the duty, which could be considered as a compensation for the costs of transshipment of the product concerned from the PRC via Malaysia.

(32) This conclusion is further corroborated by the fact that no producer of molybdenum wires from Malaysia came forward during the present investigation.

(33) In addition, it is noted that imports from Malaysia had discontinued around the time of the publication of the initiating Regulation.