Council Regulation (EC) No 1275/2005 of 26 July 2005 amending Regulation (EC) No 2268/2004 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China

COUNCIL REGULATION (EC) No 1275/2005

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amending Regulation (EC) No 2268/2004 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China

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 11(3) thereof,

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

Whereas:

A. MEASURES IN FORCE

(1) By Regulation (EC) No 771/98[(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). Following an expiry review, the duty was re-imposed by Regulation (EC) No 2268/2004[(3)].

B. PRESENT INVESTIGATION

(2) While the abovementioned expiry review was ongoing, the Commission received a request for an interim review, pursuant to Article 11(3) of the basic Regulation. The request was lodged by the European Association of Metals (Eurometaux) (the applicant) on behalf of three producers, together representing a major proportion (more than 80 %) of the total Community production of tungsten carbide and fused tungsten carbide. The applicant alleged that a new product type, falling within the product scope of the existing measures on tungsten carbide and fused tungsten carbide, had appeared on the market. The applicant alleged that the new product type shared the same basic physical and chemical characteristics and end uses as the product covered by the measures in force. In these circumstances, the applicant alleged that both the product covered by the measures in force and the new product type should therefore be considered a single product and the measures in force should, also apply to imports of the new product type.

(3) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission, on 31

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March 2004, initiated an investigation in accordance with Article 11(3) of the basic Regulation[4]. The investigation was limited in scope to the definition of the product subject to the measures in force, in order to assess the need for the amendment of the scope of the measures in force.

(4) The investigation period (IP) covered the period from 1 January 2003 to 31 December 2003.

(5) The Commission advised the applicant Community producers as well as all known Community importers, all known Community users and all known exporters in the PRC of the initiation of the review.

(6) The Commission requested information from all the abovementioned parties and from those other parties who made themselves known within the time limit set in the notice of initiation of the investigation. The Commission also gave the interested parties the opportunity to make their views known in writing and to request a hearing.

(7) No questionnaire replies were received from the importers, traders and exporters. However, the main five exporters of tungsten carbide and fused tungsten carbide made written comments.

(8) The following three Community industry companies replied to the questionnaire sent by the Commission:

— H.C. Starck GmbH, Germany,

— Wolfram Bergbau- und Hütten GmbH, Austria,

— Eurotungstène Poudres SA, France.

(9) The following seven users in the EU also replied to the questionnaire:

— Boart Longyear GmbH & Co. KG, Germany,

— Ceratizit SARL, Luxembourg,

— Ceratizit GmbH, Germany,

— F.I.L.M.S. SpA, Italy,

— MISCELE Srl, Italy,

— Harditalia Srl, Italy,

— TRIBO Hartmetall GmbH, Germany.

C. PRODUCT CONCERNED

(10) The product concerned, as defined in the regulation imposing the measures in force, is tungsten carbide and fused tungsten carbide originating in the PRC and falling within CN code 2849 90 30. Both are compounds of carbon and tungsten produced by heat treatment (carburisation in the first case, fusion in the second). Both 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.

D. RESULTS OF THE INVESTIGATION

1. Preliminary comment

(11) The exporters claimed in their written comments that the initiation of this investigation was a 'legal inconsistency', and, therefore, they did not reply to the questionnaire sent by the Commission. In their view, the allegation of a new product type appearing on the market could not be investigated within a review limited to the scope of the product concerned under Article 11(3) of the basic Regulation, but rather requires a full anti-dumping investigation under Article 5 of the basic Regulation. However, the very purpose of the current review is to assess whether the new product type and the product subject to the existing measures are to be considered as the product concerned, i.e. whether they both have the same characteristics and end uses and can therefore be considered as one single product. This assessment can only be made in the context of a review of the existing measures on imports of the product concerned. Any investigation under Article 5 of the basic Regulation could only be envisaged for a different product. The claim made by the exporters is therefore not valid and must be rejected. It should be noted that the non-cooperation of the exporters concerned resulted in a lack of certain relevant information and led to the use of available information in application of Article 18 of the basic Regulation.

2. New product type

(12) The new product type is mainly constituted of the product subject to the existing measures which is mixed with a small percentage of another metallic powder (mostly cobalt but other metallic powders such as nickel, chromium and other components, depending on specific properties required, can also be mixed with the product concerned). This new product type is currently classified within CN code 3824 30 00, a subheading described as 'non-agglomerated metal carbides mixed together or with metallic binders', which consists of a diversity of mixtures, at different stages of processing. Just as the product subject to the existing measures (see recital (10)), the new product type is an intermediate product, used as input material in the manufacture of hard metal components.

3. Comparison between the product subject to the existing measures and the new product type

(13) In order to assess whether the new product type should be considered as the product concerned and therefore fall within the scope of the existing measures, it was examined whether the new product type and the product subject to the existing measures shared the same chemical and physical characteristics and end uses. It was also examined how the Community users perceived the new product type.

(a) Physical and chemical characteristics

(14) The new product type, as explained above under recital (12), is an intermediate product, which consists of the product subject to the existing measures, simply mixed with another metallic powder.

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(15) The investigation demonstrated that simply mixing the product subject to the existing measures with a metallic powder does not change the characteristics of the product subject to the existing measures. While it is true that the new product type slightly differs in structure from the product subject to the existing measures due to the addition of a small amount of cobalt, it was established that both products keep the same physical and chemical characteristics and follow exactly the same processing stages leading to identical end use. Indeed, it is only in the subsequent processing stages (see also recital (18)), that e.g. cobalt serves as a binder, i.e. to ensure the adhesion of the carefully mixed components inserted. Only from that stage are new physical and chemical characteristics attained (see also recital (24)). It was also established that — similar to the addition of cobalt — the simple addition of other substances, e.g. nickel, chromium and/or other components, does not, merely by virtue of the substances themselves, change the properties of the product subject to the existing measures. The addition of these other substances in the milling stage depends on specific properties required (see recital (18)).

(16) Furthermore, it was found that no Community producer manufactures the new product type.

(17) As a consequence, there is no basic physical or chemical difference between the new product type and the product subject to the existing measures.

(b) End uses

(18) Both the product subject to the existing measures and the new product type enter into the same stage of the tungsten production chain. Like the product subject to the existing measures, the new product type needs to be carefully milled (together with other metallic or carbide additives and organic binders) and granulated by vacuum or spray drying (homogeneous particle shaping) before it reaches the state of a ‘ready to press’ powder. A ready to press powder is the precursor to the production of hard metal components (end product reached by pressing and sintering, i.e. high temperature moulding) where the added metallic powder finally becomes active as a binder matrix. Both the product subject to existing measures and the new product type have therefore to be transformed, through a similar process, into a ready to press powder. The ready to press powder has to correspond to very specific composition requirement by customers, i.e. the mining, metal-forging and coating industry.

(19) It follows from the above that the product subject to the existing measures and the new product type both exclusively enter into the same stage of the production chain and that the simple addition of a small amount of cobalt or any other substance mentioned in recital (15) will not change the properties of the product subject to the existing measures. All serve the same end uses, i.e. they have to be further processed.

(c) User perception

(20) Users of the product concerned are mainly small producers of a wide range of hard metal components. The few cooperating users confirmed the abovementioned