Council Regulation (EC) No 1264/2006 of 21 August 2006 terminating the investigations concerning the anti-dumping measures applicable to imports of silicon carbide originating in the Russian Federation and Ukraine and imposing a definitive anti-dumping duty on imports of silicon carbide originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

COUNCIL REGULATION (EC) No 1264/2006

of 21 August 2006

terminating the investigations concerning the anti-dumping measures applicable to imports of silicon carbide originating in the Russian Federation and Ukraine and imposing a definitive anti-dumping duty on imports of silicon carbide originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

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

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

Whereas:

1. PROCEDURE

1.1. Previous investigations, measures in force and on-going investigations

(1) By Regulation (EC) No 821/94[(2)], following an expiry review in accordance with Article 14 and 15 of Regulation (EEC) No 2423/88[(3)], the Council prolonged the imposed definitive anti-dumping duties on imports of silicon carbide (SiC) originating in the People's Republic of China (PRC), Poland, the Russian Federation (Russia) and Ukraine. At the same time, the Commission, by Decision 94/202/EC[(4)], accepted an undertaking offered by the Government of Russia, in conjunction with V/O Stankoimport, Moscow, Russia.

(2) In May 2000, by Regulation (EC) No 1100/2000[(5)], the Council again prolonged the definitive anti-dumping duty on imports of SiC originating in the PRC, Russia and Ukraine following an expiry review and also prolonged the undertaking offered by the Russian government in conjunction with V/O Stankoimport, Moscow, Russia accepted by Commission Decision 94/202/EC.

(3) The investigation mentioned in recital 1 leading to the imposition of definitive anti-dumping duties and the acceptance of undertakings from certain exporters

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1264/2006. (See end of Document for details)*

concerned by this investigation, and the expiry reviews concluded in 1994 and 2000 mentioned in recitals 1 and 2 will hereinafter be referred as to 'the original investigations'.

(4) In 2004, by Regulation (EC) No 991/2004, the Council provided for the exemption from the anti-dumping duties of imports into the new Member States that acceded to the European Union on 1 May 2004 (the EU-10) made under the terms of special undertaking offers (enlargement undertakings), and authorised the Commission to accept those enlargement undertakings. On this basis, by Decisions 2004/498/EC[(6)] and 2004/782/EC[(7)], the Commission accepted the undertakings offered by the Ukrainian exporting producer Open Joint Stock Company 'Zaporozhsky Abrasivny Combinat'. The acceptance of this undertaking expired on 20 May 2005.

(5) In January 2004 the Commission initiated a partial interim review[(8)] requested by Zaporozhsky Abrasivny Combinat, the Ukrainian exporting producer. The applicant had alleged that following a significant change of circumstances it should be granted market economy treatment (MET) and that its dumping margin was significantly below the level of the measures in force. However, following an investigation, it was found that the company did not meet the criteria to be granted MET (Article 2(7)(c) of Regulation (EC) No 384/96 and the investigation was subsequently terminated through Council Regulation (EC) No 779/2005[(9)].

(6) Finally, on 30 June 2005[(10)], the Commission initiated an anti-dumping proceeding concerning imports of SiC originating in Romania, further to a complaint lodged by the European Chemical Industry Council (CEFIC) on behalf of producers representing 100 % of the total Community production of SiC. However, further to the withdrawal of the complaint by CEFIC on 1 March 2006, the investigation was terminated by Commission Decision 2006/423/EC[(11)].

1.2. Request for an expiry review

(7) Following the publication of a notice of impending expiry of the anti-dumping measures in force of SiC originating in the PRC, Russia and Ukraine[(12)], the Commission received, on 24 February 2005, a request to review these measures pursuant to Article 11(2) of the basic Regulation. At the same time, the Commission received also a request to review the form of the measures applicable to imports of the product concerned originating in Russia pursuant to Article 11(3) of the basic Regulation.

(8) These requests were lodged by the European Chemical Industry Council on behalf of producers representing 100 % of the total Community production of SiC. The request for an expiry review was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry. The request for an interim review was based on the fact that the form of the measures would be inappropriate and would not eliminate the injurious effects of the dumping.

(9) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review pursuant to Articles 11(2) and

an interim review pursuant to Article 11(3) of the basic Regulation, the Commission initiated both reviews on the same date[13].

1.3. Investigation

(10) The Commission officially advised the exporting producers, importers, raw material producers, users known to be concerned and their associations, the representatives of the exporting countries and the Community producers of the initiation of the expiry and the interim 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) In view of the large number of Chinese exporting producers and importers in the Community not related to an exporting producer in one of the countries concerned, it was considered appropriate, in conformity with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within two weeks of the initiation of the proceeding and to provide the Commission with the information requested in the notice of initiation.

(12) No Chinese exporting producer submitted the requested information and none cooperated in the present proceeding. It was thus decided that sampling was not necessary with regard to the Chinese producers.

(13) Six unrelated importers in the Community provided the information requested in the notice of initiation and expressed their willingness to cooperate in the further investigation. From the above six importers, three companies were selected for the sample. These importers represented the largest representative volume of imports of known importers in the Community (98 %), which could be investigated within the time available.

(14) Questionnaires were therefore sent to the three sampled Community importers, to two Community producers, to 18 Community users, to 16 raw material suppliers and to the two known exporting producers in the Ukraine and in the Russian Federation. In addition, two producers in Brazil, which was selected as the potential analogue country, were contacted and received a questionnaire.

(15) Full replies to the questionnaires were received from the three sampled Community importers, seven users, two raw material producers and two exporting producers in the countries concerned, as well as from two producers in the analogue country.

(16) The Commission sought and verified all the information deemed necessary for its investigation, and carried out verification visits at the premises of the following companies:

Community producers:

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1264/2006. (See end of Document for details)*

— Kollo Silicon carbide BV (Netherlands), ESK-SIC GmbH (Germany),

— Navarro SiC, SA (Spain);

Producers in the exporting countries:

— JSC Zaporozhsky Abrasivny Combinat, Zaporozhsky (Ukraine),

— JSC Volzhsky Abrasive Combinat, Volzhsky (Russia);

Producers in the analogue country:

— Saint-Gobain Materials Cerámicas Ltda, Minas Gerais (Brazil),

— Treibacher Schleifmittel Brasil Ltda, Sao Paolo (Brazil);

Importers in the Community:

— Imexco-Ullrich GmbH (Germany),

— Smyris Abrasivi (Italy);

Users the Community:

— Morganite Crucible Limited (United Kingdom),

— TGA Ltd (Czech Republic).

(17) The investigation regarding the likelihood of a continuation or recurrence of dumping and injury covered the period from 1 April 2004 to 31 March 2005 (investigation period or IP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2001 up to the end of the IP (period considered).

(18) All the parties concerned were informed of the essential facts and considerations on the basis of which the conclusions of this review were based. They were also granted a period within which to make representations subsequent to this disclosure. The representations received, within the deadlines, were carefully considered and where deemed appropriate, taken into account for the findings.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(19) The product concerned is the same as that in the original investigations which led to the imposition of measures currently in force, i.e. SiC. SiC is currently classifiable within CN code 2849 20 00.

(20) SiC is produced by heating silicon and coke (or petroleum coke) at high temperatures (up to 2 000 °C). The output of this process is crude SiC which is usually further processed for its final end-uses. The production process of SiC is such that the output automatically comprises a variety of grades related to different content concentration of silicon. The different grades can be segregated into two main grades: crystalline and metallurgical. The crystalline grade is considered to be of higher quality because it has higher silicon content. The crystalline grade is further classified under the types black and green.

(21) The crystalline grade is normally used in the manufacturing of abrasive tools, grinding wheels, high-quality refractory products, technical ceramics, while the metallurgical grade is normally used in foundry and blast-furnace operations as a silicon carrier. As in the previous investigations, both grades have to be considered as forming one product for the purpose of this investigation.

2.2. Like product

(22) As established in the original investigations, the current investigation confirmed that the product concerned and the products manufactured and sold by the exporting producers on their domestic markets, as well as those manufactured and sold by the Community producers on the Community market and by the producer in the analogue country on the domestic market of the analogue country have the same basic physical and chemical characteristics and end uses and are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF A CONTINUATION AND/OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

(23) In this expiry review, full cooperation from the two known producers in Ukraine and the Russian Federation was obtained. However, as mentioned in recital 12, no producer came forward from the PRC.

3.2. Dumping of imports during the investigation period

3.2.1. Analogue country

(24) Since the Ukraine[(14)] and the PRC were not considered as market economy countries during the investigation period (and in the preceding investigations), normal value had to be established in accordance with Article 2(7)(a) of the basic Regulation, i.e. based on information obtained in a market economy third country where the product was produced and sold domestically. Moreover, it is recalled that the exporting producer in Ukraine had not been able to obtain MET in an interim review which was concluded just before the initiation of this expiry review (see recital 5).

(25) In the initiation of this expiry review, it was envisaged to use Brazil as an analogue country from where information about production costs and domestic sales could be obtained. It is recalled that Brazil has also been used in the previous expiry review.

(26) The investigation has confirmed that Brazil is still an appropriate analogue country for the following reasons:

(27) First, the size of its domestic market makes Brazil a representative country for the establishment of normal value for the two countries concerned. Second, domestic prices in Brazil are governed by normal market forces given the level of demand in the market and the existence of competing producers. Third, the basic physical and chemical characteristics of the like product produced in Brazil can be considered to