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Proposal for a

COUNCIL REGULATION

extending the definitive anti-dumping duty imposed by Council Regulation (EC) No 1858/2005 on imports of steel ropes and cables originating, *inter alia*, in the People's Republic of China to imports of steel ropes and cables consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, and terminating the investigation in respect of imports consigned from Malaysia

EXPLANATORY MEMORANDUM

Context of the proposal

Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') in the investigation of possible circumvention of the anti-dumping measures imposed by Council Regulation (EC) No 1858/2005 on imports of steel ropes and cables originating in the People's Republic of China by imports consigned from the Republic of Korea and Malaysia.

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 and in particular Article 13 thereof.

Existing provisions in the area of the proposal

The measures currently in force were imposed by Council Regulation (EC) No 1858/2005 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, *inter alia,* in the People's Republic of China.

Consistency with the other policies and objectives of the Union

Not applicable.

Consultation of interested parties and impact assessment

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 foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

Legal elements of the proposal

Summary of the proposed action

On 12 August 2009, the Commission published Regulation (EC) No 734/2009, by which it initiated an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 1858/2005 on imports of steel ropes and cables ('SWR') originating in the PRC by imports consigned from the Republic of Korea and Malaysia, whether declared as originating in the Republic of Korea and Malaysia or not. The initiation followed a request lodged by the Liaison Committee of EU Wire Rope Industries claiming that measures are being circumvented by transhipment of products via the Republic of Korea and Malaysia.

The attached proposal for a Council Regulation is based on the findings of the investigation carried out.

The investigation confirmed that transhipment of Chinese-origin SWR is taking place via the Republic of Korea and that all other criteria for the establishment of circumvention as set out in Article 13(1) of the basic Regulation are met. No circumvention could be established as regards products consigned from Malaysia.

It is therefore proposed to extend the anti-dumping measures in force on SWR originating in the PRC to imports of the same product consigned from the Republic of Korea. The duty corresponds to the country-wide duty on imports of SWR from the PRC (60.4%). The duty shall be levied from the date of initiation of the investigation.

Several cooperating producers in Korea requested exemption from the possible extended measures. For the companies which cooperated fully and were found not to be circumventing the measures, it is proposed to grant exemptions.

The relevant Council Regulation should be published in the *Official Journal of the European Union* no later than 11 May 2010.

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 reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how the 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 instruments: Regulation.

Other means would not be adequate for the following reason: The above-mentioned basic Regulation does not foresee alternative options.

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[1] (the 'basic Regulation'), and in particular Article 13 thereof,

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

Whereas:

1. PROCEDURE

1.1. Existing measures and former investigations

(1) By Regulation (EC) No 1796/1999[2], (the 'original Regulation'), the Council imposed definitive anti-dumping duties of 60,4% on imports of steel ropes and cables ('SWR') originating, inter alia, in the People's Republic of China (the 'PRC' or 'China'). These measures will hereinafter be referred to as 'the original measures' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

(2) In 2004, after it was found that the original measures were circumvented by the transhipment of Chinese-origin SWR via Morocco in accordance with Article 13 of the basic Regulation, the measures were extended by Council Regulation (EC) No 1886/2004[3] to imports of the same SWR consigned from Morocco. Similarly, after it was found the circumvention of the original measures on imports from Ukraine took place via Moldova following an investigation pursuant to Article 13 of the basic

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 217, 17.8.1999, p. 1.
[3] OJ L 328, 30.10.2004, p. 1.

Regulation, the measures were extended by Council Regulation (EC) No 760/2004[4] to imports of the same steel ropes and cables consigned from Moldova.

(3) By Regulation (EC) No 1858/2005[5] the Council, following an expiry review (the 'expiry review'), imposed, in accordance with Article 11(2) of the basic Regulation, a definitive anti-dumping duty on imports of SWR originating, inter alia, in the People's Republic of China, at the level of the original measures. The duty thus imposed remains in force and will hereinafter be referred to as 'the measures in force'.

1.2. Request

(4) On 29 June 2009, the Commission received a request pursuant to Article 13(3) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on SWR originating in the People's Republic of China. The request was submitted by the Liaison Committee of the EU Wire Rope Industries (EWRIS) on behalf of the Union producers of steel ropes and cables (the 'applicant').

(5) The request alleged that, following the imposition of the anti-dumping measures, a significant change in the pattern of trade involving exports from the PRC and the Republic of Korea and Malaysia to the Union took place, for which there was insufficient due cause or economic justification other than the imposition of the measures in force. This change in the pattern of trade stemmed allegedly from the transhipment of SWR originating in the PRC via the Republic of Korea and Malaysia.

(6) The request further alleged that the remedial effects of the measures in force were being undermined both in terms of quantity and price. In addition, there was sufficient evidence that these increased imports from the Republic of Korea and Malaysia were made at prices well below the non-injurious price established in the original investigation.

(7) Finally, the applicant alleged that the prices of SWR consigned from the Republic of Korea and Malaysia were dumped in relation to the normal value established for the like product during the original investigation.

1.3. Initiation

(8) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission initiated an investigation by Regulation (EC) No 734/2009[6] (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 SWR consigned from the Republic of Korea and Malaysia.

1.4. Investigation

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4 OJ L 120, 24.4.2004, p.1.
5 OJ L 299, 16.11.2005, p. 1.
6 OJ L 208, 12.08.2009, p. 7.

(9) The Commission officially advised the authorities of the PRC, the Republic of Korea and Malaysia, the producers/exporters and the traders in those countries, , the importers in the Union known to be concerned and the applicant Union industry of the initiation of the investigation. Questionnaires were sent to the known producers/exporters in the PRC, the Republic of Korea and Malaysia known to the Commission from the request or through the Missions of the Republic of Korea and Malaysia to the European Union or which made themselves known within the deadlines specified in Article 3(1) of the initiating Regulation. Questionnaires were also sent to traders in the Republic of Korea and Malaysia and to the importers in the Union named 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.

(10) Fifteen producers/exporters and two traders in the Republic of Korea, two producers/exporters in Malaysia, five producers/exporters in China, two related importers, ten unrelated importers in the Union and the European Wire Rope Importers Association made themselves known. Several other companies claimed that they are not involved in the production or export of the product under investigation.

(11) The following companies submitted replies to the questionnaires and verification visits were subsequently carried out at their premises:

Producers/exporters in the Republic of Korea:

- Bosung Wire Rope Co, Ltd., Kimhae-Si,
- Chung Woo Rope Co., Ltd., Busan,
- CS Co., Ltd, Yangsan-City,
- Cosmo Wire Ltd., Ulsan,
- Dae Heung Industrial Co., Ltd., Haman – Gun,
- DSR Wire Corp., Suncheon-City and its related company DSR Corp., Busan,
- Goodwire Mfg., Co., Ltd., Yangsan-city,
- Kiswire Ltd., Seoul,
- Line Metal Co., Ltd., Changnyoung-Gun,
- Manho Rope & Wire Ltd., Busan,
- Shin Han Rope Co.,Ltd., Incheon,
- Ssang Yong Cable Mfg. Co., Ltd, Busan,
- Young Heung Iron & Steel Co., Changwon City

Trader in the Republic of Korea:

– Trion Co Ltd., Busan

Producers/exporters in Malaysia:

– Kiswire Sdn. Bhd., Johor Bahru,

– Southern Wire Industries (M) Sdn. Bhd., Shah Alam, Selangor

Producers/exporters in the PRC:

– Qingdao DSR, Qingdao,

– Kiswire Qingdao Ltd., Qingdao,

– Young Heung (TAICANG) Steel Wire Rope Co., Ltd., Tai Cang City

Related importers:

– Kiswire Europe, the Netherlands,

– Verope AG, Switzerland**.**

1.5. Investigation period

(12) The investigation period covered the period from 1 July 2008 to 30 June 2009 (the 'IP'). Data was collected for the period from 1999 up to the end of the IP to investigate the alleged change in the pattern of trade.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

(13) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was made by analysing successively whether there was a change in the pattern of trade between third countries and the Union, 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, 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 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.

2.2. Product concerned and the like product

(14) The product concerned is, as defined in the original investigation, steel ropes and cables, including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm (in industry terminology often referred to as SWR), originating in the People's Republic of China, currently falling within CN codes ex 7312 10 81, ex 7312 10 83, ex 7312 10 85, ex 7312 10 89 and ex 7312 10 98 ('the product concerned').

(15) The product under investigation is steel ropes and cables including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional

dimension exceeding 3 mm, consigned from the Republic of Korea and Malaysia, whether declared as originating in the Republic of Korea and Malaysia or not (' the product under investigation'), currently falling within the same CN codes as the product concerned.

(16) The investigation showed that the SWR exported to the Union from the PRC and those consigned from the Republic of Korea and Malaysia to the Union have the same basic physical and technical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Degree of co-operation and determination of the trade volumes

(17) As stated above in recital (11), fourteen exporters/producers in the Republic of Korea, one Korean trader, two exporting producers in Malaysia and three exporting producers in China co-operated by submitting questionnaire replies.

Republic of Korea

(18) After the submission of its questionnaire reply, one Korean company notified the Commission that it went bankrupt and therefore it withdrew its cooperation.

(19) In the case of another Korean company the application of Article 18(1) was found to be warranted for the reasons explained below in recital (47).

(20) The cooperating Korean exporting producers covered 81% of the total Korean exports to the Union in the IP as reported in COMEXT. Therefore, even though cooperation was high, the cooperating producers/exporters did not completely cover the overall export volume of SWR from the Republic of Korea. The overall export volumes were thus based on COMEXT.

Malaysia

(21) There are two known producers in Malaysia. The total export quantities of the two cooperating companies in Malaysia exceeded the import volume of the product under investigation recorded in COMEXT. Therefore the exporting producers were considered to be reflecting the total exports of SWR from Malaysia to the Union.

(22) The applicant claimed that COMEXT data were unreliable and therefore total export volumes from Malaysia to the European Union should not be determined on this basis. However, during the investigation, import data were counter checked with Malaysian official statistics and with the verified questionnaire replies. This analysis did not reveal that actual exports from Malaysia exceeded the exports reported by the co-operating Malaysian companies. The applicant's argument had therefore to be rejected.

People's Republic of China

(23) There was a low level of co-operation by producers/exporters in the PRC, with only three exporters/producers submitting a questionnaire reply. Moreover, none of these companies exported the product concerned to the Union and only in very minor quantities to Malaysia. The exports of the cooperating companies covered 41% of the total Chinese exports to the Republic of Korea. Therefore, on the basis of the

information submitted by the co-operating parties no reasonable determination could be made as to export volumes of SWR from the PRC.

(24) Given the above, findings in respect of imports of SWR into the Union and exports of SWR from the PRC to the Republic of Korea and Malaysia had to be made partially on the basis of facts available in accordance with Article 18 of the basic Regulation. COMEXT data was used to determine overall import volumes from the PRC to the Union. Chinese, Korean and Malaysian national statistics were used for the determination of the overall imports to the Republic of Korea and Malaysia from the PRC. Data were cross-checked among the different statistical sources and confirmed by other statistical databases such as the Global Trade Atlas, China Export Database and the data provided by the customs authorities of the Republic of Korea and Malaysia.

(25) The import volume recorded in Korean, Malaysian and Chinese statistics covered a larger product group than the product concerned or the product under investigation. Therefore, the statistics were adjusted accordingly based on the findings of the present investigation.

2.4. Change in the pattern of trade

Imports of SWR into the Union

(26) Imports of SWR from China to the Union had first dropped close to zero subsequent to the imposition of the measures in 1999. After a gradual increase between 2003 and 2006 – with imports peaking in the latter year at the level of 8.656 tonnes – the trend has reversed and imported amounts have fallen again by more than 40% between 2006 and the IP.

(27) On the other hand, total imports of Korean SWR to the Union have increased significantly between 1999 and 2008 from approximately 11.123 tonnes to 48.214 tonnes. The yearly increase in absolute terms was the most significant in the years 2002 and 2003 and more recently in 2006 and 2007.

(28) Based on information in the complaint and that provided by the Mission of the Republic of Korea to the European Union, the present investigation is considered to have covered the vast majority, if not all, of the genuine producers of the product under investigation in Korea. Therefore it was considered that the exports by non-cooperating Korean companies to the Union, which represented approximately 19% of the total exports in terms of quantity from the Republic of Korea, are, apart from the producers mentioned in recitals (18) and (47), mainly exported by traders.

(29) These companies have visibly increased their exports to the EU in 2006 and 2007. Exports in these years were about 20% higher than in 2005, the first year for which data at this level is available. Exports of the non-cooperating companies have been diminishing starting from 2008 which is to be seen in light of the investigation of the Korean authorities in this period as described in recital (52).

(30) As far as Malaysia is concerned, both COMEXT data and the total export of the cooperating companies show that exports from Malaysia to the Union have also been

continuously increasing in the past. The increase was the most significant and steady between 2005 and the IP when Malaysian exports to the Union doubled.

(31) Table 1 shows import quantities of SWR from the above-mentioned countries into the Union since the imposition of the measures in 1999 until the IP:

Table 1: Evolution of imports of SWR to the Union since the imposition of the measures

Import volumes given in tonnes.	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**
PRC	N/A	414	283	394	913	2.809
Share of total imports	-	1%	1%	1%	2%	5%
Republic of Korea	11.122	12.486	13.280	16.223	22.302	31.862
Share of total imports	-	29%	32%	37%	47%	52%
Malaysia	2.989	2.366	4.171	3.371	4.836	4.426
Share of total imports	-	5%	10%	8%	10%	7%

Import volumes given in tonnes.	**2005**	**2006**	**2007**	**2008**	**IP**
PRC	4.945	8.656	6.219	6.795	4.987
Share of total imports	7%	11%	7%	7%	6%
Republic of Korea	34.536	39.128	45.783	48.213	43.185
Share of total imports	50%	50%	55%	53%	50%
Korean non-cooperating companies	*11.577*	14.042	14.160	10.287	8.391
Index (2005=100)	*100*	121	122	89	72
Malaysia	5.123	7.449	8.142	9.685	10.116
Share of total imports	7%	10%	10%	11%	12%
Malaysian cooperating companies (index, 2006=100)	-	100	102	148	144

Source: COMEXT, Korean statistics (KITA)

(32) Looking at the pattern of the above three trade flows, it can be observed that especially since 2005, Korean exporters and partly Malaysian exporters have significantly outsold and to some extent replaced Chinese exporters on the Union market in terms of volume.

(33) Due to the global economic slowdown which coincides with the IP, traded volumes of SWR have decreased or the increase has slowed down between all countries concerned. The decrease was however the most significant in the case of imports from the PRC to the Union (-27%).

Chinese exports to the Republic of Korea and Malaysia

(34) A dramatic increase of exports of steel wire ropes and cables (all diameters) can also be observed from China to the Republic of Korea within the same period: from a relatively insignificant amount in 1999 (2.519 tonnes) they increased to 78.822 tonnes in 2008. The increase was most significant between 2005 and 2008 when imports

quadrupled. In recent years China was the largest exporter of SWR to Korea representing 89% of the total imports of SWR in 2008. The estimated import for the product concerned only (products with a diameter above 3 mm), in 2008, was 58.885 tons.

(35) Looking at imports of the non-cooperating Korean companies only, the same dramatic increase can be observed, i.e. imports from China by these companies have quadrupled by 2007 and 2008. Although imports have started to decrease afterwards, they remained well above the level of imports in 2005 continuing to represent very significant amounts.

Table 2: Import of Chinese products into the Republic of Korea between 1999 and the IP

	1999	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**IP**
Import (tonnes, all diameters)	2.519	6.764	6.044	7.740	11.421	14.120	19.933	36.531	69.620	78.822	66.099
Yearly change (%)		*169*	*-11*	*28*	*48*	*24*	*41*	*83*	*91*	*13*	*-16*
Imports by Korean non-cooperating companies (tonnes, product concerned only)	N/A	N/A	N/A	N/A	N/A	N/A	7.166	18.053	33.907	29.717	22.004
Index (2005=100)	N/A	N/A	N/A	N/A	N/A	N/A	*100*	*252*	*473*	*415*	*307*

Source: Korean statistics (KITA), data provided by the Korean Customs Services, verified information provided by the cooperating producers

(36) To establish the trend of the China to Malaysia trade flow of SWR, both Malaysian and Chinese statistics were considered. Both of these data are only available at a higher product group level than the product concerned. Furthermore they showed considerable differences. Therefore, no reliable data could be established in this regard.

(37) The applicant claimed that the fact that no reliable data could be established would not be sufficient to conclude that no circumvention took place. As outlined in recitals (38) and (55), the evidence available in the current investigation, i.e. in particular production volume of the cooperating Malaysian exporting producers as well as their export sales to the European Union showed that exports of SWR from Malaysia were of genuine Malaysian origin and therefore did not constitute circumvention. In this case, it was therefore irrelevant whether there were imports from China to Malaysia or not. The applicant's claim was therefore rejected.

Production volumes in the Republic of Korea and Malaysia

(38) The evolution of the total production volume of cooperating producers in the Republic of Korea had remained stable between 2006 and the IP. Malaysian producers however have increased their output during the same period considerably.

Table 3: Production of SWR of the cooperating companies in the Republic of Korea and Malaysia

Production volumes given in tonnes.	**2006**	**2007**	**2008**	**IP**
Republic of Korea	152.657	159.584	160.113	142.413
Index	*100*	*105*	*105*	*93*
Malaysia (indexed)	*100*	*164*	*171*	*157*

Source: Verified information provided by the cooperating producers

2.5. Conclusion on the change in the pattern of trade

(39) The overall decrease of Chinese exports to the Union as from 2006 and the parallel increase of exports from the Republic of Korea and Malaysia and of exports from the PRC to the Republic of Korea after the imposition of the original measures and in particular until 2008 constituted a change in the pattern of trade between the above mentioned countries on the one hand and the Union on the other hand. In the case of the Republic of Korea, this conclusion could be reached both globally and, for the period between 2005 and 2007, also separately for the non-cooperating companies.

(40) Comments were received claiming that the increase of exports of Korean SWR to the Union was stable over the years without any sudden increase; such an increase allegedly being a precondition to establishing a change in the pattern of trade. Furthermore, it was claimed that the increase should be regarded rather as the natural development of the Korean SWR industry.

(41) Firstly, in accordance with Article 13 of the basic Regulation, a change in the pattern in trade is not exclusively defined as a sudden increase of imports of a country under investigation. Secondly, the investigation has shown that while Korean exports to the Union in the years 2006 and 2007 increased substantially, the output by Korean producers was stable in these years. It could thus not be concluded that the development of the Korean export volumes was solely due to the natural development of the Korean SWR industry. Finally, for the most part opposite trends between the China to Union trade flows and China to Korea and Korea to Union trade flows since 2006 clearly showed a change in the pattern of trade between the Union and third countries. These arguments therefore had to be rejected.

2.6. Nature of the circumvention practice

(42) Article 13(1) 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 and the assembly of parts by an assembly operation in the Union or a third country. For this

purpose the existence of assembly operations was determined in accordance with Article 13(2) of the basic Regulation.

The Republic of Korea

Transhipment

(43) The global analysis of the final destinations of steel ropes and cables produced or imported to and from Korea by the cooperating and non-cooperating companies – including imports to and from countries other than the PRC and the Union - showed that a certain amount of exports from Korea to the Union were Chinese-origin imports into Korea, because these imports were not sourced from other third countries or produced by the domestic producers in Korea.

(44) Moreover, the comparison of the total Korean export of SWR - as recorded in Korean statistics - and the verified information of the cooperating exporting producers concerning their production showed that production destined for export by Korean producers (118.856 tonnes) was significantly lower than the total exports from Korea (156.440 tonnes) in the IP. Given the high cooperation of Korean companies in this investigation, this difference cannot be explained by producers that may not have been cooperating in the investigation.

(45) The investigation also revealed that some importers in the Union sourced Chinese origin SWR from Korean exporters not co-operating during the present investigation. This information was counter-checked with Korean trade databases which showed that at least some of the SWR exported by these non-cooperating companies was indeed sourced in China.

(46) As for the cooperating companies it could be established that none of them transhipped the product concerned via the Republic of Korea in the IP. Some of them imported SWR from the PRC, but these were found to be exclusively sold on the domestic and other export markets.

(47) In the case of one company it was found that it submitted false information in its questionnaire reply. Furthermore, during the verification visit access to information was partially denied. Therefore in accordance with Article 18(1) of the basic Regulation, findings with regard to this company were based on facts available. In accordance with Article 18(4), the company was informed of the intention to disregard the information submitted by it and was granted a time-limit to provide further explanations.

(48) Subsequent to disclosure, the company admitted that it had circumvented the measures in the past by falsifying the origin of products purchased from the PRC. On the other hand the company claimed that it submitted sufficient information regarding the production, sales and purchases during the IP which was verified on-spot. It further argued that this should be sufficient to determine that it had not circumvented the measures in force in the IP.

(49) However, in view of the fact that circumvention by the company admitted to have engaged in circumvention practices and furthermore tried to mislead the investigation, it is considered appropriate to disregard the entirety of the company's submission and

not to exempt this company from the extended measures, as further outlined below in recital (77). .

(50) As explained in recital (18), one company notified the Commission that it went bankrupt and withdrew its cooperation. As above, findings with regard to this company had to be based on the facts available within the meaning of Article 18(1) of the basic Regulation.

(51) On the basis of these facts it was concluded that although none of the co-operating Korean producers were found to be involved, transhipment was taking place during the IP and the preceding years. This is also confirmed by the findings with regard to the change of the pattern in trade as described above in recitals (39).

(52) It has to be noted that in 2007 OLAF started an investigation into transhipment of the same product through Korea. The Korean authorities are known to have carried out investigations into alleged circumvention practices at the same time and concluded that several companies, mainly traders, committed fraud by falsifying the origin of SWR imported from the PRC to Korea when re-exporting the product.

(53) Therefore the existence of transhipment of Chinese-origin products via the Republic of Korea was confirmed.

Assembly operation

(54) The sources of raw materials and the cost of production was analysed for each cooperating company in order to establish whether any assembly operation in the Republic of Korea is circumventing the measures according to the criteria of Article 13(2). In all cases the Chinese-origin raw material (wire rod or semi finished product) did not constitute 60% or more of the total value of the parts of the final product. Therefore it was not necessary to examine whether the 25% threshold of value added was reached or not.

Malaysia

Transhipment

(55) The investigation established that none of the cooperating producers in Malaysia imported the product concerned from China during the IP.

(56) Based on the share of the exports by the cooperating companies to the Union within the total exports from Malaysia to the Union as recorded in COMEXT, it could be concluded that the increase of imports from Malaysia shown in the statistics can be explained fully by the increase of the cooperating companies' exports. This conclusion is reinforced by the increase of the total production volume of the genuine Malaysian producers during the same period as described in recital (38).

(57) The applicant questioned this finding without providing any further reason or evidence. This argument had therefore to be rejected.

Assembly operation

(58) The sources of raw materials and the cost of production was analysed for each cooperating company to establish whether any assembly operation in Malaysia is circumventing the measures according to the criteria of Article 13(2). In all cases the Chinese-origin raw material (wire rod or semi finished product) did not constitute 60% or more of the total value of the parts of the final product. Therefore it was not necessary to examine whether the 25% threshold of value added was reached or not.

(59) It could therefore be concluded that the change in the pattern of trade observed between the PRC, Malaysia and the Union did not stem from circumvention practices in Malaysia. Consequently, the investigation concerning imports of SWR consigned from Malaysia should be terminated.

2.7. Insufficient due cause or economic justification other than the imposition of the anti-dumping duty (Republic of Korea)

(60) The investigation did not bring to light any other due cause or economic justification for the transhipment than the avoidance of the anti-dumping duty in force on SWR originating in China.

2.8. Undermining of the remedial effect of the anti-dumping duty (non-cooperating Korean companies)

(61) To assess whether the imported products had, in terms of quantities and prices, undermined the remedial effects of the measures in force on imports of SWR from China, COMEXT data was used as the best data available concerning quantities and prices of exports by non-cooperating companies. The prices so determined were compared to the injury elimination level established for Union producers in the expiry review.

(62) The increase of imports from Korea was considered to be significant in terms of quantities bearing in mind the size of the market as determined in the expiry review (recital 99 of Regulation (EC) No 1858/2005). The estimated Union consumption in the current investigation period gives a similar indication about the significance of these imports. The comparison of the injury elimination level as established in the expiry review and the weighted average export price showed significant underselling. It was therefore concluded that the measures are being undermined in terms of quantities and prices.

2.9. Evidence of dumping (non-cooperating Korean companies)

(63) Finally, in accordance with Article 13(1) and (2) of the basic Regulation it was examined whether there was evidence of dumping in relation to the normal value previously established for the like or similar products.

(64) In the expiry review the normal value was established on the basis of prices in Turkey, which in that investigation was found to be an appropriate market economy analogue country for the PRC. In the present investigation, it was established that the price of wire rod, the main input used in the production of SWR increased significantly since the expiry review. Therefore, and considering that the price developments of the raw materials were reflected in the export price during the IP, it was deemed appropriate to

up date the normal value as previously established by the development of raw material prices.

(65) A significant part of Korean exports were found to be genuine Korean production. For this reason, for establishing the export prices from the Republic of Korea which are affected by circumvention, only the exports of the non-cooperating producers/exporters was considered which was based on best facts available, i.e. on the average export price of SWR during the IP as reported in COMEXT.

(66) For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made for differences in indirect taxes, transport and insurance costs based on the average costs of the cooperating Korean producers/exporters in the IP.

(67) In accordance with Articles 2(11) and 2(12) of the basic Regulation, dumping was calculated by comparing the weighted average normal value as established in the expiry review and the weighted average export prices during this investigation's IP, expressed as a percentage of the CIF price at the Union frontier duty unpaid.

(68) The comparison of the weighted average normal value and the weighted average export prices so established showed dumping.

3. MEASURES

(69) Given the above, it was concluded that the definitive anti-dumping duty imposed on imports of SWR originating in China was circumvented by transhipment via the Republic of Korea pursuant to Article 13(1) of the basic Regulation.

(70) In accordance with the first sentence of Article 13(1) of the basic Regulation, the measures in force on imports of the product concerned originating in the PRC, should be extended to imports of the same product consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not.

(71) The measures to be extended should be the ones established in Article 1 paragraph 2 of Regulation (EC) No 1858/2005, which are a definitive anti-dumping duty of 60,4% applicable to the CIF net, free-at-Union-frontier price, before customs duty.

(72) 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 SWR consigned from Korea.

4. TERMINATION OF THE INVESTIGATION AGAINST MALAYSIA

(73) In view of the findings regarding Malaysia, the investigation concerning the possible circumvention of anti-dumping measures by imports of SWR consigned from Malaysia should be terminated and the registration of imports of SWR consigned from Malaysia introduced by the initiation Regulation should be discontinued.

(74) The applicant contested the proposal to terminate the investigation against Malaysia. Having already addressed all its arguments above, there was no other reason to reconsider the proposal.

5. REQUESTS FOR EXEMPTION

(75) The fourteen companies in the Republic of Korea submitting a questionnaire reply requested an exemption from the possible extended measures in accordance with Article 13(4) of the basic Regulation.

(76) As explained in recital (18), one of these companies subsequently ceased co-operation. Its request for exemption in accordance with Article 13(4) had therefore to be rejected.

(77) Another company as outlined in recital (47) submitted false information and denied access to information requested. Its request for exemption in accordance with Article 13(4) could therefore not be granted.

(78) A third company in the Republic of Korea did not export the product either during the IP or after that period and no conclusions could be drawn as to the nature of its operations. Therefore, an exemption to this company could not be granted. However, should it appear, after extension of the anti-dumping measures in force, that the conditions in Article 11(4) and 13(4) of the basic Regulation are fulfilled; the company's situation may be reviewed upon request.

(79) The company has objected and reiterated its request for an exemption. However, it did not come forward with new information and evidence that could have altered the above decision. Therefore, its request could not be accepted.

(80) None of the other cooperating companies in the Republic of Korea were found circumventing the measures. Furthermore, none of the companies requesting exemption are related to companies engaged in circumvention practices. In particular, it is noted that four of the producers concerned are related to PRC companies that are subject to the original measures. However, there is no evidence that such relationship was established or used to circumvent the measures in place on imports originating in China. Exemptions should thus be granted to all other cooperating companies not mentioned in recitals (76) to (78).

(81) It is considered that special measures are needed in this case in order to ensure the proper application of such exemptions. These special measures are the requirement of the presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the extended anti-dumping duty applicable to all the companies in the Republic of Korea that are not exempted.

(82) Other exporters concerned which were not contacted by the Commission in the framework of this proceeding and which intend to lodge a request for an exemption from the extended anti-dumping duty pursuant to Article 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. The Commission would normally

also carry out an on-spot verification visit. The request would have to be addressed to the Commission with all relevant information.

(83) Where an exemption is warranted, the Commission will, after consultation of the Advisory Committee, propose the amendment of this Regulation accordingly. Subsequently, any exemption granted will be monitored to ensure compliance with the conditions set therein.

6. DISCLOSURE

(84) All interested parties were informed of the essential facts and considerations leading to the above conclusions and were invited to comment. The oral and written comments submitted by the parties were considered. None of the arguments presented gave rise to a modification of the definitive findings.

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Regulation (EC) No 1858/2005 on imports of steel ropes and cables including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, originating in the People's Republic of China, is hereby extended to imports of steel ropes and cables including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, currently falling within CN codes ex 7312 10 81, ex 7312 10 83, ex 7312 10 85, ex 7312 10 89 and ex 7312 10 98 (TARIC codes 7312 10 81 13, 7312 10 83 13, 7312 10 85 13, 7312 10 89 13 and 7312 10 98 13), with the exception of those produced by the companies listed below:

Country	Company	TARIC additional code
The Republic Korea	Bosung Wire Rope Co, Ltd., 972-5, Songhyun-Ri, Jinrae-Myeun, Kimhae-Si, Gyeungsangnam-Do	A969
	Chung Woo Rope Co., Ltd. 1682-4, Songjung-Dong, Gangseo-Gu, Busan	A969
	CS Co., Ltd, 287-6 Soju-Dong Yangsan-City, Kyoungnam	A969
	Cosmo Wire Ltd., 447-1, Koyeon-Ri, Woong Chon-Myon Ulju-Kun, Ulsan	A969
	Dae Heung Industrial Co., Ltd., 185 Pyunglim - Ri, Daesan-Myun, Haman – Gun, Gyungnam	A969
	DSR Wire Corp., 291, Seonpyong-Ri, Seo-Myon, Suncheon-City, Jeonnam	A969
	Kiswire Ltd., 20t h Fl. Jangkyo Bldg., 1, Jangkyo-Dong, Chung-Ku, Seoul	A969
	Manho Rope & Wire Ltd., Dongho Bldg, 85-2, 4 Street Joongang-Dong, Jong gu, Busan	A969
	Shin Han Rope CO.,LTD, 715-8, Gojan-dong, Namdong-gu, Incheon	A969

Ssang Yong Cable Mfg. Co., Ltd, 1559-4 Song-Jeong Dong, Gang-Seo Gu, Busan	A969
Young Heung Iron & Steel Co., Ltd, 71-1 Sin-Chon Dong, Changwon City, Gyungnam	A969

2. The application of exemptions granted to the companies specifically mentioned in paragraph 1 or authorised by the Commission in accordance with Article 3(2) shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the anti- dumping duty as imposed by paragraph 1 shall apply.

3. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, registered in accordance with Article 2 of Regulation (EC) No 734/2009 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009, with the exception of those produced by the companies listed in paragraph 1.

4. The provisions in force concerning customs duties shall apply.

Article 2

The investigation initiated by Regulation (EC) No 734/2009 concerning the possible circumvention of anti-dumping measures imposed by Regulation (EC) No 1858/2005 on imports of steel ropes and cables, originating in the People's Republic of China by imports of steel ropes and cables consigned from Malaysia, whether declared as originating in Malaysia or not, and making such imports subject to registration, is hereby terminated.

Article 3

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 authorised 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: N-105 04/92
B - 1049 Brussels
BELGIUM
Fax (32 2) 295 65 05

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 from companies which do not circumvent the anti-dumping measures imposed by Regulation (EC) No 1858/2005, from the duty extended by Article 1.

Article 4

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EC) No 734/2009.

Article 5

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,

For the Council
The President

Annex

A declaration signed by an official of the entity issuing the commercial invoice, in the following format**,** must appear on the valid commercial invoice referred to in Article 1(2):

(1) The name and function of the official of the entity issuing the commercial invoice.

(2) The following declaration: "I, the undersigned, certify that the (volume) of [product concerned] sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct."

(3) Date and signature