



EUROPEAN COMMISSION

Brussels, 9.12.2011  
COM(2011) 867 final

2011/0422 (NLE)

Proposal for a

### **COUNCIL REGULATION**

**extending the definitive anti-dumping duty imposed by 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**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community<sup>1</sup> ('the basic Regulation') in the proceeding concerning imports of certain molybdenum wires consigned from Malaysia and Switzerland, whether declared as originating in Malaysia and Switzerland or not.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EU) No 511/2010 (OJ L 150, 16.6.2010, p. 17.) on imports of certain molybdenum wire originating in the People's Republic of China.

- **Consistency with other policies and objectives of the Union**

Not applicable.

### 2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not provide for a general impact assessment but contain an exhaustive list of conditions that have to be assessed.

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<sup>1</sup> OJ L 343, 22.12.2009, p. 51.

### 3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

A definitive anti-dumping duty of 64,3% was imposed on imports of certain molybdenum wire originating in the People's Republic of China ('PRC') in June 2010.

The current investigation was initiated on 18 May 2011 pursuant to Article 13(3) of the basic Regulation upon a request submitted by the European Association of Metals (Eurometaux) on behalf of a Union producer of molybdenum wires. The applicant alleged that the measures in force were circumvented by means of transshipment via Malaysia and Switzerland

The findings in the present case are based on facts available as co-operation was obtained neither from exporting producers in the countries concerned nor from any importer in the EU. No comments were received from the Chinese, Malaysian or Swiss authorities.

According to the request, there is no production of molybdenum wires in Malaysia or Switzerland. In the course of the present investigation, the Commission received no evidence which would contradict that information.

#### **Switzerland**

The investigation could not establish any transshipment practices of molybdenum wires originating in the PRC via Switzerland as there were no imports of the product concerned from Switzerland declared as originating in Switzerland into the EU during the IP. Consequently the investigation concerning the possible circumvention of anti-dumping measures by imports of molybdenum wires consigned from Switzerland should be terminated and the registration of imports of molybdenum wires consigned from Switzerland, introduced by the initiating Regulation, should be discontinued.

#### **Malaysia**

The decrease of Chinese imports and parallel increase of imports from Malaysia constituted a change in the pattern of trade between the PRC and Malaysia on the one hand and the Union on the other.

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 duty, which could be considered a compensation for the cost of transshipment.

The comparison of weighted average normal value as established in the original investigation and the weighted average export price showed dumping.

It was further established that the export prices from Malaysia undersold those of the Union industry as established during the original investigation. As far as the undermining effects in terms of volumes are concerned, the level of imports from Malaysia in the IP amounts to around 6% of the level of imports of the product

originating in the PRC before the imposition of measures. It is therefore concluded that the Malaysian imports undermine the remedial effects of the duties in terms of both quantities and prices.

Consequently, it is proposed to extend the anti-dumping measures to imports of molybdenum wires consigned from Malaysia, whether directly or via a third country and whether declared as originating in Malaysia or not.

- **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community and in particular Article 13 thereof.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason.

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision. Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instrument: Council Regulation.

Other means would not be adequate because the basic Regulation does not provide for alternative options.

#### **4. BUDGETARY IMPLICATION**

The proposal has no implication for the Union budget.

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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<sup>2</sup> ('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 Regulation (EU) No 511/2010<sup>3</sup> ('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').

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<sup>2</sup> OJ L 343, 22.12.2009, p.51.

<sup>3</sup> OJ L 150, 16.6.2010, p. 17.

- (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 transshipment of molybdenum wires via Malaysia or Switzerland.
- (4) The request concluded that there was insufficient due cause or economic justification for the transshipment 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<sup>4</sup> ('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 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.

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<sup>4</sup> OJ L 131, 18.5.2011, p. 14.

- (12) One Chinese 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 Chinese, 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

##### 3.1.1. PRC and Malaysia

- (21) Due to lack of cooperation from the Chinese 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.

##### 3.1.2. 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.

##### 3.1.3. Imports from the PRC into Malaysia and Switzerland

- (25) The Chinese 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 EU. Consequently, the investigation could not establish any transshipment practices of molybdenum wires originating in PRC via Switzerland.

### 3.1.4. 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 EU 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 EU on the other hand indicates the existence of transshipment practices. The allegation in the request has not been contested by any operator from neither the above mentioned countries nor from the EU. 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.
- (34) It is therefore concluded that, in the absence of any other sufficient due cause or economic justification within the meaning of the second sentence of Article 13(1) of the basic Regulation, the change in the pattern of trade between the PRC and Malaysia on the one hand and the Union on the other hand was due to the imposition of the measures in force.

**5. Undermining of the remedial effects of the duty in terms of the prices and/or the quantities of the like product**

- (35) To assess whether the imported products from Malaysia had, in terms of quantities and prices, undermined the remedial effects of the measures in force, data from available statistical sources as described in recital (21) above were used as the best data available concerning quantities and prices of exports from Malaysia.
- (36) The increase of imports from Malaysia was considered to be significant in terms of quantities. The level of imports from Malaysia in the IP amounts to around 6% of the level of imports of the product originating in the PRC to EU before the imposition of measures.
- (37) The comparison of the injury elimination level as established in the original Regulation and the weighted average export price showed significant underselling. It was therefore concluded that the remedial effects of the measures in force are being undermined both in terms of quantities and prices.

**6. Evidence of dumping in relation to the normal value previously established for the like product**

- (38) In the absence of cooperation from any exporting producer, export prices were based on facts available pursuant to Article 18 of the basic Regulation. The prices available from statistical sources as described in recital (21) were considered to be the most reliable.
- (39) In accordance with Article 13(1) of the basic Regulation, it was considered appropriate that the normal value to be used in an anti-circumvention investigation is the normal value established during the original investigation. In the absence of cooperation and pursuant to Article 18 of the basic Regulation, for the purpose of comparing the export price and normal value, it was considered appropriate to assume that the product mix of the goods observed during the present investigation was the same as in the original investigation.
- (40) In the original investigation, the USA was considered to be an appropriate market economy analogue country. Since the analogue country producer made only marginal sales on the domestic US market, it was found unreasonable to use US domestic sales data for the purposes of determining or constructing normal value. Consequently, the normal value for the PRC was established on the basis of export prices from the USA to other third countries, including the EU.
- (41) In accordance with Article 2(11) and 2(12) of the basic Regulation, dumping was calculated by comparing the weighted average normal value as established in the original Regulation and the weighted average export prices established during this investigation's IP, expressed as a percentage of the net, free-at-Union-frontier price, before customs duty.
- (42) The comparison of the weighted average normal value and the weighted average export prices showed dumping.

**C. MEASURES**

- (43) In view of the findings above, it was concluded that the definitive anti-dumping duty imposed on imports of molybdenum wires originating in the PRC was circumvented by transshipment via Malaysia.
- (44) In accordance with the first sentence of Article 13(1) of the basic Regulation, the existing anti-dumping measures on imports of the product concerned originating in the PRC, should be extended to imports of the same product consigned from Malaysia, whether declared as originating in Malaysia or not.
- (45) The measures to be extended should be the ones established in Article 1(2) of Regulation (EU) No 511/2010, which are a definitive anti-dumping duty of 64,3% applicable to the net, free-at-Union-frontier price, before customs duty.
- (46) In accordance with Articles 13(3) and 14(5) of the basic Regulation, which provides that any extended measure should apply to imports which entered the Union under registration imposed by the initiating Regulation, duties should be collected on those registered imports of molybdenum wires consigned from Malaysia.

#### **D. TERMINATION OF THE INVESTIGATION IN RESPECT OF IMPORTS FROM SWITZERLAND**

- (47) In view of the findings regarding Switzerland, the investigation concerning the possible circumvention of anti-dumping measures by imports of the product concerned consigned from Switzerland should be terminated and the registration of imports of molybdenum wires consigned from Switzerland, introduced by the initiating Regulation, should be discontinued.

#### **E. REQUESTS FOR EXEMPTION**

- (48) It is recalled that during the present investigation no producer/exporter of molybdenum wires to the Union made itself known or was found to exist in Malaysia. Nevertheless, any producer from Malaysia which did not export the product under investigation to the Union during the IP and which considers lodging a request for an exemption from the extended anti-dumping duty pursuant to Articles 11(4) and 13(4) of the basic Regulation will be required to complete a questionnaire in order to enable the Commission to determine whether an exemption may be warranted. Such exemption may be granted after the assessment of the market situation of the product concerned, production capacity and capacity utilisation, procurement and sales and the likelihood of continuation of practices for which there is insufficient due cause or economic justification and the evidence of dumping. The Commission would normally also carry out an on-the-spot verification visit. The request should be addressed to the Commission forthwith, with all relevant information, in particular any modification in the company's activities linked to the production and sales.
- (49) Where an exemption is warranted, the Commission will, after consultation of the Advisory Committee, propose the amendment of the extended measures in force accordingly. Subsequently, any exemption granted will be monitored to ensure compliance with the conditions set therein.

#### **F. DISCLOSURE**

- (50) Interested parties were informed of the essential facts and considerations leading to the above conclusions and were given the opportunity to comment and to be heard,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. The definitive anti-dumping duty imposed by 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, currently falling within CN code ex 8102 96 00 and originating in the People's Republic of China, is hereby extended to 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, currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 11), consigned from Malaysia, whether declared as originating in Malaysia or not.
2. The duties extended by paragraph 1 of this Article shall be collected on imports consigned from Malaysia, whether declared as originating in Malaysia or not, registered in accordance with Article 2 of Commission Regulation (EU) No 477/2011 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### *Article 2*

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorized to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission  
Directorate-General for Trade  
Directorate H  
Office: N105 4/92  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË  
Fax +32 2297 98 81  
Email: TRADE-13-3-MOLYBDENUM@ec.europa.eu

2. In accordance with Article 13(4) of Regulation (EC) No 1225/2009, the Commission, after consulting the Advisory Committee, may authorise by decision the exemption of imports which do not circumvent the anti-dumping measures imposed by Regulation (EU) No 511/2010 from the duty extended by Article 1 of the present Regulation.

*Article 3*

The investigation initiated by Regulation (EU) No 477/2011 concerning the possible circumvention of the 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 Switzerland, whether declared as originating in Switzerland or not, is hereby terminated.

*Article 4*

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EU) No 477/2011.

*Article 5*

This Regulation shall enter into force on the day following 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, [...]

*For the Council  
The President*