



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.2.2007  
COM(2007)54 final

Proposal for a

**COUNCIL REGULATION**

**imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain tungsten electrodes originating in the People's Republic of China**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ("the basic Regulation") in the proceeding concerning imports of certain tungsten electrodes 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**

Commission Regulation (EC) No 1350/2006 imposing a provisional anti-dumping duty on imports of certain tungsten electrodes originating in the People's Republic of China

- **Consistency with the 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 already 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.

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 17 December 2005, the Commission opened an anti-dumping investigation with regard to imports into the Community of certain tungsten electrodes originating in the People's Republic of China.

By Regulation (EC) No 1350/2006 of 13 September 2006, the Commission imposed provisional anti-dumping duties on these imports.

The attached proposal for a Council Regulation is based on the definitive findings on dumping, injury, causation and Community interest which confirmed the provisional findings while introducing some changes to the calculation of the dumping and injury margins.

It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published in the Official Journal no later than 12 March 2007.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. 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 financial and administrative burden falling upon the Community, 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(s).

The above-mentioned basic Regulation does not foresee alternative options.

**4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

Proposal for a

## COUNCIL REGULATION

**imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain tungsten electrodes originating in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>1</sup> ('the basic Regulation'), and in particular Article 9 thereof,

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

Whereas:

### A. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EC) No 1350/2006<sup>2</sup> (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of certain tungsten electrodes, currently classifiable within CN codes ex 8101 99 10 and ex 8515 90 00 (CN codes since 1 January 2007), originating in the People's Republic of China ('PRC').
- (2) It is recalled that the investigation of dumping and injury covered the period from 1 January 2005 to 31 December 2005 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2001 to the end of the investigation period ('period considered').

### B. SUBSEQUENT PROCEDURE

- (3) Following the imposition of a provisional anti-dumping duty on imports of certain tungsten electrodes originating in the PRC, some interested parties submitted comments in writing. The parties, who so requested, were also granted an opportunity to be heard orally.
- (4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the parties were

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<sup>1</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

<sup>2</sup> OJ L 250, 13.9.2006, p. 10.

examined and, where considered appropriate, the provisional findings were modified accordingly. To this end, the Commission carried out further verification visits at the premises of the following companies:

*a) Unrelated importer in the Community*

- Comptoir Lyonnais de Soudage SA, Lyon, France;

*b) Related companies in the Community*

- Aleksander Binzel Schweisstechnik GmbH & Co., KG, Busech, Germany;
- Binzel France Sarl, Strasbourg, France.

- (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 tungsten electrodes originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.
- (6) The oral and written comments submitted by the parties were considered, and, where appropriate, the findings have been modified accordingly.

### **C. PRODUCT CONCERNED AND LIKE PRODUCT**

- (7) The product concerned is tungsten welding electrodes ('TE'), including tungsten bars and rods for welding electrodes, containing 94% or more by weight of tungsten, other than those obtained simply by sintering, whether of not cut to length. It is currently classifiable within CN codes ex 8101 99 10 and ex 8515 90 00 (CN codes since 1 January 2007). The product concerned is used in welding and similar processes, including tungsten inert gas shielded arc welding, plasma arc welding and cutting and thermal spraying.
- (8) One importer argued against the conclusion drawn in recital (13) of the provisional Regulation that all TE are considered to constitute a single product for the purpose of this proceeding. This importer emphasised the varying properties of different types of TE and in particular one patented type developed by the importer himself.
- (9) However, since the beginning of the investigation, the Commission has been aware that there are several types of TE. As well as being sold in different lengths and thicknesses, TE can be made either from pure tungsten or alloyed with a small percentage of a metal such as thorium, lanthanum, cerium, zirconium, or a combination of those. This alloying affects the properties of the electrodes namely in terms of ignitability, stability and durability, allowing them to be better tailored for specific applications. Despite the variations in technical features of the different types of TE, it is considered that their common basic physical characteristics and degree of substitutability are sufficient to consider them as a single product for the purpose of this proceeding as they share the same basic physical and chemical characteristics.

- (10) It should be noted, however, that the different types of TE as mentioned above have been taken into consideration for the purpose of calculating the dumping and injury margins.
- (11) The importer referred to in recital (8), also pointed to the differences in the production processes between the European and Chinese producers, and claimed that these lead to a higher quality of the Chinese TE. Furthermore, an exporting producer claimed that its electrodes are of better quality than those of its competitors and in any event better tailored for the main product manufactured by the group, the TIG welding torch. Regarding the latter claim, it should be stressed that according to the available evidence, any quality differences are not such as to prevent the use of electrodes produced by other producers in this specific application, even if they would not provide the optimal fitting to the torches. As for the alleged general quality differences, as pointed out by the importer, between the TE produced and sold by the Community industry in the Community and the TE imported into the Community from the PRC, there was no objective information available to corroborate or quantify such a perceived general quality difference. Therefore the TE produced and sold by the Community industry in the Community and the TE imported into the Community from the PRC have been considered alike within the meaning of Article 1(4) of the basic Regulation, and no adjustment was made in this respect in the injury calculations.
- (12) In the absence of any other comments concerning the product concerned and the like product, recitals (12) to (15) of the provisional Regulation are hereby confirmed.

## **D. DUMPING**

### **1. Market economy treatment ('MET')**

- (13) The exporting producer for which MET was rejected, since it did not fulfil the second MET criterion as set out in Article 2(7)(c) of the basic Regulation, argued that the discrepancies found in its accounting system concerned only a few cases and that in the meantime its system had been improved in order to meet the international accounting standards. The company, however, did not substantiate this claim or provide any evidence. Moreover, from the evidence gathered during the on-spot verification it is clear that the practices found were in clear violation of IAS as well as Chinese accounting rules, even if they would have been corrected after the IP.
- (14) In the absence of any other arguments regarding the granting of MET, the findings as set out in recitals (16) to (21) of the provisional Regulation are hereby confirmed.

### **2. Individual treatment ('IT')**

- (15) Following the provisional disclosure, the Community industry contested the granting of IT to the exporting producer referred to above in recital (13), since discrepancies were found in the company's accounts also with regard to the recording of export sales. In this respect it should be noted that the company fulfilled all criteria set out in Article 9(5) of the basic Regulation and therefore there was no reason to reject its IT claim. Moreover, all evidence related to the company's very few export transactions to the Community in the IP could be obtained during the on-spot verification of the main

anti-dumping questionnaire, and a single necessary correction to its export data could be made immediately. Therefore the claim of the Community industry was rejected.

- (16) In the absence of any other comments in this respect, the findings concerning IT as set out in recitals (22) to (25) of the provisional Regulation are hereby confirmed.

### **3. Normal value**

#### *(a) Determination of normal value for the exporting producer in the PRC granted MET*

- (17) Following the provisional disclosure, the exporting producer concerned presented a monthly normal value by linking the verified, average normal value of the IP to the price development of the main raw material, ammonium paratungstate ('APT'), in order to demonstrate that when comparing with the monthly export prices there was no more dumping towards the end of the IP. Moreover, this monthly normal value suggested that the provisional finding of dumping was essentially caused by the dramatic price increase of APT, to which the company did not react immediately by increasing its export sales prices, but only at the end of the IP. The company asked the Commission to take this development into account and to consider calculating the dumping margin based on the last six months or last quarter of the IP solely. This claim, however, had to be rejected, as differing from the IP would be discriminatory towards all other companies investigated, which were affected in the same way by that general price increase of APT. The request is also in conflict with the concept of an investigation period. Indeed, it amounts to selectively choosing data from part of the investigation period and puts thus into question the representativity of the findings.
- (18) In that context, further to the provisional disclosure, the Community industry claimed that an adjustment should be made to the raw material costs used for the construction of the normal value of the company granted MET. In the view of the Community industry such an adjustment would be justified pursuant to Articles 2(3) and 2(5) of the basic Regulation, as the Chinese tungsten market is subject to State interference at the macroeconomic level and hence the domestic prices of the main raw material, APT, have remained consistently lower than the export prices of APT.
- (19) The above claim was examined by analysing the effects of the Chinese government's policies at the macroeconomic level, which might lead to different price levels of APT between the domestic and export markets. The investigation showed that the Chinese VAT export refund policy discourages to a certain extent the export of tungsten and related products such as APT as exporters are refunded for only part of the VAT paid on the domestically sourced raw material. This also implies that producers of TE incur an additional cost when exporting. Therefore, an adjustment was made to the normal value, pursuant to Article 2(10) (b) of the basic Regulation, to reflect the total cost incurred as a result of the above-mentioned VAT scheme. It is not considered that any further adjustment is required.
- (20) Apart from the above-mentioned adjustment to the normal value, the general methodology as set out in recitals (26) to (33) of the provisional Regulation is hereby confirmed.

#### *(b) Determination of normal value for the exporting producers in the PRC not granted MET*

*(i) Analogue Country*

- (21) In the absence of any relevant comments regarding the use of the USA as an analogue country, recitals (34) to (38) of the provisional Regulation are confirmed.

*(ii) Normal value*

- (22) In the absence of any comments with regard to the determination of the normal value for the exporting producers not granted MET, recitals (39) to (46) of the provisional Regulation are definitively confirmed.

**4. Export prices**

- (23) Regarding the export prices of one company granted IT as well as the cooperating company not granted MET/IT, whose dumping margin served as the basis for the country-wide dumping margin, as explained in recitals (54) to (56) of the provisional Regulation, export prices were revised by excluding two transactions falling outside the IP.

- (24) Following the provisional disclosure, the exporting producer granted MET, whose export sales to the Community were made via a related importer and subsequently resold to related and unrelated companies in the Community, claimed that the SG&A costs of its related companies, used for the construction of the export price pursuant to Article 2(9) of the basic Regulation, were overestimated and did not reflect the costs generated by the sales of TE. The exporting producer requested the Commission to use the original SG&A presented in the questionnaire replies of the related distributors, which could not be accepted initially in the absence of evidence regarding the cost allocation method. The company presented supporting evidence for the allocation method used originally, which was based on an internal standard, used by the companies historically. The evidence provided was subsequently verified on the spot and it was found that the original allocation method corresponded to the costs associated with the sales of TE. Hence, the claim was accepted and the SG&A costs of the related distributors were adjusted accordingly.

- (25) With regard to the profit margin of the two unrelated importers, one of which was provisionally used for the constructed export price of the above-mentioned exporting producer, it was found that those profit margins should not be used since their business activities are not sufficiently comparable to that of the related importer concerned. Indeed, the majority of the TE imported by this related importer are further integrated into the main product produced by the group, the welding torch. It should also be noted that the TE are of minor value compared to the end-product. On this basis it was concluded that the related importer's own profit margin would constitute a more accurate basis for a profit margin to construct the export price.

- (26) No other comments were received with regard to export prices, and hence the general methodology as set out in recitals (47) and (48) of the provisional Regulation, with the exception of the use of the related importer's own profit margin for the constructed export price of the producer granted MET, as described above, is hereby confirmed.

## 5. Comparison

(27) The normal values, as described above in recitals (17) to (20) and (22) and the export prices, revised as explained above in recitals (23) to (26) were compared on an ex-works basis. In order to ensure a fair comparison between the normal value and the export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. The factors for which adjustments were accepted were indirect taxes as described in recital (19), transport, insurance, handling and ancillary costs, packing, credit, and bank charges.

## 6. Dumping margin

a) *For the cooperating exporting producer granted MET*

(28) In the light of the above, the definitive dumping margin, expressed as a percentage of the CIF Community frontier price, duty unpaid, is as follows:

Company	Definitive dumping margin
Shandong Weldstone Tungsten Industry Co., Ltd	17 %

b) *For the cooperating exporting producers granted IT*

(29) Following the adjustment to the export price of the other company granted IT, the definitive dumping margins, expressed as a percentage of the CIF Community frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd	107,3 %
Beijing Advanced Metal Materials Co., Ltd	128,4 %

c) *For all other exporting producers*

(30) Following the adjustment to the export price of the cooperating exporting producer not granted MET/IT, the definitive country-wide level of dumping is established at 160,2 % of the CIF Community frontier price, duty unpaid.

## **E. INJURY**

### **1. Community production**

(31) In the absence of comments concerning Community production, recitals (57) to (58) of the provisional Regulation are hereby confirmed.

### **2. Definition of the Community industry**

(32) In the absence of comments concerning the definition of the Community industry, recital (59) of the provisional Regulation is hereby confirmed.

### **3. Community consumption**

(33) In the absence of comments concerning the Community consumption, recital (60) of the provisional Regulation is hereby confirmed.

### **4. Imports into the Community from the country concerned**

(34) In the absence of any comments concerning the imports from the country concerned, recitals (61) to (66) of the provisional Regulation are hereby confirmed.

### **5. Situation of the Community industry**

(35) In the absence of comments concerning the situation of the Community industry, recitals (67) to (93) of the provisional Regulation are hereby confirmed.

## **F. CAUSATION**

(36) In the absence of any new and substantiated information or argument in this respect, recitals (94) to (114) of the provisional Regulation are hereby confirmed.

## **G. COMMUNITY INTEREST**

(37) Three exporters, one exporters' association and one importer reiterated their concern that that the provisional duties would exclude the Chinese exporters from the Community market. Given that there are only two Community producers and virtually no imports from other countries, this would allegedly eliminate competition from the Community market, to the detriment of users. Furthermore, it has been alleged that the two Community producers have a history of controlling the prices in the Community market through anti-competitive practices. However, these parties did not provide any additional evidence to substantiate their claims nor has any indication been found in the course of the investigation which would point to such practices.

(38) As stated in the provisional Regulation, the purpose of any anti-dumping measure is not to stop access to the Community market for exporters in third countries, but rather to restore a level playing field that had been distorted by unfair trade practices.

(39) No evidence for the alleged anti-competitive behaviour was found during the investigation, nor has the Community industry enjoyed abnormally high profits, even before the Chinese imports gained a substantial foothold in the Community market. Besides the two existing Community producers, the level of measures imposed should

allow at least some exporting producers from the PRC to continue selling the product concerned in the Community market. Indeed, the purpose of the duties, when based on injury, is merely to raise the import prices to a level which allow the Community industry to achieve a normal profit.

- (40) One importer further claimed that the duties would threaten the existence of his company. Moreover, this importer markets a unique type of high-quality electrode and if he were to go out of business, he claims, end-users of TE would suffer in terms of innovation and quality of service.
- (41) However, as stated in the provisional Regulation, the general effect on importers of any increase in the prices of imports of the product concerned should be to restore fair competition with Community producers and should not prevent the importers from selling the product concerned. Moreover, the high profit margins found at the level of the cooperating importers make it unlikely that they will be driven out of business even if the volume of imports decreases with the imposition of measures. The distributor/dealer's role in the welding electrode market is an essential one because it offers the end-user the benefits of a one-stop shop for all the latter's needs regarding welding. Therefore, it is highly likely that those agents will remain an important feature of the market even after measures are imposed.
- (42) It was also argued by one party that the TE imported by their group are complementary to the welding torches manufactured by the same company. If the users were induced as a consequence of the anti-dumping measures to switch to cheaper electrodes from other suppliers, the performance and durability of the company's torches would suffer, with an adverse impact on their whole business. However it is considered that, even if the customers of these users were unaware of such adverse technical consequences, the relatively low level of the duties proposed for this exporter is not likely to provide an incentive for them to switch to other sources of supply. Furthermore, no evidence of the alleged negative consequences was submitted.
- (43) In the absence of substantially new information or argument in this particular respect, recitals (115) to (132) of the provisional Regulation are hereby confirmed.

## **H. DEFINITIVE ANTI-DUMPING MEASURES**

### **1. Injury elimination level**

- (44) Further to the disclosure of provisional findings, the Community industry claimed that the adjustment mentioned in recital (136) of the provisional Regulation, for the functions of importers, was excessive, for two reasons:
- Not all importers would perform all the functions mentioned in that recital, namely packaging, stocking, quality control, branding, and in some cases a physical processing of the electrodes. In some cases, the electrodes would be exported from the PRC in a condition that does not require most of these operations to be performed by the importer.
  - Even if such functions were to be performed by a given importer, its costs, according to the Community industry's estimates, would be significantly smaller than the amount of the adjustment provisionally established by the Commission.

- (45) The Commission has further investigated this issue by, among others, obtaining detailed information from an additional unrelated importer. The investigation has shown that both the Community-produced and imported electrodes are sold through a wide variety of channels, and are often re-sold several times between the producer and the end-user. The players involved in this market perform, to different extents, functions such as quality control, storage and logistics, re-packaging, marketing and after-sales support. Having examined all the available information, it was considered a more systematic and uniform way to take into account the functions of importers to make a comparison of import prices and Community industry prices adjusted to a common level of trade.
- (46) For this purpose, the sales of the like product by the Community industry in the Community market were used as a basis to estimate the differences in prices resulting from different levels of trade, i.e. traders, retailers, end-users and original equipment manufacturers. This adjustment for level of trade was therefore applied instead of the adjustment mentioned in recital (136) of the provisional Regulation.
- (47) One exporter pointed out a mistake in the sales data used for the calculation of his injury margin. Other clerical errors in the data used for the injury margins were also corrected. As a result of these corrections, the injury margin of one exporter and the country-wide injury margin have been reduced.
- (48) It was also found that due to the infrequent time pattern of exports of some PRC exporters, and the evolution the USD/EUR exchange rate during the IP, the use of monthly exchange rates gave a significantly more accurate result than the use of a single annual rate. The calculations for all exporters were revised accordingly.
- (49) One exporter and one exporters' association argued that the lead time between the purchase of the raw material to the sale of a finished tungsten electrode to a dealer is significantly higher for the PRC exporters than for the Community industry, due to longer transport time and custom procedures. This would mean that the prices of the PRC exporters naturally take a longer time to react to the raw material price increases than those of the Community industry and, the importer claimed, this should be taken into account in the injury calculation.
- (50) While it is recognised that the time lag between the product being manufactured and delivery at the customer is greater for Chinese exporters, this is not considered to be a relevant factor for the injury determination. The data used in the investigation are defined by invoice date, which normally corresponds to the date on which the goods have been shipped from the factory. There is also a time lag between the time the price is negotiated on the basis on the current levels of raw material prices and the shipping date, but there is no reason to assume that this would be greater for Chinese producers than for those in the Community. Therefore, this argument has to be rejected.
- (51) Accordingly, the definitive weighted average injury margins for companies granted either IT or MET are:

<b>Company</b>	<b>Definitive injury margin</b>
Shandong Weldstone Tungsten Industry Co. Ltd.	22,7 %
Shaanxi Yuheng Tungsten & Molybdenum Industrial Co. Ltd.	41,0 %
Beijing Advanced Metal Materials Co. Ltd.	38,8 %
All other companies	63,5 %

## 2. Form and level of the duties

(52) 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 the level sufficient to eliminate the injury caused by the imports without exceeding the dumping margin found.

(53) On the basis of the above, the definitive duties are as follows:

<b>Company</b>	<b>Definitive duty</b>
Shandong Weldstone Tungsten Industry Co., Ltd.	17,0 %
Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd.	41,0 %
Beijing Advanced Metal Materials Co., Ltd.	38,8 %
All other companies	63,5 %

(54) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

- (55) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission<sup>3</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (56) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporters, but also to those companies which did not have any exports during the IP. However, the latter companies are invited, when they fulfil the requirements of Article 11(4) of the basic Regulation, second paragraph, to present a request for a review pursuant to that Article in order to have their situation examined individually.

### **3. Undertakings**

- (57) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties, two exporting producers in the PRC offered price undertakings in accordance with Article 8(1) of the basic Regulation.
- (58) The product concerned is characterised by a considerable number of product types with significant price variations between them. The two exporting producers offered only one minimum import price ('MIP') for all product types at a level which would not have guaranteed the elimination of injurious dumping for all products. It also needs to be noted that the high number of product types makes it virtually impossible to establish meaningful MIPs for each product type which could be properly monitored by the Commission even if the exporting producers had offered different MIPs for each of them.
- (59) Moreover during the IP the product concerned showed a considerable volatility in prices and therefore it is not suitable for a fixed price undertaking. In order to overcome this problem both companies offered to index the MIP on the basis of the volatility of the APT prices. However, as no close correlation between the volatility of APT prices and the volatility of TE prices could be established during the IP for one of the exporting producers, the indexation of the MIP on basis of the APT prices was not feasible for this particular exporting producer.
- (60) Furthermore one of the exporting producers has several related companies in the EC and these related companies also sell other products to the same customers. This complex sales structure raises the risk of circumvention.
- (61) On the basis of the above, it was concluded that these undertaking offers had to be rejected.

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#### 4. Definitive collection of provisional duties and special monitoring

- (62) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, i.e. Regulation (EC) No 1350/2006, should be definitively collected to the extent of the amount of the definitive duties imposed. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitely collected.
- (63) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures, which only apply to companies for which an individual duty rate is introduced, include the following:
- (64) 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 residual anti-dumping duty applicable to all other exporters.
- (65) It is recalled that should the exports by the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the anti-dumping measures, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, *inter alia*, examine the need for the removal of individual duty rates and the consequent imposition of a country-wide duty.

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of tungsten welding electrodes, including tungsten bars and rods for welding electrodes, containing 94 % or more by weight of tungsten, other than those obtained simply by sintering, whether or not cut to length, falling within CN codes ex 8101 99 10 and ex 8515 90 00 (TARIC codes 8101 99 10 and 8515 90 00 10) and originating in the People's Republic of China.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products manufactured by the companies listed below shall be as follows:

Company	Anti-Dumping Duty	TARIC Additional Code
Shandong Weldstone Tungsten Industry Co., Ltd.	17,0 %	A754
Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd.	41,0 %	A755
Beijing Advanced Metal Materials Co., Ltd.	38,8 %	A756
All other companies	63,5 %	A999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 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 duty rate applicable to all other companies shall apply.

4. 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 1350/2006 on imports of certain tungsten electrodes, including tungsten bars and rods for welding electrodes, containing 94% or more by weight of tungsten, other than those obtained simply by sintering, whether or not cut to length, falling within CN codes ex 8101 99 10 and ex 8515 90 00 (TARIC codes 8101 99 10 10 and 8515 90 00 10) and originating in the People's Republic of China shall be definitively collected. The amounts secured in excess of the amount of the definitive anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties 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*

## ANNEX

The valid commercial invoice referred to in Article 1(3) of this Regulation must include a declaration signed by an official of the company, in the following format:

- (1) The name and function of the official of the company which has issued the commercial invoice.
- (2) The following declaration “I, the undersigned, certify that the [volume] of tungsten electrodes sold for export to the European Community 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.”

*Date and signature*