Commission Regulation (EC) No 1350/2006 of 13 September 2006 imposing a provisional anti-dumping duty on imports of certain tungsten electrodes originating in the People's Republic of China

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 Articles 8, 9, 11(2) and 11(3) thereof,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 4 November 2005, the Commission received a complaint lodged pursuant to Article 5 of Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Communities (the basic Regulation) by Eurometaux (the complainant) on behalf of a producer representing a major proportion, in this case more than 50 %, of the total Community production of certain tungsten electrodes.

(2) This complaint contained evidence of dumping of certain tungsten electrodes from the People's Republic of China (PRC) and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

(3) On 17 December 2005, the proceeding was opened by the publication of a notice of initiation in the *Official Journal of the European Union*[(2)].

2. Parties concerned by the proceeding

(4) The Commission officially advised the complainant, the other Community producer, the exporting producers, importers, users known to be concerned and representatives of the PRC of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(5) The complainant producer, the other Community producer, exporting producers, importers and an exporters' association made their views known. All

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interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(6) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned. Two companies requested MET pursuant to Article 2(7) of the basic Regulation or IT should the investigation establish that they do not meet the conditions for MET. Two other companies requested only IT.

(7) In the notice of initiation, the Commission indicated that sampling may be applied in this investigation for exporters/producers in the PRC. Eleven companies indicated their willingness to be included in the sample. However, given that only four companies requested either MET or IT, it was decided that sampling was not required.

(8) Questionnaires were sent to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from one Community producer, three unrelated importers, four exporting producers in the PRC, 13 related companies in the Community and one producer in the analogue country, the United States of America (USA).

(9) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

(a) *Community producer*

— Plansee Metall GmbH, Reutte, Austria;

(b) *exporting producers in the PRC*

— Shandong Weldstone Tungsten Industry Co., Ltd, Zibo,

— Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd, Baoji,

— Beijing Advanced Metal Materials Co., Ltd, Beijing,

— Beijing Tungsten & Molybdenum Material Factory, Beijing;

(c) *related companies in the PRC*

— Weldstone (Shanghai) Industrial Products Co., Ltd, Shanghai,

— Beijing Advanced Materials Co., Ltd, Beijing,

— Beijing General Mining & Metallurgical Corporation, Beijing;

(d) *related companies in the Community*

— Weldstone GmbH, Wilnsdorf, Germany,

— Alexander Binzel Schweisstechnik GmbH & Co., KG, Buseck, Germany,

— Binzel Benelux BVBA., Gent, Belgium,

— Binzel France Sarl, Strasbourg, France,

— Alexander Binzel (UK) Ltd, Warrington, United Kingdom.

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(10) In view of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country, the USA in this case, took place at the premises of the following company:

producer in the analogue country, USA

— Osram Sylvania, Towanda.

3. Investigation period

(11) The investigation of dumping and injury covered the period from 1 January to 31 December 2005 (investigation period or IP). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2001 to the end of the investigation period (period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(12) The product concerned is certain tungsten electrodes (TE), including tungsten bars and rods, other than those obtained simply by sintering, whether or not cut to length. The product is normally declared within CN codes ex 8101 95 00 and ex 8515 90 90.

(13) 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. TE are used in a wide variety of industrial sectors such as construction, shipbuilding, automobile manufacturing, marine, chemical and nuclear engineering, aerospace as well as oil and gas pipelines. Based on the physical characteristics and the substitutability of the different types of the product from the perspective of the user, all TE are considered to constitute a single product for the purpose of this proceeding.

2. Like product

(14) The investigation showed that the basic chemical, physical and technical characteristics of TE produced and sold by the Community industry in the Community, TE produced and sold on the domestic Chinese market and TE imported into the Community from the PRC, as well as that produced and sold in the USA are the same and that these products have the same use.

(15) It was therefore provisionally concluded that these products are alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Market economy treatment (MET)

(16) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers

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which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(17) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

1. Business decisions and costs are made in response to market signals and without significant State interference;

2. Firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes;

3. There are no significant distortions carried over from the former non-market economy system;

4. Bankruptcy and property laws guarantee legal certainty and stability;

5. Exchange rate conversions are carried out at market rates.

(18) Two exporting producers in the PRC requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadline. The Commission sought and verified at the premises of these companies all necessary information submitted in their MET applications as deemed necessary.

(19) The investigation revealed that the MET claim had to be rejected for one company. The determination for the company against each of the five criteria as set out in Article 2(7)(c) of the basic Regulation showed that the company did not meet the requirements of the abovementioned criterion two. The company's accounts did not reflect the true financial situation since some transactions were booked on an accrual basis whereas others were not. This together with the fact that the auditors of the company did not express any reservations about the practices found, constituted a clear violation of the international accounting standards.

(20) The interested parties were given an opportunity to comment on the above findings. Comments were received from one exporting producer claiming MET.

(21) On this basis, MET was granted to one exporting producer of TE in the PRC:

— Shandong Weldstone Tungsten Industry Co., Ltd.

2. Individual treatment (IT)

(22) Pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate, amongst others, in accordance with Article 9(5) of the basic Regulation, that their export prices and quantities as well as the conditions and terms of the sales are freely determined, that exchange rates are carried out at market rates, and that any State interference is not such as to permit circumvention of measures if exporters are given different rates of duty.

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(23) The exporting producer to which MET could not be granted also claimed IT in the event it was not granted MET. On the basis of the information available, it was found that the company met all of the requirements to be granted IT in accordance with Article 9(5) of the basic Regulation.

(24) Two additional exporting producers, not having claimed MET, requested only IT. Both companies had sales to independent customers in the Community during the IP and cooperated in the investigation. The investigation showed that one company met all the requirements for IT as set forth in Article 9(5) of the basic Regulation whereas the other company did not meet the third IT criterion, since it was found that it is fully State-owned and thus is not free to take its business decisions, including determination of export prices and quantities without State-interference.

(25) It was therefore concluded that IT should be granted to the following two exporting producers in the PRC:

— Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd,

— Beijing Advanced Metal Materials Co., Ltd.

3. Normal value

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

(26) As far as the determination of normal value is concerned, the Commission first established, for the exporting producer concerned, whether its total domestic sales of TE were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of the exporting producer was at least 5 % of its total export sales volume to the Community.

(27) Given that the overall domestic sales of the exporting producer concerned were found to be representative, the Commission subsequently identified the types of TE sold domestically which were identical or directly comparable to the types sold for export to the Community.

(28) For each of those types, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type exported to the Community.

(29) An examination was also made as to whether the domestic sales of each type of the product concerned, sold domestically in representative quantities, could be regarded as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers on the domestic market of the type in question.