

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

COUNCIL REGULATION (EC) No 2268/2004
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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(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

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a request for an expiry review from Eurometaux ('the applicant') on behalf of producers representing a 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.

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- (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

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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 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.

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(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.

(29) It was found that the weighted average selling price of all sales during the IP was higher than the weighted average unit cost of production. Therefore, all domestic sales were regarded as having been made in the ordinary course of trade.

(30) In accordance with Article 2(1) of the basic Regulation, normal value was based on the prices of all Osram Sylvania Inc.'s domestic sales of tungsten carbide and fused tungsten carbide to independent customers in the United States of America during the IP.

4. Export price

(31) Five of the seven cooperating exporters accounted for almost all exports from the PRC to independent customers in the Community during the IP. The other two cooperating exporters did not export the product concerned to the Community during the IP. The export price could therefore be established in accordance with Article 2(8) of the basic Regulation (i.e. on the basis of the prices actually charged by the five cooperating exporters).

5. Comparison

(32) To achieve a fair comparison, in accordance with Article 2(10) of the basic Regulation, adjustments were made for differences in respect of transport, packaging, insurance, credit costs, payment terms, handling and ancillary costs, which were claimed and demonstrated to affect prices and price comparability.

6. Dumping margin

(33) In accordance with Article 2(11) of the basic Regulation, the normal value was compared to the export price. Both were calculated on an ex-factory basis, and the comparison was made at the same level of trade.

(34) In order to calculate the dumping margin, the weighted average normal value was compared to the weighted average export price to the Community at ex-factory level and at the same level of trade. This comparison showed the existence of dumping at a level of around 31 % which is close to the current level of anti-dumping duty.

7. Likelihood of continuation of dumping

(35) As dumping had not stopped, it was examined whether there is a likelihood of continuation of exports of the product concerned at dumped prices. In this context, factors such as the production capacity of producers of the product concerned in the PRC and their sales prices to other third countries and on the domestic market in the PRC were taken into account.

7.1. Spare production capacity

(36) As mentioned in recital (31), there were five cooperating exporters in the PRC that exported the product concerned to the Community during the IP.

(37) Two of these exporters produced the product concerned themselves, i.e. the production and export sales occurred in the same legal entity.

(38) Two other exporters were each related to production companies, i.e. production and export sales occurred in two separate but related legal entities.

(39) The fifth exporter had no related production company; its products were instead purchased from the producers/exporters mentioned under recitals (37) and (38), and thereafter exported.

(40) The four exporters with a production facility had a combined theoretical⁽¹⁰⁾ capacity of 9 850 tonnes during the IP and total production of 8 460 tonnes, which represented a utilisation rate of 86 %. The four producing exporters therefore have spare production capacity of 1 390 tonnes, which is equivalent to 21,5 % of the calculated consumption of the product concerned for the free market (6 461 tonnes)⁽¹¹⁾.

(41) The two other cooperating exporters which did not export the product concerned to the Community during the IP also submitted information on their production and sales during the IP. One of these two exporters was a trader without own production, the other had its own production capacity, with a production capacity of approximately 200 tonnes and an actual production during the IP of 49 tonnes.

(42) The combined capacity of the seven exporters amounted to 10 050 tonnes. The seven exporters had spare production capacity of 1 541 tonnes during the IP, representing approximately 24 % of free market consumption in the Community as defined in recital (41) above. This spare capacity is a clear indication that Chinese exporters could opt for a substantial increase of their exports of the product concerned to the Community market if measures were repealed. It is recalled that the total exports of the cooperating exporters amounted to 239 tonnes, or close to 100 % of the total imports of the product concerned during the IP, and that the cooperating exporters therefore account for almost all exports to the Community.

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- 7.2. Sales by PRC exporters on the domestic market and on markets of third countries
- (43) Since the imposition of the existing measures, the Chinese exporters have developed their competence in downstream utilisation of the product concerned, mainly for the tool industry (derived from cemented carbides).
- (44) During the IP, approximately 4 846 tonnes (57 %) of total production by the five cooperating exporters were further processed, whilst 1 557 tonnes (18 %) were sold on the domestic market, and 2 021 tonnes (24 %) were exported through the cooperating exporters.
- (45) The table below shows the average sales price by destination by the five cooperating exporters during the IP, and a comparison with the average sales price of the Community Industry:

	Average Sales Price/kg (EUR) (CIF)	Compared with the Average Sales Price of the Community Industry in the Community
Domestic Sales	9,79	– 34 %
Export sales to Japan	11,99	– 20 %
Export sales to United States of America	12,54	– 16 %
Export sales to other countries in Southeast Asia	12,33	– 17 %
Export sales to European Community	12,59	– 16 %
Export sales to other destinations	12,3	– 18 %

- (46) As seen above, Chinese exporters would have all interest in not only using their existing spare capacity to increase sales to the Community market, but also in shifting at least part of their domestic sales and sales to third countries to the Community market. Indeed, in comparison to the prices that the cooperating exporters could charge on their domestic market, the prices on the Community market would make it a very attractive market, if the existing anti-dumping measures were allowed to expire.
- (47) Also in comparison with the Chinese exports to other third countries such as Japan and the United States of America, the prices on the Community market would be an attractive market, and the risk for trade diversion to the Community market, if measures were allowed to lapse, would be high.

- (48) Accordingly, it was considered that should the measures be repealed, it was likely that significant quantities of the product concerned would be sold at prices which would undercut the average sales prices of the Community industry thereby causing injury to that industry.

8. Conclusion

- (49) As noted in recital (34), the Chinese exporters have continued their dumping practices. The dumping margin established during the IP was 31 %, which is at approximately the same level as the dumping margin established in the previous review investigation.

- (50) The combined capacity of the five cooperating producing exporters amounted to 10 050 tonnes during the IP, which is more than the combined capacity of the Community Industry. Furthermore, the five cooperating producing exporters had spare production capacity in the IP representing approximately 24 % of free market consumption in the Community.

- (51) Regarding export prices of the product concerned from the PRC during the IP, it is noted that the average sales prices to the Community market are attractively high for Chinese exporters. Therefore, it was considered that should the measures be repealed, there would be a risk of continuation of injurious dumping. Moreover, given the price differences found in the IP between the cooperating exporters' export prices of the product concerned to the Community and those to other third countries, there would also be a likelihood that dumped exports would be diverted from other markets (e.g. Japan and the United States of America) to the Community market, as the prices in the Community were higher than those found on the other main exports markets.

- (52) In summary, all indicators suggest that imports to the Community from the PRC will continue at dumped prices, and were the measures repealed, in increasing quantities.

C. COMMUNITY INDUSTRY

- (53) During the IP, the product concerned was manufactured by
- three complainant producers which fully cooperated with the Commission during the investigation, and which manufactured the product concerned for sale to third parties at prices determined by the market ('the free market'),
 - one other producer which manufactures for the free market and supported the complaint, but did not cooperate in the investigation,
 - three other producers which manufactured the product concerned for their own captive use. One of these producers cooperated and the others have neither supported nor opposed the present investigation.
- (54) Regarding the producers which manufacture the product concerned for captive use, these companies' production of the product concerned is an

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intermediate product which is fully consumed in the production of high-value downstream products. None of their production was sold on the free market.

- (55) The distinction between captive use and the free market is relevant for the analysis of the economic situation on the Community market and situation of the Community industry because products destined for captive use are not exposed to direct competition from imports. By contrast, production destined for free market sales was found to be in direct competition with imports of the product concerned from the PRC. In light of the above, it is considered that the situation is different as between the free and captive markets.
- (56) The production of the three cooperating Community producers which produced for the free market and fully cooperated constituted approximately 89 % of the total Community production of the product concerned for the free market during the IP. These Community producers constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

D. SITUATION ON THE COMMUNITY MARKET

- 1. General
 - 1.1. Import data
 - (57) Eurostat information related to import volumes for CN code 2849 90 30 and verified export data from the cooperating exporters in the PRC were used as the source of the import data.
 - 1.2. Community Industry data
 - (58) Community industry data were obtained from the verified questionnaire responses of the three cooperating Community producers which manufactured the product concerned for sale on the free market, and from the cooperating producer which manufactured the product concerned for its own captive use.
 - 1.3. Community consumption
 - (59) Apparent consumption on the free market of the product concerned in the Community was established on the basis of:
 - the total import volumes of the product concerned into the Community as reported by Eurostat, plus
 - the total verified sales volumes to independent customers on the Community market of the three cooperating Community producers which produce for the free market.
 - (60) Free market consumption in the Community increased by 9 % during the period considered. However, this increase followed an uneven trend. Following a decrease between 1998 and 1999, consumption increased until 2001 when it peaked at 7 949 tonnes before falling back to 6 461 tonnes in the IP.

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	1998	1999	2000	2001	IP
Free market consumption (tonnes)	5 947	5 393	6 706	7 949	6 461
1998 = 100	100	91	113	134	109

- (61) The significant increase in free market consumption during 2000 and 2001 is partly explained by higher economic activity in the Community as well as on the world market, and partly by the enforcement of a new export licensing system in the PRC. The latter prompted massive purchases (stock-building by users) towards the end of 2000 and during 2001 for fear of eventual shortages of raw materials and the product concerned.

2. Imports from the PRC

2.1. Volume and market share

	1998	1999	2000	2001	IP
Volume (tonnes)	179	132	212	315	240
1998 = 100	100	73	118	175	134
Market Share	3 %	2 %	3 %	4 %	4 %

- (62) The volume of imports from the PRC shows a somewhat fluctuating trend during the period considered, ending with an increase in volume in comparison with 1998 which is reflected in a higher market share in the IP compared to 1998.

2.2. Prices and Undercutting

- (63) The average price of imports of the product concerned from the PRC during the IP was EUR 12,59/kg CIF at EC frontier. For the purpose of analysing price undercutting, the weighted average prices of the product concerned sold by the Community Industry were compared to the weighted average prices of imports from the PRC on the Community market during the IP, duly adjusted for customs duties and post-importation costs.

- (64) The prices of the Community Industry are those reported in the responses to the questionnaires for their sales in the Community to the first unrelated customer on an ex works basis. The prices of the Chinese imports are those reported by those cooperating exporting producers which exported the product concerned during the IP.

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- (65) On this basis, the price-undercutting margin, expressed as a percentage of the Community industry's prices, was found to be around 10 %. If the present level of anti-dumping duties is included in the calculation, there is no undercutting.

3. Volumes and unit prices of imports and Community Industry EU sales in the IP

Country	Volumes(tonnes)	Average Sales Price (CIF)/kg (EUR)
United States of America	824	17,0
Republic of South Korea	217	16,1
Canada	181	14,8
Israel	159	13,6
Switzerland	54	15,3
Community Industry	4 154	14,92

- (66) In comparison to imports originating in other third countries the prices of imports originating in the PRC (i.e. EUR 12,59/kg on average) were considerably lower. In these circumstances there is a clear likelihood that, were the measures repealed, imports of the product concerned originating in the PRC would gain ground at the expense of other third countries exports to the Community, and this at dumped prices.

E. SITUATION OF THE COMMUNITY INDUSTRY

- (67) In accordance with Article 3(5) of the basic Regulation, the examination of the situation of the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry from 1998 (base year) to the IP. The Community industry data below represent the aggregated information of the three cooperating Community producers except where otherwise stated.

1. Production, capacity, capacity utilisation and stocks

- (68) Production capacity was established on the basis of the maximum hourly output of the machines installed, multiplied by the annual maximum working hours, less a deduction for maintenance and other similar production interruptions. Production capacity increased by 22 % during the period considered.

	1998	1999	2000	2001	IP
Production(tonnes)		5 150	5 606	6 528	5 554
Index	100	94	102	119	101

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Production capacity(tonnes)	6 838	6 848	7 799	8 030	8 310
Index	100	100	114	117	122
Capacity utilisationin (%)	80,3	75,2	71,9	81,3	66,8
Index	100	94	90	101	83
Stocks(tonnes)	996	1 133	1 189	834	1 688
Index	100	114	119	84	169
Stocks as % of Production	18	22	21	13	30
Index	100	122	117	72	167

- (69) Production by the Community Industry increased during the period considered by 1 %. However, this modest increase followed an uneven trend. Following a decrease of 6 % in 1999, production increased between 1999 and 2001 by 27 %. Finally, in the IP, production returned to a level which was only marginally above the production level in 1998.
- (70) The reasons for the increase in production and capacity in 2000 and 2001 are explained in recital (61). The dramatic surge in worldwide demand of the product concerned, which was due to higher economic activity on the world market and to the enforcement of a new export licensing system in the PRC, triggered investments in production capacity, especially during 2000 and 2001, which resulted in an increase in capacity of 22 % in the period considered.
- (71) The decrease in the capacity utilisation rate during the IP compared to the preceding years is explained by the sudden drop in demand for the product concerned in the IP. Whilst capacity had increased based on the assumption of continuous strong demand in the market, this was not achieved as during the IP customers reduced their purchases in order to reduce their stock levels. In consequence, production in the IP was more or less at the same level as in 1998.
- (72) Stock levels remained relatively stable in relation to production and sales up to 2000. In 2001, stocks fell due to high demand. In the IP, due to the unexpected drop in worldwide demand, the level of stocks held by the Community Industry increased, and reached a level of 30 % of production, compared to 18 % in 1998. The level of stocks which is normal for this industry is around 20 % of production.
2. Sales volume, prices, market share and sales volumes on export markets

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- (73) The figures below represent the Community Industry's sales volumes and prices to independent customers in the Community, market share in the Community and sales volumes on export markets.

	1998	1999	2000	2001	IP
Sales volumes on the Community market(tonnes)	3 662	3 702	4 353	4 164	4 154
Market share on the Community market	62 %	69 %	65 %	52 %	64 %
Average Sales Price(EUR)	14,27	13,65	13,7	17,1	14,92
Sales volumes on the export market(tonnes)	1 367	1 118	1 470	1 955	1 696
Total Sales in volumes(tonnes)	5 029	4 820	5 823	6 119	5 850

- (74) Sales volumes on the Community market show a modest increase during the period considered, with quantities sold during the IP 13 % above the level in 1998. Overall, the Community Industry gained some ground at the expense of imports, with market share increasing from 62 % in 1998 to 64 % in the IP.
- (75) With the exception of 2001, the average sales price of the Community Industry has remained relatively stable, with its average sales price during the IP 5 % higher than in 1998. During 2001, the average sales price increased to EUR 17,10/tonne but subsequently fell back during the IP to EUR 14,92.
- (76) Export sales volumes also increased during the period considered. Quantities sold increased by 24 % between 1998 and the IP, having peaked in 2001. As a proportion of overall sales, export sales represented around 25-30 % of overall sales during the period considered.
- (77) Total sales volumes increased by 16 % between 1998 and the IP, having peaked in 2001 for the reasons explained in recital (61).

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3. Profitability, Return on Investments (Assets) and Cash Flow

	1998	1999	2000	2001	IP
Profitability on EC Sales	7,9 %	5,9 %	3,3 %	10,9 %	1,4 %
Return on Assets	4,5 %	2,8 %	2,5 %	6,7 %	1,0 %
Cash Flow(Mio. EUR)	8 596	6 932	6 559	13 798	5 399

(78) With the exception of 2001, which, as explained above, was an exceptional year, the economic indicators (profitability, return on investments and cashflow) show that the Community Industry has experienced some deterioration in profit margins, returns and cash flow generated from the sales on the Community market.

(79) A contributing factor to the loss of profitability during the IP was the temporary loss of a major supply contract by one of the Community producers and a fall in sales at least partly caused by users depleting the stocks which they had built up in 2001 for fear of eventual shortages. There is also evidence that severe fluctuations in the price of the main raw material (APT), most of which originates in China, have affected the profitability of those producers in the Community which are dependent on purchasing this commodity on the open market.

4. Investments and ability to raise capital

	1998	1999	2000	2001	IP
Investments(Mio. EUR)	2 485	2 395	3 081	3 062	1 264

(80) The levels of investment were relatively stable between 1998 and 2001, with regular investments in technical refinements to the production process and other related installations. However, during the IP, the level of investments decreased significantly due to the low level of return from sales on the Community market.

(81) The Community industry remained able to raise capital, either from external providers of finance or parent companies during the period considered, including the IP.

5. Employment, Productivity and Wages

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	1998	1999	2000	2001	IP
Number of employees	464	455	456	474	460
Employment costs (EUR 1 000)	22 223	21 563	22 591	24 188	23 928
Productivity (tonne/employee)	11,84	11,32	12,29	13,77	12,07

(82) The number of employees decreased slightly over the period considered. The total cost of employment remained relatively stable until 2000, but then increased in 2001 and remained at a higher level in the IP. In the period considered employment costs increased by 8 %, representing normal wage increases.

(83) Productivity increased by 2 % between 1998 and the IP in line with an increase in production. Indeed, the Community Industry was able to increase production in 2000 and 2001 without a significant increase in employment, resulting in improved productivity in those years. However, it should be noted that the level of productivity is affected not only by the level of production itself, but also by the different product mix in different years.

6. Magnitude of dumping margin and recovery from past dumping

(84) The volume and market share of dumped imports from PRC increased during the period considered. However, they both remained small relative to the size of the free market (being only 4 % of consumption on the free market). Nevertheless, due to the magnitude of the dumping margin (31 %) as well as external factors such as fluctuations in the price of the main raw material (APT) and the temporary loss of a major supply contract, and despite broadly stable demand for the product concerned, the Community Industry experienced some fall in its level of profitability (10 %) and other financial indicators as described in recital (78).

7. Captive market

(85) The findings concerning certain economic indicators relating to the Community industry were compared with the data provided by the cooperating Community producer which produced solely for captive use in order to provide a fuller picture of the situation of Community producers. The findings relating to this producer are as follows (on an indexed basis given that findings concern only one company):

	1998	1999	2000	2001	IP
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Produktion	100	92	108	98	73
Capacity	100	116	116	116	116
Capacity utilisation	100	99	99	94	57
Stocks	100	328	360	449	331
Investments	100	2	1	75	1
Employment	100	100	97	97	87
Employment costs	100	110	110	117	109
Productivity	100	92	111	101	84

- (86) Production capacity increased by 16 % between 1998 and 1999 and subsequently remained stable. Production fell by 27 % over the period concerned, having fluctuated between index 92 and index 108. Capacity utilisation fell by 6 % between 1998 and 2001, and then by a further 39 % in the IP in line with a fall in production. Stocks have more than trebled over the period concerned, although the scale of this increase partly reflects low stocks in 1998. Major investments were undertaken in 1998 and 2001. Employment remained fairly stable until 2001, but fell by 10 % in the IP. Employment costs increased to index 117 up to 2001, but then fell to index 109 in the IP. Productivity fluctuated between index 92 and index 111 from 1998 to 2000, but fell to index 84 in the IP in line with the fall in production, and notwithstanding the fall in employment, in that year.
- (87) The product concerned was sold internally at a transfer price. Transfer prices were found not to be sufficiently closely based on actual market prices to be considered to reflect market prices. Nor would an analysis of the breakdown of the various costs associated with the production of the downstream product contribute to establishing a market value for the transferred product concerned. Therefore, analysis of profitability, return on investment and cash-flow in relation to captive use is not considered to be a reliable indicator. As part of a larger group, the ability of the company concerned to raise capital was not seriously affected.
- (88) As imports were not found to be in direct competition with the product concerned produced for captive use, notwithstanding the magnitude of the dumping margin, those producers producing for captive use were not found to be significantly affected by the dumped imports or the measures.
- (89) Overall, developments in the captive market were similar to those in the free market, albeit in the case of production, employment and productivity they showed a more negative trend. Therefore, inclusion of the captive market

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would not have impacted on the overall conclusions reached in relation to the free market.

8. Conclusion on the situation of the Community industry

- (90) Although measures have been in place for some time and despite broadly stable demand for the product concerned, the Community Industry experienced some deterioration in profit margins and other financial indicators during the period considered. By limiting its price increases during the period considered, the Community industry has been able to increase sales and market share. However, this has been at the expense of profitability. During the IP, the industry was only slightly above break-even point, although this result must be balanced against that in 2001, which was an exceptional year. Whilst the unfair effect of dumping is compensated by the duty, there is evidence that severe fluctuations in the price of the main raw material (APT), most of which originates in the PRC, have affected the profitability of those producers in the Community which are dependent on purchasing this commodity on the open market.

F. LIKELIHOOD OF CONTINUATION OF INJURY

- (91) In light of the foregoing, and with special regard to recital (66) above, it is likely that the Community industry would face more pressure from increased volumes of dumped exports of the product concerned from the PRC if the measures were allowed to expire. The increased unfair competition from dumped imports would very likely lead to further deterioration in the financial situation of the Community Industry. It is therefore concluded that the repeal of the measures would in all likelihood result in continuation of injury to the Community Industry.

G. COMMUNITY INTEREST

1. General considerations

- (92) It has been examined whether compelling reasons exist which could lead to the conclusion that it is not in the Community interest to maintain the present measures. For this purpose and in accordance with Article 21(1) of the basic Regulation, the determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, other Community producers, the importers/traders as well as the users of the product concerned. For the purpose of this analysis, information was requested from all identified interested parties.
- (93) It should be recalled that in the previous investigation the adoption of measures was considered not to be against the interest of the Community. Furthermore, the fact that the present investigation is a review of anti-dumping measures already in place allowed the assessment of any undue negative impact on the parties concerned by the current anti dumping measures.

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- (94) It was examined whether, despite the conclusion on the likelihood of continuation of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain the measures in this particular case.
2. Interest of the Community Industry
- (95) It is recalled that it has been established that there is a likelihood of continuation of dumping of the product concerned originating in the PRC and that there is a risk of continuation of injury to the Community Industry arising from such imports. It is in the interest of the Community Industry to avoid injury and continuation of the measures should help to achieve this. Therefore, it is in the interest of the Community Industry to maintain measures against dumped imports from the PRC.
3. Interest of unrelated importers and traders
- (96) No replies were received from any importers or traders. The non-cooperation of importers and traders suggests that the continued imposition of measures on imports originating in the PRC would not have any significant impact on the situation of unrelated importers and traders of the product concerned in the Community. This is also in line with the findings made in previous investigations.
4. Interest of users
- (97) Product concerned are mainly manufacturers of hard metal components which use the product concerned as a raw material. Some of the users are large international manufacturers which mainly use their own production of tungsten carbide as raw material (captive use), whilst some other users (mainly smaller manufacturers) purchase the product concerned either from exporters or from the Community Industry.
- (98) Concerning the interest of the large international manufacturers, the lack of support or opposition by these large users suggests that the continued imposition of measures on imports originating in the PRC would not have any significant impact on their situation in the Community.
- (99) One small manufacturer of tools replied to the questionnaire. Approximately 90 % of its supply of tungsten carbide is purchased from the Community Industry. It expressed concern that, should the measures be maintained, this would strengthen the position of the Community Industry in relation to the users, an industry which this user claimed to be fragmented, and make users more dependent on the Community Industry as a source of supply. However, albeit the Community Industry dominated 64 % of the EU market and is an important source of supply, it is not the only source of supply. During the IP, four producers in the EU competed for sales on the EU market. In addition, there is competition from imports from the PRC and other countries which

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together had 36 % of the market in the IP. Therefore, it is considered that there are a number of alternative sources of supply on the EU market and that the concerns of this user are unfounded.

- (100) Whilst the continuation of measures may help to maintain the position of the Community Industry in relation to the users, there are adequate alternative sources of supply. If the measures were terminated there is a clear risk that the Community Industry would go out of the market and users would lose an important source of supply.

5. Conclusion on Community Interest

- (101) In view of the above, the continued imposition of measures does not appear to be against the Community interest. On the contrary, insofar as it will allow the Community Industry to remain active on the Community market, it helps to maintain different sources of supply for users.

H. CONCLUSION

- (102) The investigation has shown that exporters in the PRC have continued their dumping practices during the IP. It has also been demonstrated that the Community market is an attractive market for Chinese exporters, given the level of prices charged to its domestic customers and other export markets. Therefore, if measures were repealed, it is likely that significant quantities of dumped imports would enter the Community market.
- (103) The financial situation of the Community Industry, reflected in the reduced profitability, return on investment and cashflow during the period considered, would most likely be aggravated if measures were repealed as increased volumes of dumped imports from the PRC would start to flow onto the Community market.
- (104) Regarding Community interest, it is concluded that there are no compelling reasons not to impose anti-dumping measures against imports of the product concerned originating in the PRC.
- (105) It is therefore considered appropriate to maintain the current anti-dumping measures against imports of tungsten carbide and fused tungsten carbide originating in the PRC.

I. ANTI-DUMPING MEASURES

- (106) All parties were informed of the essential facts and considerations on the basis of which it was recommended that the existing measures be maintained. They were also granted a period to make representations subsequent to disclosure. No comments were received which were such as to change the above conclusions.

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- (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 the product concerned originating in the PRC should be maintained,

HAS ADOPTED THIS REGULATION:

Article 1

[^{F1}1 A definitive anti-dumping duty is hereby imposed on imports of tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide originating in the People's Republic of China, falling within CN codes 2849 90 30 and ex 3824 30 00⁽¹²⁾ (TARIC code 3824 30 00 10).]

2 The rate of the definitive anti-dumping duty applicable to the net free-at-Community-frontier price, before duty, shall be 33 %.

3 Unless otherwise specified, the provisions in force concerning custom duties shall apply.

Textual Amendments

F1 Substituted by [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.](#)

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.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 2268/2004. (See end of Document for details)

- (1) [OJ L 56, 6.3.1996, p. 1](#). Regulation as last amended by Regulation (EC) No 461/2004 ([OJ L 77, 13.3.2004, p. 12](#)).
- (2) [OJ L 264, 27.9.1990, p. 7](#). Regulation as amended by Regulation (EC) No 610/95 ([OJ L 64, 22.3.1995, p. 1](#)).
- (3) [OJ L 264, 27.9.1990, p. 59](#).
- (4) [OJ L 248, 23.9.1994, p. 8](#). Regulation as amended by Regulation (EC) No 82/95 ([OJ L 14, 20.1.1995, p. 1](#)).
- (5) [OJ L 64, 22.3.1995, p. 1](#).
- (6) [OJ L 111, 9.4.1998, p. 1](#).
- (7) Commission Regulation (EC) No 1094/2002 ([OJ C 166, 12.7.2002, p. 2](#)).
- (8) [OJ C 84, 8.4.2003, p. 2](#).
- (9) [OJ C 81, 31.3.2004, p. 8](#).
- (10) Production capacity was established on the basis of the maximum hourly output of the machines installed, multiplied by the annual maximum working hours, less a deduction for maintenance and other similar production interruptions. The method applied is the same as the capacity calculations made for the Community Industry.
- (11) Free market consumption is defined as the total import volumes of the product concerned plus the total verified sales volumes on the Community market of the three cooperating Community producers which produce for the free market. See also recital (60).
- (12) [^{F1}The particles are irregular and not free flowing in contrast to 'ready to' press powder particles, which are spherical or granular shaped, homogeneous and free flowing. The lack of fluidity can be measured and established by using a calibrated funnel, e.g. a HALL flow meter according to ISO standard 4490.]

Textual Amendments

- F1** Substituted by [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](#).

Changes to legislation:

There are currently no known outstanding effects for the Council Regulation (EC) No 2268/2004.