COMMISSION IMPLEMENTING REGULATION (EU) 2015/395

of 10 March 2015

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 slightly modified molybdenum wires, and making such imports subject to registration

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) and 14(5) thereof,

After having informed the Member States,

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 certain molybdenum wires originating in the People's Republic of China by imports of certain slightly modified molybdenum wires, either changed to the weight or to the diameter, of which the cross-sectional dimension exceeds 4,0 mm but does not exceed 11,0 mm, originating in the People's Republic of China, and to make such imports subject to registration.

(2) The request was lodged on 26 January 2015 by Plansee SE, 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 (TARIC codes 8102 96 00 11 and 8102 96 00 19) ('the product concerned'). This is the product to which the measures currently in force apply.

(4) The product under investigation for possible circumvention has the same characteristics as the product concerned defined in the previous recital, but is however presented at import with a maximum cross-sectional dimension that exceeds 4,0 mm but does not exceed 11,0 mm and currently falls within the same CN code as the product concerned but under a different TARIC code (i.e. 8102 96 00 99 until the entry into force of this Regulation). This product also originates in the People's Republic of China. The investigation of possible circumvention also includes molybdenum wire containing by weight 97 % or more but less than 99,95 % of molybdenum with a maximum cross-sectional dimension that exceeds 4,0 mm but does not exceed 11,0 mm, originating in the People's Republic of China.

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]) on imports of certain molybdenum wires originating in the People's Republic of China ('the existing measures'). Following an anti-circumvention investigation, in 2012 these

([1]) OJ L 343, 22.12.2009, p. 51.
([2]) 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 (OJ L 150, 16.6.2010, p. 17).

measures were extended to imports of certain molybdenum wires consigned from Malaysia, whether declared as originating in Malaysia or not [1]. Following another anti-circumvention investigation, in 2013 these measures were extended to imports of molybdenum wire, containing by weight 97 % or more but less than 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 [2].

D. **GROUNDS**

(6) The request contains sufficient prima facie evidence that the existing anti-dumping measures on imports of the product concerned originating in the People's Republic of China are being circumvented by means of imports of the product under investigation and that they could be further circumvented by other slight modifications of weight or diameter.

(7) More specifically, the request shows that a significant change in the pattern of trade involving exports from the People's Republic of China to the Union has taken place following the imposition of the definitive anti-dumping duty on the product concerned imposed by Implementing Regulation (EU) No 511/2010, without sufficient due cause or economic justification for such a change other than the imposition of the duty.

(8) The request contains sufficient prima facie evidence that this change stems from the importation of the slightly modified product concerned, namely with a maximum cross-sectional dimension that exceeds 4,0 mm but does not exceed 11,0 mm, which is then converted in the Union into the product concerned, namely the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, by redrawing the wire to a cross-sectional dimension of 4,0 mm or below. The prima facie evidence demonstrates that there is no due cause or economic justification other than the imposition of the duty for such practice, process or work.

(9) The request also contains sufficient prima facie evidence that the product under investigation has the same essential characteristics and uses as the product concerned.

(10) 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 both in terms of quantity and price. Significant volumes of imports of the product under investigation appear to have replaced imports of the product concerned. In addition, there is sufficient prima facie evidence that imports of the product under investigation are made at prices below the non-injurious price established in the investigation that led to the existing measures.

(11) 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.

(12) Should circumvention practices covered by Article 13 of the basic Regulation, other than the one mentioned above, be identified in the course of the investigation, the investigation may also cover these practices.

E. **PROCEDURE**

(13) In light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13(3) of the basic Regulation and to make imports of the product under investigation subject to registration, in accordance with Article 14(5) of the basic Regulation.

(a) **Questionnaires**

(14) In order to obtain 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 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. Information, as appropriate, may also be sought from the Union industry.

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[1] 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 (OJ L 8, 12.1.2012, p. 22).

[2] Council Implementing Regulation (EU) No 871/2013 of 2 September 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of 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 to imports of molybdenum wire, containing by weight at least 97 % 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 (OJ L 243, 12.9.2013, p. 2).

(15) In any event, all interested parties should contact the Commission, 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.

(16) The authorities of the People's Republic of China will be notified of the initiation of the investigation.

(b) **Collection of information and holding of hearings**

(17) All interested parties are 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 from registration of imports or measures**

(18) 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.

(19) While the extent to which the possible circumvention is taking place inside and/or outside the Union needs to be investigated, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to importers and/or exporters/producers of the product under investigation that can show that they are not related [1] to any producer subject to the measures [2] and that are found not to be engaged in circumvention practices as defined in Articles 13(1) and 13(2) of the basic Regulation. Importers and exporters/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**

(20) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation shall 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 from the date on which registration of such imports was imposed.

G. **TIME LIMITS**

(21) 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,

— importers in the Union and exporters/producers may request exemption from registration of imports or measures,

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

(22) 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 laid down in Article 3 of this Regulation.

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[1] In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1), persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognized partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife, (ii) parent and child, (iii) brother and sister (whether by whole or half blood), (iv) grandparent and grandchild, (v) uncle or aunt and nephew or niece, (vi) parent-in-law and son-in-law or daughter-in-law, (vii) brother-in-law and sister-in-law. In this context 'person' means any natural or legal person.

[2] However, even if producers are related in the aforementioned sense to companies subject to the measures in place on imports originating in the People's Republic of China (the original anti-dumping measures), an exemption may still be granted if there is no evidence that the relationship with the companies subject to the original measures was established or used to circumvent the original measures.

H. **NON-COOPERATION**

(23) 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.

(24) 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.

(25) 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.

(26) Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. The interested party should immediately contact the Commission.

I. **SCHEDULE OF THE INVESTIGATION**

(27) The investigation will be concluded, pursuant to Article 13(3) of the basic Regulation, within nine months of the date of entry into force of this Regulation.

J. **PROCESSING OF PERSONAL DATA**

(28) 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 ([1]).

K. **HEARING OFFICER**

(29) Interested parties may request the intervention of the Hearing Officer in trade proceedings. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.

(30) A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered.

(31) For further information and contact details interested parties may consult the Hearing Officer's web pages on the Directorate-General for Trade's website: http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is initiated pursuant to Article 13(3) of Regulation (EC) No 1225/2009, in order to determine if imports into the Union of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 4,0 mm but does not exceed 11,0 mm and currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 20) originating in the People's Republic of China, and if imports into the Union of molybdenum wire, containing by weight 97 % or more but less than 99,95 % of molybdenum of which the maximum cross-sectional dimension exceeds 4,0 mm but does not exceed 11,0 mm and currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 40) originating in the People's Republic of China, are circumventing the measures imposed by Implementing Regulation (EU) No 511/2010.

([1]) 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 (OJ L 8, 12.1.2001, p. 1).

Article 2

The Customs authorities shall, pursuant to Article 13(3) and Article 14(5) of Regulation (EC) No 1225/2009, take the appropriate steps to register the imports into the Union identified in Article 1 of this Regulation.

Registration shall expire nine months following the date of entry into force of this Regulation.

The Commission, by regulation, may direct Customs authorities to cease registration in respect of imports into the Union of products made by exporters/producers or importers having applied for an exemption from registration and having been found to fulfil the conditions for an exemption to be granted.

Article 3

1. Questionnaires must be requested from the Commission within 15 days from the date of entry into force of this Regulation.

2. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views in writing and submit questionnaire replies or any other information within 37 days from the date of entry into force of this Regulation, unless otherwise specified.

3. Importers in the Union and exporters/producers requesting exemption from registration of imports or measures must submit a request duly supported by evidence within the same 37-day time limit.

4. Interested parties may also apply to be heard by the Commission within the same 37-day time limit.

5. Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing a) the Commission to use the information and data for the purpose of this trade defence proceeding and b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their right of defence.

6. All written submissions, including the information requested in this Regulation, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' ([1]).

7. Interested parties providing 'Limited' information are required to furnish non- confidential summaries of it pursuant to Article 19(2) of the basic Regulation, which will be labelled 'For inspection by interested parties'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such information may be disregarded.

8. Interested parties are invited to make all submissions and requests by e-mail including scanned powers of attorney and certification sheets, with the exception of voluminous replies which shall be submitted on a CD-ROM or DVD by hand or by registered mail. By using e-mail, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf The interested parties must indicate their name, address, telephone and a valid e-mail address and they should ensure that the provided e-mail address is a functioning official business e-mail which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by e-mail only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by e-mail, interested parties should consult the communication instructions with interested parties referred to above.

([1]) A *'Limited'* document is a document which is considered confidential pursuant to Article 19 of Regulation (EC) No 1225/2009 and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

Commission address for correspondence:

European Commission

Directorate-General for Trade

Directorate H

Office: CHAR 04/039

1040 Brussels

BELGIUM

E-mail: TRADE-MOWI-R613-CIRCUMVENTION@ec.europa.eu

Article 4

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 March 2015.

For the Commission

The President

Jean-Claude JUNCKER