Council Implementing Regulation (EU) No 287/2011 of 21 March 2011 imposing a definitive anti-dumping duty on imports of tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 287/2011

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Articles 9(4) and 11(2), 5 and 6 thereof,

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

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) By Regulation (EEC) No 2737/90[(2)], the Council imposed a definitive anti-dumping duty of 33 % on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China ('PRC'). By Decision 90/480/EEC[(3)] the Commission accepted undertakings given by two major exporters concerning the product subject to measures.

(2) Following the withdrawal of the undertakings by the two Chinese exporters concerned, the Commission imposed by Regulation (EC) No 2286/94[(4)] a provisional anti-dumping duty on imports of the product concerned.

(3) By Regulation (EC) No 610/95[(5)], the Council amended Regulation (EEC) No 2737/90 and imposed a definitive duty of 33 % on imports of tungsten carbide and fused tungsten carbide. Following a review which had been initiated pursuant to Article 11(2) of the basic Regulation ('the previous review investigation'), these measures were extended for another five-year period by Council Regulation (EC) No 771/98[(6)].

(4) By Regulation (EC) No 2268/2004[7], following an expiry review, the Council imposed an anti-dumping duty of 33 % on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China ('PRC').

(5) By Regulation (EC) No 1275/2005[8], the Council amended the definition of the product scope to also cover tungsten carbide simply mixed with metallic powder.

2. Request for a review

(6) Following the publication of a notice of impending expiry[9] of the definitive anti-dumping measures in force, the Commission received on 30 September 2009 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by the European Association of Metals (Eurometaux) ('the applicants') on behalf of Union producers representing a major proportion, in this case more than 85 %, of the total Union production of tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide.

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

3. Initiation

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 30 December 2009, by a notice published in the *Official Journal of the European Union*[10] ('the notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. Investigation

4.1. *Investigation period*

(9) The investigation of continuation or recurrence of dumping covered the period from 1 January 2009 to 31 December 2009 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a recurrence of injury covered the period from 1 January 2006 to the end of the RIP ('the period considered').

4.2. *Parties concerned by the investigation*

(10) The Commission officially advised the applicant, other known Union producers, exporting producers, importers and users known to be concerned, producers in the analogue country 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.

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

(12) 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 seven Union producers, one exporting producer in the PRC, one exporting producer in the analogue country and three users.

(13) None of the importers replied to the sampling exercise nor supplied the Commission with any information or made themselves known in the course of the investigation. As only one exporting producer from the PRC came forward with the requested information, it was not necessary to select a sample.

(14) The Commission sought and verified all the information it deemed necessary for a 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*

— Wolfram Bergbau und Hütten-GmbH Nfg.KG., St Peter, Austria

— H. C. Starck GmbH & Co. KG, Goslar, Germany

— Eurotungstène poudres S.A., Grenoble, France

— Global Tungsten & Powders spol. s.r.o, Bruntál, Czech Republic

— Treibacher Industrie AG, Althofen, Austria

(b) *Analogue Country*

— Global Tungsten & Powders Corp., USA

(c) *User*

— Sandvik Hard Materials, Epinouze, France

B. PRODUCT CONCERNED AND LIKE PRODUCT

(15) The product concerned by the present review is tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide originating in the PRC and currently falling within CN codes 2849 90 30 and ex 3824 30 00.

(16) Tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide are compounds of carbon and tungsten produced by heat treatment (carburisation in the first case, fusion in the third). These products are intermediate products, used as input materials in the manufacture of hard metal components such as cemented carbide cutting tools and high-wear components, in abrasion-resistant coatings, in bits for oil drilling and mining tools as well as in dies and tips for the drawing and forging of metals.

(17) The present investigation confirmed that the product concerned manufactured and sold by the exporting producer to the Union is identical in terms of physical and chemical characteristics and uses to the product produced by the Union producers and sold on the Union market or to the one produced and sold in the analogue country and are, therefore, considered to be like products within the meaning of Article 1(4) of the basic Regulation.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 287/2011. (See end of Document for details)*

C. LIKELIHOOD OF A CONTINUATION OR A RECURRENCE OF DUMPING

1. Preliminary remarks

(18) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping. It is recalled that in the context of investigation under this Article, market economy treatment ('MET') is not reconsidered.

(19) As explained above, it was not necessary to apply sampling in respect of exporting producers in the PRC.

(20) At the sampling stage, the sole cooperating Chinese exporting producer appeared to represent less that 5 % of total Chinese exports to the Union. The Chinese authorities and the other interested parties were notified of the possibility that Article 18 of the basic Regulation might be applied due to a low level of cooperation by the exporting producers. The Commission did not receive any answer to this communication.

(21) However, further in the investigation, in the reply to the questionnaire, the cooperating exporting producer corrected the error in reporting its export sales to the Union and revised upwards its export volume to the Union. In parallel, the volumes of the product concerned exported to the Union from the PRC were further analysed based on Eurostat figures. As a result, and after the verification of the questionnaire reply, it was established that the export volume of the cooperating exporting producer was very high[11]. On the basis of these findings, it was concluded that cooperation was high.

2. Dumping of imports during the RIP

2.1. *Analogue country*

(22) Since no exporting producer from PRC was granted MET in the previous investigations, the normal value for China was established in accordance with the provisions of Article 2(7)(a) of the basic Regulation.

(23) In the notice of initiation, it was envisaged to use the USA as an appropriate analogue country for the purpose of establishing normal value for the PRC. Interested parties were invited to comment on the appropriateness of this choice. No comments or objections were received from any parties in that respect. The USA was used also as an analogue country in the original investigation and no new or changed circumstances which would justify a change appeared to exist nor were any such circumstances communicated to the Commission. It was considered that the USA was representative as a reference market, especially in view of the openness and competitiveness of the US domestic market. In addition, one producer from the USA agreed to cooperate within the present review.

(24) Therefore, the USA has been used as an analogue market economy country for the purpose of this review.

2.2. *Normal value*

(25) Pursuant to Article 2(7) of the basic Regulation, normal value was established on the basis of the verified information received from the cooperating US producer in the analogue country, i.e. on the basis of prices paid or payable on the domestic market in the USA, for product types which were found to be sold in the ordinary course of trade.

(26) As a result, normal value was established as the weighted average domestic sales price to unrelated customers by the cooperating producer in the USA.

(27) It was first established whether the total domestic sales of the like product to independent customers of the US cooperating producer were representative in accordance with Article 2(2) of the basic Regulation, i.e. whether they accounted for 5 % or more of the total sales volume of the product concerned exported to the Union. The domestic sales of the cooperating US producer were found to be sufficiently representative during the review investigation period.

(28) It was subsequently examined whether the domestic sales of the like product could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for the like product sold on the US market the proportion of profitable domestic sales to independent customers during the RIP.

(29) Since the volume of profitable sales of the like product represented less than 80 % of the total sales volume of the like product, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales.

2.3. *Export price*

(30) As explained above, in view of the fact that the cooperating exporting producer represented more than 90 % of total Chinese imports to the Union, the export price was examined on the basis of data provided by that exporting producer, i.e. the duly adjusted price actually paid or payable for the product concerned when sold for export to the Union.

2.4. *Comparison*

(31) The weighted average normal value was compared with the weighted average export price for each type of product concerned, on an ex-works basis, at the same level of trade and the same level of taxation. In accordance with Article 2(10) of the basic Regulation, and for the purpose of ensuring a fair comparison, differences in factors which were claimed and demonstrated to affect price and price comparability were taken into account. Adjustments were made for ocean and domestic freight, insurance, bank charges and packaging costs. Further, a 5 % adjustment on the export price for the export tax was made and the adjustment for Value Added Tax (VAT) on the normal value.

2.5. *Dumping margin*