Council Regulation (EC) No 260/2007 of 9 March 2007 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

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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[(1)] (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[(2)] (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 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:

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(a) *Unrelated importer in the Community:*

— Comptoir Lyonnais de Soudage SA, Lyon, France;

(b) *Related companies in the Community:*

— Alexander Binzel Schweißtechnik GmbH & Co., KG, Buseck, 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.

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(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-the-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-the-spot verification of the main anti-dumping questionnaire, and a single necessary correction to its export

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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 abovementioned VAT scheme. It is not considered that any further adjustment is required.

(20) Apart from the abovementioned 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 been 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 abovementioned 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