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2013/0134 (NLE)

Proposal for a

**COUNCIL IMPLEMENTING REGULATION**

**imposing a definitive anti-dumping duty on imports of certain tungsten electrodes originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009**

## **EXPLANATORY MEMORANDUM**

### **CONTEXT OF THE PROPOSAL**

#### **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation'), in the expiry review proceeding concerning the anti-dumping duty in force in respect of imports of certain tungsten electrodes originating in the People's Republic of China ('the PRC').

#### **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 260/2007<sup>1</sup> the Council imposed a definitive anti-dumping duty on imports of tungsten electrodes originating in the PRC. The measures took the form of an ad valorem duty at the level of 63,5%. Individual anti-dumping duty rates were granted to three Chinese exporters (rates from 17,0% to 41,0%).

#### **Consistency with other policies and objectives of the Union**

Not applicable.

### **CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

#### **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

#### **Collection and use of expertise**

There was no need for external expertise.

#### **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

### **LEGAL ELEMENTS OF THE PROPOSAL**

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<sup>1</sup> OJ L 72, 13.3.2007, p. 1

## **Summary of the proposed action**

On 9 March 2012, the Commission announced by a notice, published in the *Official Journal of the European Union*<sup>2</sup>, the initiation of an expiry review of the anti-dumping measures applicable to imports of tungsten electrodes originating in the PRC.

The review was initiated following a substantiated request lodged by European Association of Metals (EUROMETAUX) on behalf of Union producers representing more than 25% of the Union production of certain tungsten electrodes.

The review investigation found continuation of dumping and injury should anti-dumping measures be lifted. It was further established that the maintenance of measures was not against the interest of the Union.

Therefore, it is suggested that the Council adopts the attached proposal for a Regulation, which should be published in the *Official Journal of the European Union* by 4 June 2013 at the latest, in order to prolong the existing 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 European Union. The subsidiarity principle therefore does not apply.

## **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

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

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

## **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

The basic Regulation does not provide for alternative options.

## **BUDGETARY IMPLICATION**

The proposal has no implication for the Union budget.

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<sup>2</sup> OJ C 71, 9.3.2012, p. 23

Proposal for a

## COUNCIL IMPLEMENTING REGULATION

**imposing a definitive anti-dumping duty on imports of certain tungsten electrodes originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009**

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<sup>3</sup> ('the basic Regulation'), and in particular Article 9(4) and 11(2), (5) and (6) thereof,

Having regard to the proposal from the European Commission ('Commission') after consulting the Advisory Committee,

Whereas:

### A. PROCEDURE

#### 1. Measures in force

(1) Following an investigation (the 'original investigation') the Council, by Regulation (EC) No 260/2007<sup>4</sup>, imposed a definitive anti-dumping duty on imports of certain tungsten electrodes originating in the People's Republic of China ('the PRC') (the 'original measures'). The measures took the form of an *ad valorem* duty of 63,5% for all companies except three Chinese exporting producers to whom individual duties were granted.

#### 2. Initiation of an expiry review

(2) On 9 March 2012, the Commission announced by a notice ('Notice of initiation')<sup>5</sup>, published in the *Official Journal of the European Union*, the initiation of an expiry review of the anti-dumping measures applicable to imports of certain tungsten electrodes originating in the People's Republic of China ('the PRC').

(3) The review was initiated following a substantiated request lodged by Eurométaux ('the applicant') on behalf of a Union producer representing more than 50%, of the Union production of certain tungsten electrodes.

(4) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping and injury to the Union industry.

#### 3. Investigation

##### 3.1. Review investigation period and the period considered

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<sup>3</sup> OJ L 343, 22.12.2009, p. 51.

<sup>4</sup> OJ L 72, 13.3.2007, p. 1.

<sup>5</sup> OJ C 71, 9.3.2012, p. 23.

(5) The investigation of continuation or recurrence of dumping covered the period from 1 January 2011 to 31 December 2011 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2008 to the end of the RIP ('the period considered').

### 3.2. Parties concerned by the investigation

(6) The Commission officially advised the applicant, the other known Union producer, exporting producers in the PRC, unrelated importers and users known to be concerned, producers in the potential analogue countries and the representatives of the PRC of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation.

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

(8) In view of the apparently large number of exporting producers in the PRC and unrelated importers in the Union involved in the investigation, sampling was envisaged in the Notice of initiation, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the publication of the notice of initiation and to provide the Commission with the information requested in the Notice of initiation.

(9) Three importers made themselves known. None of them, however, imported certain tungsten electrodes originating in the PRC during the RIP.

(10) As only two exporting producers from the PRC came forward with the requested information it was not necessary to select a sample of exporting producers.

(11) The Commission sent questionnaires to all parties known to be concerned and to those who made themselves known within the deadlines set in the Notice of initiation. Replies were received from two Union producers, two exporting producers in the PRC and one producer in the USA.

(12) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following companies:

(a) *Union producers*

- Plansee SE, Austria
- Gesellschaft für Wolfram Industrie mbH, Germany

(b) *Exporting producers in the PRC*

- Shandong Weldstone Tungsten Industry Co., Ltd., Zibo,
- Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd Baoji

(c) *Related company to one cooperating exporting producer in the PRC*

- Shanghai Weldstone Asia Co., Ltd., Shanghai

- (d) *Related companies to one cooperating exporting producer in the European Union*
- Weldstone GmbH, Wilnsdorf, Germany
  - Binzel Benelux bvba, Eke – Nazareth, Belgium
- (e) *Analogue Country*
- Global Tungsten & Powders Corp, Towanda, USA

## **B. PRODUCT UNDER REVIEW AND LIKE PRODUCT**

- (13) The product concerned is the same as that covered by Council Regulation (EC) No 260/2007, namely 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, originating in the PRC ('TE' or 'the product under review'), currently falling within CN codes ex 8101 99 10 and ex 8515 90 00.
- (14) The product under review is used in welding and similar processes. 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 and chemical 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.
- (15) The investigation confirmed that, as in the original investigation, the product under review and that manufactured and sold on the domestic market of the PRC, as well as that produced and sold by the Union industry on the Union market and that produced and sold on the analogue country market have the same basic physical and technical characteristics and the same basic uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

## **C. LIKELIHOOD OF A CONTINUATION OR A RECURRENCE OF DUMPING**

1. Preliminary remarks
- (16) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.
- (17) As explained above, it was not necessary to select a sample of exporting producers in the PRC. The two cooperating companies covered the imports of product concerned from the PRC to the Union in a range of 80% to 85% during the RIP. On this basis, it was concluded that cooperation was high.
- (18) One of the cooperating exporting producers benefited from market economy treatment ('MET') in accordance with Article 2(7)(c) of the basic Regulation, while the second benefited from individual treatment ('IT') in accordance with Article 9(5) of the basic Regulation, granted to them during the original investigation. It is recalled that in the context of investigations in accordance with Article 11(2) of the basic Regulation, MET and IT are not reconsidered. A third company, who did not cooperate in the current expiry review, was granted IT in the original investigation.
2. Dumping of imports during the RIP
- 2.1. Analogue country

- (19) Since the PRC is an economy in transition and in accordance with the provisions of Article 2(7)(a) of the basic Regulation, normal value for exporting producers not granted market economy treatment has to be determined on the basis of the price or constructed value in an appropriate market economy third country ('analogue country').
- (20) As in the original investigation, the United States of America ('the USA') was proposed as analogue country in the Notice of initiation for the purpose of establishing normal value. Interested parties were given the opportunity to comment on the appropriateness of this choice. No comments were received in this regard.
- (21) The Commission also examined whether other countries could be a reasonable choice of an analogue country and identified other third countries from which imports of tungsten electrodes were recorded in Eurostat. Potential known producers in these countries were contacted and invited to cooperate in the investigation. However, no cooperation was obtained.
- (22) It was considered that the USA was representative as a reference market, especially in view of the openness and competitiveness of their domestic market. The USA was used also as an analogue country in the original investigation. No new or changed circumstances which would justify a change appeared to exist nor were any such circumstances communicated to the Commission.
- (23) Therefore, the USA has been used as an analogue market economy country for the purpose of this review. The only known USA producer was contacted and agreed to cooperate, to reply to the questionnaire and to accept a verification visit. The verified sales and production figures of this company have been used for the determination of the normal value for companies not granted MET during the original investigation.

## 2.2. Normal value

- (24) For the company granted MET in the original investigation, normal value has been established based on its data. In accordance with Article 2(2) of the basic Regulation, it was examined whether the domestic sales of TE to independent customers were representative during the RIP, i.e. if the sales volume of the product intended for domestic consumption represented 5 % or more of their exports of the product under review to the Union.
- (25) It was subsequently examined whether the domestic sales of the like product could be regarded as being 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.
- (26) For the types of the product concerned where the domestic sales were representative and made in the ordinary course of trade, normal value was established on the prices paid by independent customers in the exporting country. For the remaining types of the product under review the normal value had to be constructed in accordance with Article 2(3) of the basic Regulation. Therefore, the established normal value was calculated using the company's cost of manufacturing and adding selling, general and administrative costs (SG&A) and profit achieved on the domestic sale made in the ordinary course of trade in accordance with Article 2(6) of the basic Regulation.
- (27) Following disclosure one party argued that the methodology used to determine SG&A expenses was different from the one used in the original investigation which may have had an impact on the determination of the profit margin used to calculate the constructed normal value in accordance with Article 2(6) of the basic Regulation.

Further to the information already previously submitted in the investigation the party did not substantiate its claim by any evidence. It is noted that in accordance with Article 2(5) of the basic Regulation SG&A expenses were allocated on turnover basis and that this methodology was also used in the original investigation.

- (28) Profit used in the initial investigation was not from the OCOT test (ordinary course of trade) as none of the exported types of the product concerned were sold on the domestic market in the ordinary course of trade. The current expiry review showed that some types of the product concerned were profitable and therefore, in compliance with Article 2(3) and (6) of the basic Regulation, profit of these profitable transactions was used for constructing the normal value.
- (29) As far as the company not granted MET in the original investigation is concerned, pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of information collected from the cooperating producer in the analogue country. Domestic sales of the producer in the analogue country were found to be made in sufficient quantities and in the ordinary course of trade and could thus be used as a basis to determine normal value for the company not granted MET.

### 2.3. Export price

- (30) Regarding the company granted MET, all export sales to the Union were made via related importers and subsequently resold to related and unrelated companies in the Union. The export price was therefore constructed, pursuant to Article 2(9) of the basic Regulation, on the basis of the price at which the imported products were first resold to an independent buyer, duly adjusted for all costs incurred between importation and resale, as well as a reasonable margin for SG&A and profits. In this regard, the related companies' own SG&A costs were used.
- (31) Following disclosure one party argued that when determining SG&A of the related importers, certain expenses were taken into consideration that were related to the sales of other products than the product concerned and that these expenses should therefore be excluded. It is noted that the verified SG&A expenses as provided by the companies concerned were taken into consideration when constructing the export price in accordance with Article 2(9) of the basic Regulation. The claim that the SG&A expenses reported included SG&A expenses from sales of other products was not supported by any evidence and had therefore to be rejected.
- (32) In addition, the comments submitted by on interested party on export prices were based on an erroneous quotation of the relevant currency. Therefore this claim was rejected.
- (33) As far as the profit margin is concerned, none of the unrelated importers in the Union cooperated. In the original investigation, the profit margin of the related importers was used, based on the fact that the activities of the unrelated importers were not sufficiently comparable to that of the related importer concerned. The investigation showed that the activities of the related importer were the same during the RIP as during the investigation period of the original investigation, i.e. the majority of the TE imported was 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 and as in the original investigation it was concluded that the related importer's own profit margin would constitute an accurate basis for a profit margin to construct the export price.

- (34) Regarding the company granted IT in the original investigation, all export sales to the Union were made directly to independent customers established in the Union. In accordance with Article 2(8) of the basic Regulation, the export price was therefore established on the basis of the prices actually paid or payable.
- (35) The determination of the export price of all other producers established in the PRC was based on imports statistics available in the Article 14(6) database.
- (36) In accordance to Article 11(10) of the basic Regulation, export prices were established by deducting the anti-dumping duties paid, as none of the parties submitted any evidence that the duty was duly reflected in resale prices and subsequent selling prices in the Union market.

#### 2.4. Comparison

- (37) The comparison between normal value and export price was made on an ex-works basis.
- (38) For the purpose of ensuring a fair comparison between the normal value and the export price of the both cooperating exporting producers, and in accordance with Article 2(10) of the basic Regulation, due allowance in the form of adjustments was made with regard to differences in transport, insurance and credit costs which affected prices and price comparability.

#### 2.5. Dumping margin

- (39) As provided for under Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price.
- (40) For the cooperating exporting producer granted MET in the original investigation this comparison showed that this company continued dumping at significant levels.
- (41) For the cooperating exporting producer granted IT in the original investigation as well as country-wide dumping margin applicable to all other non-cooperating exporting producers in the PRC showed a significant level of dumping even higher than in the original investigation.

### 3. Development of imports should measures be repealed

#### 3.1. Preliminary remark

- (42) Further to the finding of the existence of dumping during the RIP, the likelihood of continuation of dumping should measures be repealed was investigated.
- (43) In this regard, it should be noted that the cooperating exporting producers represented only around 10% of the total production capacity in The PRC. Therefore, findings had to be largely based on information submitted in the review request as well as publicly available information. The export price behaviour of Chinese producers to other third country markets, the Chinese production capacity as well as available spare capacities and the attractiveness of the Union market for Chinese exporters were considered in particular.

#### 3.2. Export price behaviour of Chinese producers to other third country markets

- (44) As far as exports to other third country markets are concerned, it should be noted that the statistical information available from Chinese public databases covers a broader product scope than the product under review and therefore no meaningful analysis of quantities exported to other markets or prices on these markets could be made. The

two cooperating producers from the PRC did not export to unrelated customers in other third markets. On this basis, the export prices to other third country markets during the RIP could not be reliably established and no firm conclusions could be drawn on the basis of the information available.

### 3.3. Spare capacity of the Chinese producers

(45) The data on the basis of which the analysis below is made were provided by the applicant in the review request and was cross-checked with publicly available information.

(46) On this basis, capacities of producers in the PRC were estimated at 1 600 000 kg. The applicant's estimation of the capacity utilisation of Chinese producers is around 63% resulting in an unused capacity of about 600 000 kg, exceeding nearly five times the total Union consumption during the RIP. Thus, there are large quantities available for export from the PRC, in particular, because there are no indications that third country markets or the domestic market could absorb this significant spare capacity.

### 3.4. Volume and prices of dumped imports from the PRC

(47) Imports from the PRC into the Union increased by 9% over the period considered and reached the level of well above 50 000 kilograms during the RIP representing approximately half of the total EU consumption during the RIP.

(48) Throughout the period considered, import prices were fluctuating and followed the same trends as the sales prices of the Union industry on the Union market. Overall, import prices increased from 2008 to the RIP by 42% and were still at dumped levels. The price growth is mainly explained by the higher cost of the main raw material (tungsten powder) during the RIP.

### 3.5. Attractiveness of the Union market

(49) The Union market is among the largest in the world reaching around 20 % of the world consumption of TE. Chinese companies have shown a serious interest in developing their presence on the Union market which is supported by the fact that they maintained and even increased their significant market share of 45 % during the RIP.

### 3.6. Conclusion of the likelihood of continuation of dumping

(50) The foregoing analysis demonstrates that Chinese imports continued to enter the Union market at dumped prices with significant dumping margins. Given most notably the analysis of price levels on the Union market, and the interest Chinese exporters have shown in the Union market, as well as the significant spare capacities available in the PRC, going far beyond the total Union consumption, it can be concluded there is a strong likelihood of continuation of dumping should measures be removed.

## **D. SITUATION ON THE UNION MARKET**

### 1. Definition of the Union industry

(51) The current investigation confirmed that TE is manufactured by two producers in the Union. Both producers cooperated fully with the investigation.

(52) The above companies constitute the Union industry within the meaning of Article 4(1) and 5(4) of the basic Regulation and will hereafter be referred to as the 'Union industry'.

### 2. Preliminary remark

- (53) Since there are only two companies which constitute the Union industry, the data referring to the Union industry will be either presented in indexed form or ranges, so as to protect confidentiality pursuant to Article 19 of the basic Regulation.
- (54) Since imports under CN code level from Eurostat also included products other than TE, information on imports have been analysed at TARIC code level, supplemented by data collected in accordance with Article 14(6) of the basic Regulation. TARIC data are considered confidential as they provide a level of detail which allows for identification of parties. For this reason some information is presented in ranges.

### 3. Union Consumption

- (55) Union consumption was established on the basis of the sales volume of the Union industry on the Union market, and import data from Eurostat, at TARIC code level supplemented by information from data collected in accordance with Article 14(6) of the basic Regulation.
- (56) Between 2008 and the RIP ('period considered'), Union consumption decreased by 16%. Consumption in the Union has decreased substantially between 2008 and 2009, and has increased since, without reaching the pre-crisis levels during the RIP. From the low peak in 2009 to the RIP, Union consumption increased by almost 40%.

*Table 1  
Consumption*

Volume (kilograms)	2008	2009	2010	RIP
Consumption	140 000 – 150 000	90 000 – 100 000	110 000 – 120 000	120 000 – 130 000
<i>Index (2008=100)</i>	<i>100</i>	<i>61</i>	<i>75</i>	<i>84</i>

*Source: Questionnaire replies, Eurostat, Article 14(6) database*

### 4. Volume and market share of dumped imports from the PRC

- (57) The volumes and market shares of dumped imports from the PRC was established on the basis of statistical information provided at TARIC level supplemented by information from data collected in accordance with Article 14(6) of the basic Regulation.
- (58) Notwithstanding the absolute decrease of the Union consumption, the volume of imports of the product under review originating in the PRC increased by 9% over the period considered, keeping a level well above 50 000 kg during the RIP (see Table 2). This increase, together with the general reduction of the Union consumption during the period considered, led to an increase of the market share of the Chinese exporters to approximately half of the total Union market.

*Table 2  
Imports from the PRC*

	2008	2009	2010	RIP
Volume	51 771	36 188	39 953	56 289
<i>Index (2008=100)</i>	<i>100</i>	<i>70</i>	<i>77</i>	<i>109</i>
Market share	35% - 40%	35% - 40%	35% - 40%	45% - 50%

*Source: Eurostat, Article 14(6) database*

5. Prices of the imports from the PRC

5.1. Evolution of prices

- (59) Prices from the PRC increased in the region of 40% between the year 2008 and the RIP, with a sharp increase during the RIP. The price growth is mainly explained by the higher cost of the main raw material (tungsten powder) during the RIP.

*Table 3*  
*Prices of the imports from the PRC*

	2008	2009	2010	RIP
Prices EUR/Kg	36.59	33.83	41.56	51.83
<i>Index (2008=100)</i>	<i>100</i>	<i>92</i>	<i>114</i>	<i>142</i>

*Source: Eurostat, Article 14(6) database*

5.2. Price undercutting

- (60) The investigation revealed that import prices from the PRC were undercutting the Union industry average prices. An undercutting margin of 37% was established during the RIP, and when including the anti-dumping duty in the calculation, the undercutting margin was still significant at a level of 24%. The calculation was based on a comparison of the CIF export prices of the cooperating exporting producers with the average Union industry prices at ex-work level. The prices were considered representative for the PRC as the two cooperating exporting producers covered around 80% of the imports of TE from the PRC.
- (61) Following disclosure one exporting producer claimed that prices were not compared on a per-type basis and due to alleged significant price variations between different product types the undercutting levels calculated were not meaningful. On the basis of the information available, a price comparison on a per-type basis was only possible for part of the Union industry's sales on the Union market and only for part of the export sales made to the Union. However, the party did not present evidence that would call into question the reasonableness of the methodology applied. This claim had therefore to be rejected.
- (62) Following disclosure it was also argued that the Chinese import prices and the Union industry's sales prices on the Union market were not compared at the same level of trade. This claim was not substantiated as the party concerned did not submit any information or evidence that demonstrated consistent and distinct differences in function and prices of the seller for the alleged different levels of trade. This claim was therefore rejected.

6. Imports from other third countries

- (63) The volume of imports and prices from other countries during the period considered is shown in the table below. The volumes and market shares of imports from other third countries were established on the basis of statistical information provided at TARIC level supplemented by information from data collected in accordance with Article 14(6) of the basic Regulation.

*Table 4*  
*Imports from other third countries*

	2008	2009	2010	RIP
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<b>Vietnam</b>				
Volume of imports (Kgs)	27 878	14 184	13 776	25 833
<i>Index (2008=100)</i>	100	51	49	93
Price EUR / Kg	44.36	45.34	46.02	56.01
<i>Index (2008=100)</i>	100	102	104	126
<b>South Korea</b>				
Volume of imports (Kgs)	21 299	8 174	11 051	3 319
<i>Index (2008=100)</i>	100	38	52	16
Price EUR / Kg	50.99	44.16	44.16	59.31
<i>Index (2008=100)</i>	100	87	87	116
<b>Other third countries</b>				
Volume of imports (Kgs)	7 641	6 247	10 942	9 186
<i>Index (2008=100)</i>	100	82	143	120
Price EUR / Kg	43.24	59.82	64.98	57.75
<i>Index (2008=100)</i>	100	138	150	134
<b>Total</b>				
Volume of imports (Kgs)	56 818	28 605	35 779	38 338
<i>Index (2008=100)</i>	100	50	63	67
Market share of imports from other third countries	35% - 40%	30% - 35%	30% - 35%	30% - 35%
Price EUR / Kg	46.70	48.17	51.25	56.71
<i>Index (2008=100)</i>	100	103	110	121

*Source: Eurostat, Article 14(6) database*

- (64) Import volumes from other third countries to the Union market decreased during the period considered by around 33%. Market shares decreased over the period considered and were between 30% to 35% during the RIP. Prices from other third countries increased by 21% over the same period.

- (65) It is recalled that in the original investigation there were no significant imports of the like product to the Union market other than from the PRC. The original investigation established that the core markets of the remaining US and Japanese producers were their respective domestic markets. It was therefore concluded that imports from countries other than the PRC were extremely small.
- (66) Information provided by the Union industry alleged that there is no existing production of TE in Vietnam and South Korea and that imports from those countries were in fact coming from the PRC. However, no information was obtained confirming this allegation during the current investigation.
7. Economic situation of the Union industry
- 7.1. Preliminary remarks
- (67) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry.
- (68) Since the Union industry is composed of only two producers, the data are reported in ranges for confidentiality reasons.
- 7.2. Production, production capacity and capacity utilisation
- (69) The Union industry's production decreased each year during the period considered. By the end of RIP, the production had decreased by 29% compared to 2008. The trend has been particularly negative during 2009, with a decrease of more than 40%.

*Table 5*

*Total Union production*

Volume (kgs)	2008	2009	2010	RIP
Production	60 000 – 70 000	35 000 – 40 000	50 000 – 60 000	40 000 – 50 000
<i>Index (2008=100)</i>	<i>100</i>	<i>60</i>	<i>82</i>	<i>71</i>

*Source: Questionnaire replies*

- (70) Production capacity remained stable during the period considered. As production decreased, the resulting capacity utilisation showed an overall decrease of 27% between 2008 and the RIP, reaching a 41% capacity utilisation during the RIP. Detailed data is shown below:

*Table 6*

*Production capacity and capacity utilisation*

Volume (kgs)	2008	2009	2010	RIP
Production capacity	95 000 – 110 000	95 000 – 110 000	95 000 – 110 000	95 000 – 110 000
<i>Index (2008=100)</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>
Capacity utilisation	57%	35%	47%	41%
<i>Index (2008=100)</i>	<i>100</i>	<i>60</i>	<i>82</i>	<i>73</i>

*Source: Questionnaire replies*

7.3. Stocks

- (71) The level of closing stocks of the Union industry decreased by 20% between 2008 and the RIP. This trend is in line with the trend of decreasing consumption on the Union market over the same period.

*Table 7*

*Closing stock*

Volume (kgs)	2008	2009	2010	RIP
Closing stock	5 000 – 15 000	5 000 – 15 000	5 000 – 15 000	5 000 – 15 000
<i>Index (2008=100)</i>	<i>100</i>	<i>70</i>	<i>85</i>	<i>80</i>

*Source: Questionnaire replies*

7.4. Sales volume

- (72) The sales volume of the Union industry on the Union market to unrelated customers decreased by 23% between 2008 and the RIP, with a sharp decrease between 2008 and 2009. This negative trend has been sharper than the decrease in the total consumption, with the exception of year 2010.

*Table 8*

*Sales to unrelated customers*

	2008	2009	2010	RIP
Volume (kgs)	40 000 – 50 000	25 000 – 30 000	35 000 – 40 000	30 000 – 35 000
<i>Index (2008=100)</i>	<i>100</i>	<i>65</i>	<i>87</i>	<i>77</i>

*Source: Questionnaire replies*

7.5. Market share

- (73) As a result of what observed in the previous recital regarding sales volume of the Union industry on the Union market, the market share held by the Union industry fell during the period considered. The Union industry, whilst losing sales volumes, was able to maintain its market shares through 2009 and 2010, but suffered a setback during the RIP, with declining sales notwithstanding the growing market. This resulted in a market share of between 20% to 25%, slightly lower than the one which was registered at the beginning of the period considered.

*Table 9*

*Union market share*

	2008	2009	2010	RIP
Union market share	25% - 30%	25% - 30%	30% - 35%	20% - 25%
<i>Index (2008=100)</i>	<i>100</i>	<i>107</i>	<i>117</i>	<i>91</i>

*Source: Questionnaire replies, Eurostat, Article 14(6) database*

7.6. Growth

- (74) As explained above, consumption in the Union has decreased substantially between 2008 and 2009, as a result of the economic downturn, and has increased since, without reaching the pre-crisis levels during the RIP. The Union industry, whilst losing sales volumes, was able to maintain its market shares through 2009 and 2010, but suffered a setback during the RIP, with declining sales notwithstanding the growing market.

7.7. Employment and productivity

- (75) The level of employment of the Union industry declined between 2008 and the RIP by 13%.
- (76) Following the fall in production, the productivity per employee, measures as output in kg per employee, has also decreased during the period considered. Detailed data is shown below:

*Table 10*

*Total Union employment and productivity*

	2008	2009	2010	RIP
Index of employees	100	65	84	87
Index of productivity	100	92	106	83

Source: Questionnaire replies

#### 7.8. Unit sales prices

- (77) Unit sales prices of the Union industry to unrelated customers in the Union decreased slightly between 2008 and 2010, partly reflecting the impact of the economic crises. Between 2010 and the RIP unit sales prices increased substantially. Overall, the prices of the Union industry increased by 35% during the period considered. This price development, in particular between 2010 and the RIP, was caused by the increase of prices of the main components making up TE.

Table 11  
Unit price of Union sales

	2008	2009	2010	RIP
Unit price of Union sales (EUR per unit)	80-120	80-120	80-120	100-140
Index (2008=100)	100	94	96	135

Source: Questionnaire replies

#### 7.9. Profitability

- (78) Profitability improved between 2008 and the RIP, after having reached a lower level in 2009 and 2010. However profitability remained negative throughout the whole period considered.

Table 12  
Profitability

	2008	2009	2010	RIP
Profitability Union sales				
Index (2008=100)	100	95	95	104

Source: Questionnaire replies

#### 7.10. Investment and return on investment

- (79) Investment in the business of the product concerned significantly decreased during the period considered.
- (80) Return on investment followed the profitability trend. In 2008 the Union industry registered a negative return on investment which slightly improved, though it remained negative, during the RIP.

Table 13  
Investments and Return on Investment

Index (2008=100)	2008	2009	2010	RIP
Investments	100	2	23	18
Return on investment	100	100	96	103

Source: Questionnaire replies

#### 7.11. Cash flow and ability to raise capital

- (81) The cash-flow, which is the ability of the industry to self-finance its activities, expressed as a percentage of the turnover of the product concerned, significantly improved during the period considered, although it remained negative.

*Table 14*  
*Cash flow*

	2008	2009	2010	RIP
Cash flow Index (2008=100)	100	99	96	106

*Source: Questionnaire replies*

#### 7.12. Wages

- (82) Between 2008 and the RIP the wages of the Union industry decreased by 16% in line with the reduction of the number of employees.

#### 7.13. Magnitude of dumping margin

- (83) Despite the measures in force substantial dumping continued during the RIP at a level which is significantly above the current level of measures. Given the large spare capacity, the actual volumes of imports from the PRC and prices significantly undercutting the Union industry's sales price, the impact on the Union industry of the actual margins of dumping cannot be considered to be negligible.

#### 7.14. Recovery from past dumping

- (84) It was analysed whether the Union industry recovered from the effects of past dumping. Despite the anti-dumping measures in force, the Union industry did not manage to recover from past dumping. As a response to the price pressure of the Chinese imports the Union industry tried to keep their market share but had losses as a result.

### 8. Conclusion on the situation of the Union industry

- (85) The Union industry remained in a vulnerable economic situation and continued to suffer material injury. Almost all injury indicators relating to the financial performance of the Union industry deteriorated during the period considered. Consequently, it could not be concluded that the situation of the Union industry was secure.
- (86) As a response to the price pressure of the Chinese imports the Union industry tried to keep its market share, but selling at prices largely below the break-even level. Indeed, the increase of the sales prices of the Union industry between 2010 and the RIP is linked to the increase of raw material prices and did not cover the total cost of the Union industry.
- (87) In conclusion, the difficulties of the Union industry can be clearly linked to the massive presence of Chinese low-priced imports of the product under review on the Union market, which are sold at significantly dumped prices, despite the measures in force. This factor was enough to determine a situation where the Union industry suffer losses in an attempt to keep a reasonable market share. In addition, these difficulties have been further deepened throughout almost the entire period considered by two factors: the downturn of the market during the economic crisis of 2008-09 and, even if to a minor extent, the sudden increase of raw material costs during the RIP. This led to a scenario where losses have reached significant levels.

- (88) In view of the negative development of the indicators pertaining to the Union industry, it is considered that the Union industry continued to suffer material injury within the meaning of the Article 3(5) of the basic Regulation during the period considered.

### **E. LIKELIHOOD OF CONTINUATION OF INJURY**

#### 1. Preliminary remarks

- (89) During the period considered, the Union industry appeared in a vulnerable situation, still exposed to the injurious effect of the dumped imports from the PRC.
- (90) In accordance with Article 11(2) of the basic Regulation, imports from the country concerned were assessed in order to establish if there was a likelihood of continuation of injury, should measures be allowed to lapse.

#### 2. Chinese import volumes

- (91) It is recalled that consumption on the Union market decreased significantly since the original investigation mainly due to the economic downturn. In these circumstances, the Chinese import volumes increased to a level well above 50 000 kg during the RIP. As to the import volumes, this has increased by 9% while the market share of the Union industry decreased.

#### 3. spare capacity in the PRC

- (92) As described in recital (41), based on the information available there is significant spare capacity available in the PRC. It can be expected that a large part of this spare capacity could be used to increase imports in the Union market in the absence of anti-dumping measures. This is because there are no indications that third country markets or the Chinese domestic markets could absorb the significant Chinese spare capacity. Therefore, the capacity to significantly increase imports to the Union exists. The estimation of the unused capacity would exceed nearly five times the Union consumption during the RIP.

- (93) Moreover, information submitted during the investigation indicated important distortions in the raw material (ammonium paratungstate – 'APT') market used to manufacture the product under review. This raw material is subject to export quotas imposed by the Chinese authorities as well as export taxes. This limits the exports of APT and artificially increases its world price. These distortions are likely to confer further incentives to the Chinese industry to produce and export at low prices, while the Union industry has to produce the like product on the basis of artificially high raw material prices.

#### 4. Attractiveness of the Union market

- (94) It was demonstrated that the Chinese exporting producers showed a continuous interest in the Union market and were able to increase import volumes at the expense of the sales of the Union industry. They even increased their already significant market share during the RIP.

#### 5. Conclusion

- (95) The Union industry had been suffering from the effects of the Chinese dumped imports for several years and is currently still in a fragile economic situation.
- (96) If measures were allowed to lapse there is a strong likelihood of increased dumped imports which could seriously threaten the existence of the Union industry. Indeed, in the PRC there is a significant spare capacity which is likely to be largely directed to

the Union market, at dumped prices undercutting the Union industry sales prices in the Union market, should measures be allowed to lapse.

- (97) In view of the findings of the investigation, namely the continuation of dumping, the spare capacity in the PRC, the distortion found in the market for raw materials, the potential of the exporting producers in the PRC to redirect their export volumes to the Union market, the price behaviour of the Chinese exporters clearly undercutting the prices of the Union industry and the attractiveness of the Union market, any repeal of the measures would point to a likelihood of continuation of injury.

## **F. UNION INTEREST**

### **1. Introduction**

- (98) In accordance with Article 21 of the basic Regulation, it has been examined whether the maintenance of the existing measures would be against the Union interest as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, of importers and of users. All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (99) It should be recalled that in the original investigation the imposition of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (100) On this basis it was examined whether, despite the conclusion on the likelihood of a continuation of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

### **2. Interest of the Union industry**

- (101) In view of the situation of the Union industry and the analysis on the likelihood of recurrence of injury, it is clear that the Union industry would be likely to experience a serious deterioration of its financial situation in case the anti-dumping measures were allowed to lapse. Throughout the period considered the Union industry lost production and sales volume while imports from the country concerned increased despite the measures in force. During the same period the financial situation of the Union industry deteriorated as it experiences heavy losses. Therefore, effective competitive conditions need to be enforced on the Union market.
- (102) It is considered that the continuation of measures would benefit the Union industry, which should then be able to increase sales volumes and improve its financial situation. By contrast, the discontinuation of the measures would seriously threaten the viability of the Union industry.

### **3. Interest of users**

- (103) None of the 15 contacted users came forward to cooperate. As in the original investigation no questionnaire replies were received from interested users. In the original investigation the non-cooperation was explained by the low impact of TE on their production costs as it appears that quality and reliability are primary criteria for customers. Given the apparent marginal impact of the product under review on the costs of downstream products, it was concluded that measures would not adversely impact the user industry.

4. Interest of importers

(104) Three importers contacted the Commission at the beginning of the investigation, but they were not considered as being interested parties since they had not imported the product concerned from the PRC during the RIP. Given that importers of TE did not show any interest during the investigation, it was concluded that it would not be clearly against EU interest to maintain measures.

5. Conclusion

(105) Given the above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

**G. ANTI-DUMPING MEASURES**

(106) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.

(107) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain tungsten electrodes originating in the PRC, imposed by Council Regulation (EC) No 260/2007 should be maintained.

(108) In order to minimise the risk 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: 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 producers.

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, currently 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 the China.
2. The rate of duty applicable to the, net free-at-Union-frontier price, before duty, of the products described in paragraph 1, and 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.,	41,0 %	A755

Ltd		
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*

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 Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'