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2010/0134 (NLE)

Proposal for a

COUNCIL REGULATION

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

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 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') in the proceeding concerning imports of certain molybdenum wires originating in the People's Republic of China.

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.

Existing provisions in the area of the proposal

By Regulation (EC) No 1247/2009 the Commission imposed provisional anti-dumping measures on imports of certain molybdenum wires originating in the People's Republic of China .

Consistency with other policies and objectives of the Union

Not applicable.

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

3. Legal elements of the proposal

Summary of the proposed action

On 8 April 2009, the Commission initiated an anti-dumping proceeding concerning imports of certain molybdenum wires originating in the People's Republic of China.

The investigation found dumping of the product concerned, which caused injury to the Union industry. The investigation also found that it was not against the Union interest to impose anti-dumping measures. On this basis, provisional measures were imposed by Commission Regulation (EC) No 1247/2009. The attached proposal for a Council Regulation is based on the definitive findings on dumping, injury, causation and Community interest; the investigation following the imposition of provisional measures has confirmed the main provisional findings.

It is therefore proposed that the Council adopts the attached proposal for a Regulation in order to impose definitive measures.

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.

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 because 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[1] (the 'basic Regulation'), and in particular Article 9 thereof,

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The European Commission (Commission), by Regulation (EC) No 1247/2009[2] (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of certain molybdenum wires originating in the People's Republic of China ('PRC' or 'country concerned').

(2) The proceeding was initiated following a complaint lodged by the European Association of Metals (EUROMETAUX) (the complainant) on behalf of a producer representing a major proportion, in this case more than 25%, of the total Union production of molybdenum wires.

(3) As set out in recital 13 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 April 2008 to 31 March 2009 (‘investigation period’ or ‘IP’). The examination of the trends for the assessment of injury covered the period from March 2005 to the end of the IP ('period considered').

1 OJ L 343, 22.12.2009, p. 51.

2 OJ L 336, 18.12.2009, p. 16.

1.2. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures ('provisional disclosure'), several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain molybdenum wires originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). They were also granted a period within which they could make representations subsequent to this disclosure.

2. PRODUCT CONCERNED AND LIKE PRODUCT

(6) In the absence of any comments concerning the product concerned and the like product, recitals (14) to (17) of the provisional Regulation are hereby confirmed.

3. DUMPING

3.1. Market Economy Treatment (MET) – Individual Treatment (IT)

(7) In the absence of any comments concerning the MET and IT findings, recitals (18) to (23) of the provisional Regulation are hereby confirmed.

3.2. Normal value

(8) Following the disclosure of the provisional findings, the cooperating exporting producer contested the use of the export prices from the USA to other countries (including the Union) as a basis for the determination of the normal value for the PRC. Instead, it proposed to use the price actually paid or payable in the Union for the like product because it considered that normal value determined on this basis would yield a lower dumping margin for the PRC.

(9) The same producer claimed that the normal value should be adjusted downwards in order to account for the efficiencies it enjoys as a vertically integrated producer in comparison with the complainant or the analogue country producer which do not have mining facilities for the main raw material, the molybdenum ore.

(10) Regarding the first claim it is noted that the use of prices paid or payable in the Union is an option provided for in Article 2(7)(a) of the basic Regulation to be used only when the other options provided for in the same Article cannot be applied. Since in this proceeding co-operation was obtained from a third country producer, and it was thus possible to use the option of a price from the market economy third country to other countries, there is no legal justification to apply the residual option of Article 2(7)(a). The claim was therefore, rejected.

(11) Regarding the second claim it is noted that that the co-operating producer did not provide any evidence to demonstrate that the level of integration of producers is a factor that affects prices and price comparability. The claim was therefore rejected.

(12) Certain parties questioned the choice of the analogue country producer in view of the fact that this company in the USA is a daughter company of the complainant. In this regard it is noted that the fact that a company in the proposed analogue country is a related company of the complainant did not preclude that the information obtained was reliable and verifiable.

(13) In the absence of any other comments concerning the normal value, which would alter the provisional findings, recitals (24) to (25) of the provisional Regulation are hereby confirmed.

3.3. Export price

(14) In the absence of any comments concerning the export price, recital (26) of the provisional Regulation is hereby confirmed.

3.4. Comparison

(15) It is noted that the indirect taxation adjustment mentioned in recital (27) of the provisional Regulation is 5% and represents the difference between the VAT payable on domestic sales and that payable on the export sales transactions due account being taken of the VAT refund rate on export sales.. The co-operating exporting producer contested the manner in which this adjustment was applied and claimed that it should rather be calculated as a factor decreasing the export price.

(16) Regarding this claim it is noted that the adjustment was based on the provisions of Article 2(10)(b) of the basic Regulation which provides for an adjustment to normal value for import charges and indirect taxes – a category which includes VAT. On this basis the claim was rejected.

(17) In the absence of any other comments concerning the comparison, which would alter the provisional findings, recital (27) of the provisional Regulation is hereby confirmed.

3.5. Dumping margins

(18) Based on the above, the country-wide dumping established in recitals (28) to (29) of the provisional Regulation at 68,4% is hereby confirmed.

4. INJURY

4.1. Union production

(19) It is recalled that in order to protect the business confidential information of the sole Union producer that fully co-operated, all the figures related to sensitive data provided below have been indexed or given in a range.

(20) In the absence of any comments concerning the Union production recitals (30) to (31) of the provisional Regulation are hereby confirmed.

4.2. Definition of the Union industry

(21) In the absence of any comments concerning the definition of the Union industry, recital (32) of the provisional Regulation is hereby confirmed.

(22) Regarding recital (33) of the provisional Regulation it is noted that on the basis of comments received by one interested party a clerical error was detected. The fiscal year ('FY') 2005 of the Union producer covers the period from 1 March 2005 to 28 February 2006 and not the period from 1 March 2004 to 28 February 2005 as indicated in that recital. Hence, the starting point of the injury assessment was effectively March 2005.

4.3. Union consumption

(23) It is recalled that the Union consumption was established by adding to the sales volume of the known producers in the Union all the imports from third countries extracted from Eurostat. It is also recalled that since the CN code under which the product concerned is declared also includes other products which fall outside the scope of this investigation and given that there are no specific import statistics available only for the product concerned, the Eurostat data was adjusted in accordance with the method suggested in the complaint. This methodology is based on a comparison of the import values from the PRC with the Union producer's sales values.

(24) However, at provisional stage the import data used corresponded to the calendar years whereas the sales volume of the known producers were based on the fiscal years. One interested party contested this discrepancy in the period used for the determination of consumption and claimed that the imports should also be based on the fiscal years.

(25) This claim was considered to be valid and, therefore, Eurostat data was adjusted to correspond to the same periods, namely fiscal years. As a result, the Union consumption figures provided in table 1 of the provisional Regulation were amended; the new figures being as provided in Table 1 herein:

Table 1

Union Consumption	**2005**	**2006**	**2007**	**2008**	**IP**
Tonnes	403	396	430	396	358
Index 2005=100	*100*	*98*	*107*	*98*	*89*

(26) Overall, the Union consumption of molybdenum wires decreased by 11% over the period considered. The demand decreased slightly by 2% in 2006 and went up in 2007 by 9% after which it dropped in 2008 and in the IP, in connection with the negative impact of the economic crisis.

4.4. Imports into the European Union from the PRC

4.4.1. Volumes and market share of the imports from the PRC

(27) Following the acceptance of the argument mentioned in recital (25) above, the table below shows the revised total import volumes, market shares and prices of Chinese

molybdenum wires into the Union market during the period considered. It is noted that this revision did not affect the import volumes from the country concerned in the IP.

Table 2

All imports from the PRC	**2005**	**2006**	**2007**	**2008**	**IP**
Tonnes	42	56	87	100	97
Index 2005=100	*100*	*133*	*207*	*238*	*231*
Market share *Index 2005=100*	*100*	*136*	*194*	*243*	*261*
Prices (EUR/tonne) *Index*	*53 202* *100*	*62 198* *117*	*56 046* *105*	*51 512* *97*	*50 892* *96*

Source: Eurostat and complaint data

(28) The revised figures in Table 2 above showed that overall the trends of import volumes and market shares from the country concerned presented in the table of recital (36) of the provisional Regulation remained unchanged. The dumped imports from the PRC increased significantly from 42 tonnes in 2005 to 100 tonnes in 2008, i.e. more than doubled. Following a peak in 2008, these imports decreased during the IP in line with the evolution of the Union consumption. Moreover, the market share of the dumped imports more than doubled over the period considered.

(29) The revised figures concerning the average import prices, however, now show a declining trend between 2005 and the IP. It was found that over the period considered the average import prices from the PRC decreased by 4%.

4.4.2. Price undercutting

(30) In the absence of any comments concerning price undercutting, recitals (39) and (40) of the provisional Regulation are hereby confirmed.

4.5. Economic situation of the Union industry

(31) It is recalled that, as mentioned in recital (41) of the provisional Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators for an assessment of the state of the Union industry from March 2005 to the end of the IP.

(32) In the absence of any comments with regard to production, production capacity and capacity utilisation, the provisional conclusions as outlined in recitals (41) to (43) of the provisional Regulation are hereby confirmed.

(33) Subsequent to the provisional Regulation and following the minor revision made to the Union consumption in Table 1 above, the market share of the Union industry has been revised as follows, while the sales volume and average sales prices remained unchanged:

Table 3

	2005	**2006**	**2007**	**2008**	**IP**
Sales volume in the Union market *Index*	100	99	92	75	68
Market share *Index*	100	101	86	76	77
Average sales prices *Index*	100	86	96	95	92

(34) As mentioned in recital (45) of the provisional Regulation, the sales volume of the Union industry to independent customers on the Union market decreased significantly by 32% over the period considered. This decrease significantly exceeded the decrease in consumption which as shown in table 2 above decreased by11% over the same period. This resulted in a significant drop of 23% in the market share of the Union industry in the same period.

(35) In the absence of any comments with regard to the development of the sales prices, stocks, employment, the financial performance indicators of the Union industry, the provisional conclusions as outlined in recitals (46) to (57) of the provisional Regulation are hereby confirmed.

(36) The conclusion that the Union industry suffered material injury, as set out in recitals (58) to (61) of the provisional Regulation, is also confirmed.

5. CAUSALITY

5.1. Effect of the dumped imports

(37) In accordance with Articles 3(6) and 3(7) of the basic Regulation, at provisional stage it was examined whether the dumped imports of the product concerned originating in the PRC caused material injury to the Union industry to a degree that can be considered as material.

(38) It is recalled that the deterioration in the economic situation of the Union industry coincided with the surge of the dumped imports from the PRC. Subsequent to the provisional measures and following the revisions to the import figures originating from the PRC as provided in recital (25) above, the imported volume and the market share of the Chinese exporters more then doubled between 2005 and IP.

(39) As a result of the revisions the import prices of the dumped imports decreased over the period considered by 4% while remaining constantly below the prices of the Union industry, undercutting them by 30 to 35% during the IP. Consequently, the Union

industry was facing price pressure by the Chinese exporters on a continued basis in order to remain competitive on the Union market.

(40) One interested party contested the existence of a causal link between the dumped imports from the PRC and the material injury suffered by the Union industry. It argued that there is no correlation between the financial performance of the Union industry and the surge of dumped imports. It stressed that while the imports from the PRC had increased significantly in 2007 in relation to the earlier periods, the Union industry moved from a loss making to a profitable situation in that year.

(41) In this respect it is firstly noted that, between 2005 and the IP, while the imports more than doubled, the sales volume of the Union industry decreased significantly by 32% leading to a loss of market share by 33% during the same period. At the same time all the other injury indicators, such as production, capacity utilisation, investments, profitability and cash flow showed significant declining trends during that period. Secondly, the investigation showed that the weak performance of the Union industry was linked to the lowering of prices in its attempt to gain back the important customers lost to the Chinese exporters. As regards 2007, the Union industry continued its attempts to win back its customers by rationalisation efforts in order to keep the cost prices low and to be competitive with the low priced dumped imports. Accordingly, it is considered that the conclusions made in recitals (63) to (66) of the provisional Regulation are valid and therefore this claim had to be rejected.

(42) Following the above, it can be confirmed that the surge of low-priced dumped imports from the PRC had a considerable negative impact on the economic situation of the Union industry during the IP.

5.2. Effect of other factors

(43) It is recalled that other factors were also examined in the causality analysis, namely the development of the demand, the evolution of the costs of the Union industry, its export performance and finally the possible impact of the imports from other countries.

(44) One interested party claimed that the material injury suffered by the Union industry was caused by factors other than the dumped imports, namely by i) the contraction of demand due to the economic crisis and due to changes in technology, and ii) the export performance of the Union industry.

(45) As regards the decrease in consumption it is noted that the sales volumes of the Union industry decreased considerably more (-32%) than the decrease in Union consumption (-11%), leading to market share loss of 33%. At the same time, the market share of the Chinese exporters increased significantly by more than two times. Therefore, it is considered that the conclusion made in recital (69) of the provisional Regulation can be confirmed and therefore this claim had to be rejected.

(46) As regards the export performance, there was indeed a declining trend in the export sales of the Union industry for reasons provided in recital (72) of the provisional Regulation (i.e. in line with the negative worldwide situation in the automotive sector as from 2008). The investigation showed, however, that the export sales was not the core business of the Union industry as these sales never exceeded 17% of its Union sales during the period considered. More importantly, however, in addition to recitals (71) and (72) of the provisional Regulation it is noted that its sales prices in the export

market remained above the sales prices within the Union. Hence, any negative impact caused by the decrease in export sale volume is considered to be very limited. Therefore, this claim had to be rejected.

(47) In the light of the foregoing and in the absence of any other comments recitals (67) to (80) of the provisional Regulation are confirmed.

6. UNION INTEREST

6.1. Interest of the Union industry

(48) In the absence of any comments with regard to the interest of the Union industry, the provisional conclusions as outlined in recitals (83) to (86) of the provisional Regulation are hereby confirmed.

6.2. Interest of importers, traders and users in the Union

(49) It is recalled that despite the fact that numerous parties were contacted, the level of co-operation with the investigation at the provisional stage of importers, traders and users was very low. . It is recalled that only one trader, located in Germany, and one user, located in Italy, had cooperated fully at provisional stage.

(50) The cooperating user argued that the negative impact of the anti-dumping measures on its business has been underestimated in the analysis of the Union interest made at provisional stage, and claimed that in fact it would have difficulties in passing on the cost increase to its customers.

(51) It is recalled that the share of the business regarding the product concerned in this user activity accounts for between 15 to 25% of its total business activity. Further analysis made after the imposition of provisional measures confirmed that the impact on the overall profit of the company would be limited. This user has a strong position in the business segment involving the product concerned, in particular in terms of reliability and supply security towards its customers. This element would indicate that this user is likely to be able to pass at least part of the cost increase to its customers. On that basis, the claim had to be rejected.

(52) Subsequent to the publication of the provisional Regulation, two users and one importer came forward and claimed that their activity will be negatively impacted by the imposition of the anti-dumping duty.

(53) According to the data submitted by one of these two users, the business segment that includes molybdenum wire represents between 10 to 20% of its total activity. On the basis of the elements provided, there are indications that, while the imposition of the anti-dumping duty is likely to have a negative impact on the part of the activity incorporating molybdenum wire, this user would still remain profitable. As for the other user, no data was provided that would substantiate its claim.

(54) Regarding the importer, it is noted that it only provided overall basic data according to which it appeared that the imports of molybdenum wire from the PRC would account for between 10 and 20% of the total imports from the PRC during the IP. In terms of the share of the molybdenum business in relation to the total company business - this would account for less than 7%. Based on the information available it could, therefore,

be concluded that while anti-dumping measures would have a negative impact on the business segment including molybdenum wire, the overall impact on the total company business would be limited.

(55) In view of the above and in absence of any other comments, recitals (93) to (96) of the findings and conclusion of the provisional Regulation are hereby confirmed.

6.3. Competition and trade distorting effects

(56) Subsequent to the publication of the provisional Regulation, some parties came forward and argued that the anti-dumping measures would lead to limited competition in the Union market.

(57) As regards this claim, it should be reiterated that since the anti-dumping duties would re-establish a level playing field, the Chinese imports would likely continue entering the Union market, albeit at non-injurious prices. In addition, it is recalled that some alternative sources of supply exist. No substantiated evidence invalidating this conclusion was provided and therefore the conclusions made in recitals (97) to (99) of the provisional Regulation are hereby confirmed.

6.4. Conclusion on Union interest

(58) Based on the above, it is confirmed that there are no compelling reasons against the imposition of anti-dumping duties against imports of molybdenum wire originating in the PRC in the present case.

7. DEFINITIVE ANTI-DUMPING MEASURES

7.1. Injury elimination level

(59) In the absence of any substantiated comments that would alter the conclusion regarding the injury elimination level, recitals (101) to (104) of the provisional Regulation are hereby confirmed.

7.2. Definitive measures

(60) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at a level sufficient to eliminate the injury caused by the dumped imports without exceeding the dumping margin found. In this case, the duty rate should accordingly be set at the level of the injury margin found, i.e. 64,3%.

(61) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period within which they could make representations subsequent to this disclosure. The comments submitted by the parties were duly considered, and, where appropriate, the findings have been modified accordingly.

7.3. Undertakings

(62) The co-operating Chinese exporting producer expressed its willingness to offer a price undertaking in accordance with Article 8(1) of the basic Regulation.

(63) However, this company was not granted either MET or IT, and it is, in general, the Commission's practice not to accept undertakings in such a case, since no individual determination of the duty margin could be established. On this basis, price undertakings could not be considered further.

7.4. Definitive collection of provisional duty

(64) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation be definitively collected.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed 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, currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 10).

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 shall be 64,3%.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EC) No 1247/2009 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 (TARIC code 8102 96 00 10), and originating in the People's Republic of China shall be definitively collected.

Article 3

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