Council Regulation (EC) No 2268/2004 of 22 December 2004 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China

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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(2) thereof,

Having regard to the proposal submitted by the 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 Regulation (EC) No 771/98[(6)].

2. Present investigation

(4) Following the publication of a notice of the impending expiry of the anti-dumping measures in force on imports of tungsten carbide and fused tungsten carbide originating in the PRC[(7)] on 9 January 2003 the Commission received a request for an expiry review from Eurometaux ('the applicant') on behalf of producers representing a

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major proportion, in this case more than 80 %, of the total Community production. The request was based on the grounds that the expiry of measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

(5) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated an investigation, pursuant to Article 11(2) of the basic Regulation[8].

3. Request for interim review

(6) On 25 November 2003, the Commission also received a request for an interim review from the applicant, on behalf of producers representing a major proportion of the total Community production.

(7) The applicant alleged that a new product type had appeared on the market which shares the same basic physical and chemical characteristics and end uses as the product concerned by the measures in force on imports of tungsten carbide and fused tungsten carbide originating in the PRC. Although not subject to the measures, the applicant claimed that the new product type is in fact a part of the product concerned. The applicant claimed that, in consequence, the existing measures were no longer sufficient to counteract the dumping which is causing injury, and that the scope of the measures should therefore be amended so that the new product type falls within the product definition.

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, on 31 March 2004[9] the Commission initiated a review in accordance with Article 11(3) of the basic Regulation, limited in scope to the definition of the product concerned. This investigation is at present still ongoing.

4. Parties concerned by the investigation

(9) The Commission officially advised the producers, importers and users as well as exporters in the PRC of the initiation of the review.

(10) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initiation.

(11) The Commission sent questionnaires to all parties known to be concerned and received replies from the three complainant Community producers, one other Community producer, one importer that was also a user of the product concerned, seven exporters/producers, one trader based in Hong Kong, one trader/importer in Germany and one producer in the analogue country. All parties made their views known in writing and were granted a hearing when requested.

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

(a) Community producers

— Wolfram Bergbau und Hütten-GmbH Nfg. KG, St. Peter, Austria
— H. C. Starck GmbH & Co. KG, Goslar, Germany
— Eurotungstène poudres SA, Grenoble, France

(b) Importers / users in the Community
— Harditalia SpA and F.I.L.M.S. SpA, Anzola D'ossola, Italy (related companies)

(c) Exporters in the PRC
— Nanchang Cemented Carbide Co., Ltd, Nanchang City, Jiangxi Province
— Xiamen Golden Egret Special Alloy Co., Ltd, Xiamen City, Fujian Province
— Zhuzhou Cemented Carbide Works Import & Export Company, Zhuzhou City, Hunan Province
— Zigong Cemented Carbide Corp., Ltd, Zigong City, Sichuan Province

(d) Producer in the analogue country
— Osram Sylvania Inc., Towanda, Pennsylvania, United States of America

5. Investigation period

(13) The investigation regarding the continuation and/or recurrence of dumping and injury covered the period from 1 January 2002 to 31 December 2002 (the 'IP'). The examination of the trends relevant for the assessment of a likelihood of continuation of dumping and recurrence of injury covered the period from 1998 up to the end of the IP (the 'period considered').

6. Product concerned and like product

6.1. Product concerned

(14) It is recalled that, following the alleged appearance of a new product type on the market which shares the same basic physical and chemical characteristics and end uses as the product covered by the measures, a partial interim review limited in scope to the definition of the product concerned was initiated on 31 March 2004 (see recitals 6 to 8).

(15) However, the product concerned by the present review is the same as the one under consideration in Council Regulation (EEC) No 2737/90 and its subsequent amendments, i.e. tungsten carbide and fused tungsten carbide falling within CN code 2849 90 30.

(16) Tungsten carbide and fused tungsten carbide 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

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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) Some exporters argued that tungsten carbide and fused tungsten carbide were different products. This was based on the assertion that their production processes are completely different, and that their end uses are also different.

(18) It is recalled that in recital (11) of Council Regulation (EC) No 771/98, the investigation had shown that, although their manufacturing process is different, tungsten carbide and fused tungsten carbide have the same chemical composition (both consist of approximately 92 to 94 % of tungsten metal and 4 to 6 % of carbon) and come from the same stage in the tungsten production chain, i.e. between tungsten metal powder and carbide tools and wear-resisting materials. Furthermore, they are put to similar end-uses in the industry, i.e. as a surface hardening component. Although for certain specific and limited applications which require higher wear and abrasive resistance only fused tungsten carbide is used, fused tungsten carbide and tungsten carbide are generally interchangeable. It was therefore concluded in the previous review investigation, that tungsten carbide and fused tungsten carbide are one single product for the purpose of the investigation.

(19) No compelling argument was submitted which would justify a change in approach leading to a different conclusion to that reached in the previous review investigation. Moreover, there is no significant price difference on the market between fused tungsten carbide and tungsten carbide, because some additional processing for fused tungsten carbide is offset by a less refined selection of grain sizes. Therefore, tungsten carbide and fused tungsten carbide are to be considered a single product sharing the same basic characteristics for the purpose of this investigation.

6.2. Like product

(20) As established in the previous investigations, this review investigation has confirmed that the products exported by the PRC and those manufactured and sold by the Community producers and by the producer in the analogue country were, because they have essentially the same physical characteristics and end uses, like products within the meaning of Article 1(4) of the basic Regulation.

B. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

(21) As a general background, it is recalled that imports of the product concerned from the PRC during the 9-month IP of the investigation which led to the imposition of measures in 1990 were 117 tonnes, representing a market share of 5,3 %. The dumping margin found at that time was 73,13 %. In the IP of the previous review investigation, imports were 234 tonnes, representing a market share of 5 %, while the dumping margin was 30,6 %.

2. Market Economy Status and Analogue country

(22) It is recalled that none of the exporters of the product concerned obtained market economy status ('MES') in the previous investigations. Cooperating exporters argued that the possibility of granting MES should be examined pursuant to Article 2(7)(b) of the basic Regulation, stating that there are no provisions in the basic Regulation which prevent cooperating exporters being granted MES in a review pursuant to Article 11(2) of the basic Regulation.

(23) It is recalled that the current investigation is an expiry review, following which measures can only be repealed or maintained, but not amended. In line with the consistent practice of the Institutions, claims for MES are therefore to be addressed in the context of interim reviews because as a result of such interim review the level of measures may be changed.

(24) The cooperating exporters also questioned the use of the United States of America as an appropriate market economy third country ('analogue country'), referring to the difference in GDP per capita between the PRC and United States of America as a reason for its inappropriateness. Instead, the cooperating exporters proposed the use of the Republic of Korea or the Czech Republic, on the grounds that the GDP per capita was more in line with the level of GDP in the PRC.

(25) The issue of GDP per capita alone is not considered as a determinative factor in deciding upon a suitable analogue country. The United States of America was found to be an appropriate analogue country in the previous review investigation and no change of circumstances was identified which would make its use inappropriate in the current investigation. Moreover, no convincing evidence was provided showing that the Republic of Korea or the Czech Republic would be more suitable.

(26) Osram Sylvania Inc., a producer of the product concerned in the United States of America, had offered to cooperate in the investigation and it was accordingly examined whether the domestic sales of Osram Sylvania Inc. were significant in comparison to the volume of the product concerned exported from the PRC. It was found that the domestic sales by Osram Sylvania Inc to domestic customers, and in the ordinary course of trade, were made at volumes which considerably exceeded 5 % of the exports made by the Chinese exporters to the Community, as required if normal value is to be based on domestic sale prices.

(27) Hence, pursuant to Article 2(7)(a) of the basic Regulation, it was decided to maintain the United States of America as the analogue country in the present proceeding and to use the domestic sales by Osram Sylvania Inc. as the basis for establishing the normal value.

3. Normal value

(28) It was examined whether the domestic sales of Osram Sylvania Inc. to independent customers could be considered to have been made in the ordinary course of trade, pursuant to Article 2(4) of the basic Regulation.