COUNCIL REGULATION (EC) No 1951/97

of 6 October 1997

amending Regulation (EEC) No 2552/93 for the purpose of imposing a definitive anti-dumping duty on imports of artificial corundum 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], hereinafter referred to as 'the Basic Regulation', and in particular Article 11 (6) thereof,

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

Whereas:

A. PREVIOUS PROCEDURE

(1) Following a complaint lodged by the European Chemical Industry Council (CEFIC), the Commission, by Regulation (EEC) No 2690/84 [2], imposed provisional anti-dumping duties on imports of artificial corundum originating *inter alia* in the People's Republic of China. Subsequently the Commission, by Decision 84/650/EEC [3], accepted an undertaking given by the China National Import and Export Corporation and repealed the provisional duties previously imposed.

(2) Following a request by CEFIC, a review of the aforementioned measures was carried out which led to Decision 91/512/EEC [4] by which the Commission accepted undertakings given six Chinese companies authorized by the Chinese Chamber of Commerce to export artificial corundum to the Community.

(3) It was subsequently found that other exports were being made from China by other exporters and trade organizations previously unknown to the Commission which led to the imposition, by Council Regulation (EEC) No 2552/93 [5], of a definitive residual anti-dumping duty of 30,8 % on imports of artificial corundum originating in the People's Republic of China, with the exception of imports sold for export to the Community by the six Chinese companies from which price undertakings had been accepted.

(4) Subsequently, the Commission established that the abovementioned undertakings had been violated. The anti-dumping duty was consequently extended to the six Chinese companies concerned by Council Regulation (EC) No 2556/94 [6], with the result that an anti-dumping duty of 30,8 % was applied as from 22 October 1994 to all imports of artificial corundum originating in the People's Republic of China.

B. REVIEW INVESTIGATION

(5) On 27 July 1995, a request for a review was lodged by CEFIC on behalf of Community producers representing a major proportion of the Community production of artificial corundum. This request was made pursuant to Article 12 of Council Regulation (EC) No 3283/94 [7], which was subsequently replaced by the Basic Regulation, on the grounds that the existing definitive anti-dumping duty on imports of artificial corundum originating in the People's Republic of China had not resulted in sufficient movement in resale prices in the Community, the duty having been compensated by a further decrease in the Chinese export prices. Consequently the Community industry was allegedly suffering further injury from the Chinese dumped imports.

(6) As a period of more than four years had elapsed since the adoption of measures following the last review in 1991 and in the light of evidence that indicated changed circumstances regarding both dumping and injury, the Commission considered it appropriate to initiate an interim review covering dumping and injury pursuant to Article 11 (3) of the Basic Regulation.

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).
[2] OJ L 255, 25. 9. 1984, p. 9.
[3] OJ L 340, 28. 12. 1984, p. 82.
[4] OJ L 275, 2. 10. 1991, p. 27.
[5] OJ L 235, 18. 9. 1993, p. 1. Regulation as last amended by Regulation (EC) No 709/95 (OJ L 73, 1. 4. 1995, p. 1).
[6] OJ L 270, 21. 10. 1994, p. 24.
[7] OJ L 349, 31. 12. 1994, p. 1. Regulation as amended by Regulation (EC) No 355/95 (OJ No L 41, 23. 2. 1995, p. 2).

(7) On 12 January 1996, by a notice published in the *Official Journal of the European Communities* [1], the Commission announced the review of Regulation (EEC) No 2552/93, pursuant to Article 11 (3) of the Basic Regulation.

(8) The Chinese producers claimed that the request for review contained evidence relating exclusively to the evolution of resale prices in the Community market, while no meaningful information was provided about the complainants' current market situation, as would normally be the case in a complaint giving rise to full investigation of dumping and injury.

In this respect, it should be noted that the complaint contained sufficient evidence of both a sharp increase in the volume and market share of the Chinese imports of artificial corundum combined with a decrease in the Chinese export prices and of a corresponding decline of the Communtiy producers' market share.

(9) The Commission officially advised the producers, exporters and importers known to be concerned, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(10) The Commission sent questionnnaires to parties known to be concerned and received replies to its questionnaires from the complainant producers and two other producers in the Community, eight Chinese exporters and three importers in the Community. Concerning the market economy country, to be used as analogue country for the purpose of establishing normal value for the People's Republic of China, the Commission received replies from three producers in Brazil and one producer in the United States of America (USA).

(11) The Commission sought and verified all information it deemed necessary for the purposes of a determination and carried out investigations at the premises of the following companies:

(a) *Community producers:*

— Péchiney Electrométallurgie, France,

— Universal Abrasives, United Kingdom,

— H.C. Starck, Germany;

(b) *Importers in the Community:*

(i) related importer

— Sinabrasive Import-Export GmbH., Ratingen, Germany;

(ii) unrelated importers

— Smyris Abrasive s.r.l., Pero, Italy,

— Mineralien-Werke Kuppenheim GmbH., Kuppenheim, Germany.

(12) The following Chinese exporters fully replied to the questionnaire.

— China Abrasives Import and Export Corporation, Zhengzhou, PRC,

— CMEC Guizhou Corporation Ltd, Guizhou, PRC,

— Guangdong Machinery & Equipment Import & Export, Guangzhou, PRC,

— Guiyang Xinsheng Abrasives & Abrasive Tools Factory, Guiyang, PRC,

— Mount Tai Abrasives Company, Shandong, PRC,

— Shandong Machinery & Equipment Import & Export Corp., Qingdao, PRC,

— The 7th Grinding Wheel Factory Import & Export Corp., Guizhou, PRC,

— White Dove (Group) Corporation Ltd, Zhengzhou, PRC.

(13) As Brazil has been used as the analogue country for the purpose of establishing normal value, as explained in recitals 25 to 28, the Commission conducted an investigation at the premises of three Brazilian producers of artificial corundum. Their names are not mentioned in this Regulation for reasons of confidentiality.

(14) The investigation of dumping covered the period from 1 January 1995 to 31 December 1995 (hereinafter referred to as the 'investigation period'). The period for the determination of injury covered the years 1992 to 1995. The geographical scope of the investigation was the Community as constituted at the time of the initiation, thus including all 15 Member States.

(15) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the amendment of the existing measures. They were also granted a period within which to make representations subsequent to these disclosures.

(16) Since the interim review in respect of imports from China was not concluded before the end of the five-year period of application of the measures concerned (that it to say on 26 July 1996), the interim review has also covered, in accordance with Article 11 (7) of the Basic Regulation, the circum-

[1] OJ C 7, 12. 1. 1996, p. 5.

stances set out in Article 11 (2) of the said Regulation (the circumstances to be examined in the context of an expiry review, i.e. likelihood of continuation or recurrence of dumping and injury). This is why the investigation has exceeded the normal period of one year as provided for in Article 6 (9) of the Basic Regulation.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Description of the product under consideration

(17) The product concerned by this review is fused aluminium oxide, also known as artificial corundum falling from 1 January 1997 onwards within CN codes 2818 10 10 and 2818 10 90. It is principally produced in two basic varieties, for which the chemical formula is identical (A1203):

— brown artificial corundum, consisting of 94 to 97 % aluminium oxide,

— white artificial corundum, consisting of 97,5 % to 99,5 % aluminium oxide.

Small quantities of pink artificial corundum which has a content of aluminium oxide similar to the white artificial corundum are also produced and sold in the Community. Hence the term 'white artificial corundum' will be intended hereafter to include pink artificial corundum as well.

(18) The raw material for the production of brown artificial corundum is bauxite in natural or calcined form, while for the production of white artificial corundum, calcined alumina is used, which is a processed form of bauxite. Artificial corundum is manufactured by melting the raw material in electric-arc furnaces at temperatures higher than 2 000 °C.

Artificial corundum, due to its specific characteristics, notably hardness, is mainly used in the production of abrasive materials such as grinding wheels, cutting wheels, sandpaper and in the production of refractory materials.

The production process generates a certain amount of lower quality artificial corundum containing less than 94 % of aluminium oxide. Its use is limited to the production of resin-bonded grinding wheels and to sand-blasting purposes.

(19) In the Community, the product is sold mainly in the form of grains for mixture (less than 10 mm) and in grains for grit size (crystalline powder). These latter are normally classified following international standards (FEPA in the Community). However, artificial corundum is also sold in the form of lumps of variable sizes of more than 100 mm.

These different forms in which the product in question is sold correspond to different steps of the final stage of the production process. For the purpose of the investigation, both white and brown artificial corundum have been classified in the following four categories, according to the form in which the product is sold:

— lumps,

— grains for mixture (size range: 0 to 10 mm),

— grains for grit size macro (FEPA standard: 8 to 220),

— grains for grit size micro (FEPA standard: 240 to 1 200).

(20) The Chinese producers submitted that brown and white artificial corundum are two distinct products, with different qualitites and characteristics which make them not interchangeable for the production of specific abrasive end-products. Accordingly, these producers claimed that brown and white artificial corundum should be treated separately for the purpose of the anti-dumping investigation.

It should be noted, however, that the arguments put forward by the Chinese producers refer exclusively to the use of artificial corundum for manufacturing abrasive end-products, and not to the production of refractory masses which constitutes the other main end use of artificial corundum and for which the interchangeability of white and brown artificial corundum was not put into question.

Furthermore, it has been found that brown and white artificial corundum are made from the same raw material, i.e. bauxite, and through the same basic production process. Moreover, they both have the same basic chemical and physical characteristics and final applications. They are both used for the production of abrasives and refractory materials, are to a certain degree interchangeable as regards both these uses; hence no clear dividing line can be established between basic varieties as far as their use is concerned. Therefore, for the purpose of this investigation, the various forms of artificial corundum have been considered as a single product. This approach confirms the one adopted in the previous investigation.

2. Like product

(21) The Commission found that the artificial corundum produced and sold in the Community and in Brazil, which was chosen as the analogue country, on the one hand, and that imported from China an the other, were made from the same raw material and were manufactured by using the same basic technology. Moreover, it was found that Community and Brazilian corundum were comparable in their essential physical and chemical characteristics, applications and uses to that imported from the people's Republic of China.

(22) In this context, the Chinese producers argued that the artificial corundum imported from China in lump form is not in any sense comparable with the artificial corundum in grain form marketed by the Community producers.

In this respect, it was found however, that lumps and grains correspond to two subsequent final steps of the production process of artificial corundum. Indeed, lumps can be easily processed into grains and this operation is often carried out by the importers/traders with little effect on the market price of the product. Furthermore, Chinese exports of artificial corundum in the form of lumps represented only 25 % of total exports of the product in question to the Community, the rest being exported in the form of grains. This mix of sales was similar to that of the Community producers.

(23) On the basis of all the above, it is considered that artificial corundum produced and sold in the Community and Brazil, as well as that imported from the People's Republic of China, are like products within the meaning of Article 1 (4) of the Basic Regulation.

D. DUMPING

(24) The continued existence of dumping was verified to ascertain firstly whether there were still grounds for continuation of measures against artificial corundum originating from the People's Republic of China and, if so, whether the alleged changed circumstances with regard to the dumping margin required the existing measures to be adapted accordingly.

1. Normal Value

(25) In establishing normal value, account was taken of the fact that the People's Republic of China is considered to be non-market economy country. Therefore, in accordance with Article 2 (7) of the Basic Regulation, the determination of normal value had to be based on a market economy third country. In this respect, the USA and Brazil were envisaged in the notice of initiation of the review as appropriate market economy countries for the determination of normal value. The Chinese producers submitted that Brazil was inappropriate because only one major producer operates in that market and alumina, the raw material for the production of white artificial corundum, is allegedly purchased at inflated prices from its major competitor in the domestic market or sourced from Australia. Consequently, it was argued that prices of artificial corundum in Brazil are abnormally high, and therefore exports to the Community from this country have ceased.

(26) The Commission requested the two known USA producers of artificial corundum to cooperate in this review, but only one of them agreed to answer the questionnaire. A request for cooperation was also made to the three known producers in Brazil which all agreed to provide the information requested in the questionnaire.

(27) The domestic sales of the product concerned by the three Brazilian producers during the investigation period have been found to represent about 80 % of the total exports from China to the Community. The relative size of these three producers was such that none of them appeared to have a dominant position on the Brazilian market. Furthermore, imports into Brazil from third countries have been estimated to represent about 20 % of the domestic market. Hence, Brazil is considered to be a sufficiently open and competitive market for artificial corundum. Bauxite, the main raw material, is easily available in an area close to the plants and no relevant supply from Australia has been recorded. No evidence was found of alumina being sold at inflated prices by any of the three producers to the other. Finally, Brazilian exports of artificial corundum to the Community during 1995 were almost 3 000 tonnes, which is a significiant volume. In the light of the above, and taking into account the number of co-operating producers in the USA and Brazil, the latter country is considered to be an appropriate market economy country for the purpose of establishing normal value for the Chinese exports to the Community.

(28) Normal value has been determined for each product type of artificial corundum exported from China to the Community during the investigation period. Normal value per product type was generally established on the basis of the prices paid or payable by independent customers in Brazil for sales of the like product made in sufficient quantities and in the ordinary course of trade. Where it was found that no, or insufficient, sales of a given product type were made in Brazil by any of the producers investigated, normal value for this type was constructed on the basis of its costs of production in Brazil, plus a reasonable amount for selling, general and administrative expenses and for profits, in accordance with Article 2 (3) of the Basic Regulation. The amounts of these expenses and profit have been determined on the basis of the actual amounts applicable to production and sales, in the ordinary course of trade, of the like product for the producer in question in the Brazilian market, in accordance with Article 2 (6) of the Basic Regulation.

2. **Export Price**

(29) Exports of the product concerned to the Community by the Chinese producers which replied to the Commission's questionnaire represented about 76 % of total imports from China during the investigation period as recorded in Eurostat statistics. The export price was generally established on the basis of the price actually paid or payable for the product sold for export from the People's Republic of China to independent customers in the Community, in accordance with Article 2 (8) of the Basic Regulation.

(30) One Chinese producer provided information about the export price which was found to be false. This information has been disregarded and, in accordance with Article 18 of the basic Regulation, the export prices of the producer in question were determined on the basis of the information provided by its unrelated importers in the Community.

(31) Two other Chinese producers sold for export to a related importer in the Community, but only in one case did the importer cooperate, and it was possible to construct the export price on the basis of the resale price at which the imported product was first resold to an independent buyer. From the resale price, all costs between importation and resale incurred by the importer, as well as a reasonable amount for profit, were deducted, so as to establish a reliable export price, in accordance with Article 2 (9) of the Basic Regulation. The amount for profit has been calculated by reference to those realised by the cooperating independent importers. As to the other Chinese producer, it was considered non-cooperating.

(32) With regard to exports made by either the aforementioned non-cooperating Chinese producer or those who did not manifest themselves, the export price had to be established pursuant to Article 18 of the Basic Regulation on the basis of the facts available. It was considered that the figures reported by Eurostat, duly adjusted to deduct the volume and value of the imports into the Community from the cooperating Chinese producers, provided the most appropriate basis, and the export price has been determined accordingly.

3. **Comparison**

(33) Normal value and export price have been compared for each product type at FOB level. For the purpose of ensuring a fair comparison between normal value and export price, account was taken and, where appropriate, adjustments made in accordance with Article 2 (10) of the Basic Regulation, for differences affecting price comparability.

(34) While a considerable proportion of domestic sales in Brazil was made to end-users, i.e. grinding wheel producers and refractory producers, the major part of the Chinese exports to the Community was made to traders. However, no clear price difference has been found in Brazil between sales to traders and sales to end-users. Hence, no adjustment has been made with regard to differences in levels of trade.

(35) Adjustments for other factors affecting price comparability have been made. Ocean freight, insurance costs for transport and credit costs were deducted, where appropriate, from the export price, in order to express it at a Chinese border FOB level.

(36) In the case of normal value, adjustments for inland transport to harbour and loading costs have been made in order to bring the normal value, initially established at an ex-factory level, to an FOB Brazilian border level. Adjustments for credit costs have also been made where appropriate.

(37) The Chinese producers submitted that artificial corundum in grain form originating in China must undergo further processing by the importer in order to be made fit for sale in the Community market. The Commission found that the Chinese product actually underwent a number of processes including resieving, removal of iron and finally packing before being sold to the end-user. Moreover, sometimes the product needed to be dried and/or made more cubic (block shaped). The costs relating to these operations have been deducted from normal value for the purpose of comparability with the export price of the Chinese product.

(38) Regarding other alleged physical differences which are claimed to result in a lower quality of the Chinese product, no evidence has been provided to substantiate such allegations. Hence, no further adjustment was granted in this respect.

4. **Dumping margin**

(39) In accordance with Article 2 (11) of the Basic Regulation, the weighted average normal value per product type of artificial corundum was compared to the weighted average export price of the corresponding type. This comparison showed the existence of dumping, the dumping margins per type being equal to the amount by which the normal value exceeded the export price.

(40) Seven Chinese exporters asked that individual dumping margins should be determined for them. However, some exporters did not provide any documentary evidence to support their claim; some others provided only the business licence. This document was not considered sufficient to support the claim of these exporters to be indepedent of the State. Consequently, their request could not be accepted. It is therefore considered appropriate, in accordance with previous Community practice, to establish one country-wide dumping margin.

(41) This margin has been calculated by comparing the overall weighted average normal value to the overall weighted average export price. The amount of this dumping margin, expressed as a percentage of the CIF Community frontier export price duty unpaid, has been established to be 88,7 %.

E. COMMUNITY INDUSTRY

(42) The complaining Community producers which took part in the investigation account for almost 50 % of the total Community production of artificial corundum. The other known producers did not fully cooperate in the investigation, but expressed their support for the review of the measures in force.

Given the above, the complaining Community producers which cooperated with the investigation are considered to constitute the Community industry within the meaning of Article 4 (1) of the Basic Regulation for the purpose of the investigation.

F. INJURY

1. Community consumption

(43) The consumption of artificial corundum in the Community increased by 70 272 tonnes from 1992 (272 913 tonnes) to the end of the investigation period (343 185 tonnes). This represents an overall increase of 25 %. This increase was constant as from 1993, after a slight decrease in 1992 to 1993 by 2,4 %.

2. Volume and prices of the dumped imports

2.1. *Volume and market share of imports*

(44) The volume of imports from China increased continuously and more than quadrupled during the period examined, from 13 403 tonnes in 1992 to 54 836 tonnes in 1995. The market share of these imports followed a similar progressive trend: 4,9 % in 1992, 6,6 % in 1993, 9,7 % in 1994 and 16 % in 1995, gaining a further 11 % of market share since 1992.

2.2. *Prices of the dumped imports*

(45) For the investigation period, the undercutting calculations were made separately for brown and white artificial corundum and each type was classified in four categories according to the grain mix. For the purposes of comparison, an adjustment was made to the exporters' prices of grain (ex-Community frontier) to take account of customs duty and anti-dumping duty plus an allowance in respect of processing costs incurred by importers in the Community (based on information collected during the investigation). The Community producers' prices were considered at ex-works level. Comparisons were made at comparable levels of trade. The comparison showed a weighted average undercutting margin of 21,7 % for all types of artificial corundum during the investigation period.

For the period between 1991 and 1994, while undertakings were in force, the investigation confirmed that the Chinese prices (Eurostat basis) were on average below the Community industry's prices and, indeed, below the undertaking prices. Moreover, the *ad valorem* duty of 30,8 % imposed in June 1994 was largely absorbed by a subsequent 24 % decrease in the export price between 1994 and 1995.

2.3. *Conclusion*

(46) The allegation made in the request for review was fully confirmed. The volume and market share of Chinese imports have substantially increased in the period examined and the replacement of the undertakings by a duty has resulted in a further fall in export prices.

3. Situation of the Community industry

3.1. *Production, production capacity, utilization rate*

(47) The production of the Community industry increased regularly, with the exception of 1993, from 91 056 tonnes in 1992 to 102 821 tonnes in 1995. However, this increase in production of 11 500 tonnes (12,9 %) should be seen in relation to an increase in consumption of 70 000 tonnes (25 %) during the same period.

(48) The production capacity of the Community industry remained stable, at 140 700 tonnes for the period examined.

(49) The capacity utilization rate on average for the Community industry decreased from 66 % in 1992 to 60 % in 1993 and increased thereafter up to 73 % in 1995, since production increased and the production capacity did not significantly change.

3.2. *Sales volume and market share of the Community industry*

(50) The sales of the complaining Community producers increased constantly in the period considered (with the exception of 1993) from 87 488 tonnes in 1992 to 93 531 tonnes in 1995 (increase by 6,9 %). However, this development of sales volume compared to the much more significant increase of the apparent Community consumption led to a decrease in the market share held by the Community industry from 32,1 % in 1992 to 27,3 % in 1995.

3.3. *Stocks*

(51) Stocks of artifical corundum held by the Community industry increased regularly from 11 842 tonnes in 1992 to 17 160 in 1995 (increase by 45 %).

3.4. *Price evolution*

(52) The prices of the Community industry have been depressed over the past years. The Community producers had to adapt their prices to the downward pressure exterted by the Chinese dumped imports. Prices decreased on average by 8 % from 1992 to 1994, albeit there was a slight recovery (less than 2 % on average) after 1994.

3.5. *Profitability*

(53) The Commission found that during the period considered, the artificial corundum Community industry has recorded poor financial results. The worst financial results were recorded in 1994 (−23,6 % on a weighted average basis) where prices were at their lowest. In 1995, (investigation period) losses decreased on a weighted average basis to −13,9 %, partly as a consequnce of an increase in this period of the Community industry's production of special types of the product designed for specific applications. However, on average, losses were prevalent throughout the period.

3.6. *Employment*

(54) The employment levels of the Community industry fluctuated during the period under consideration, representing in 1995 similar levels to 1992 (around 750 persons).

4. Conclusion on injury

(55) In spite of the measures in force, an overall assessment of the main economic indicators leads to the conclusion that the artificial corundum Community industry continues to show clear signs of economic difficulties. The production and sales of the complainants increased in the examined period; however, this increase did not reflect the increase in consumption with a consequent loss in market share on 4,8 % between 1992 and 1995. Financial losses were prevalent throughout the period examined and indeed the Community industry was unable to recover from the price pressure and financial difficulties encountered when the proceeding was reviewed in 1991. It is therefore concluded that the Community industry continued to suffer material injury during the period examined.

5. Causation of injury

5.1. *Dumped imports*

(56) The extent to which the injury suffered by the Community industry had continued to be caused by the dumped imports was examined. It was found that the injury consisted mainly in financial losses resulting from depressed prices together with a loss in market share in an expanding market. In this context, it is noted that the market share of the Chinese imports substantially increased at the same time as the Community industry's market share decreased. Moreover, the Chinese prices significantly undercut those of the Community industry. It was therefore concluded that the Chinese imports largely contributed to the continued injury sustained by the Community industry.

5.2. *Other imports*

(57) The effect of imports from other third countries in determining the injury suffered by the Community industry were analyzed.

Measures of artificial corundum were in force until 26 July 1996 for a number of countries, namely Hungary, Poland, the Czech Republic, Brazil, the Republic of Slovenia, the Russian Federation and Ukraine. No expiry review of these measures was requested by the Community industry which considered that the imports from the abovementioned countries no longer constituted a threat to this industry.

On the basis of Eurostat data, the investigation confirmed that during the period examined, imports from the abovementioned countries remained relatively stable in terms of market share (slight increase for Russia and Ukraine). Moreover, the prices of imports originating in these countries were in all cases consistently higher than the Chinese prices and indeed there were no indications that such imports were being dumped.

5.3. *Structure of the industry*

(58) The Commission examined whether the difficulties faced by the industry could be attributed to structural problems. It was found that considerable efforts of rationalization have been made by the Community industry, allowing this industry to develop the production of a significant range of types of artificial corundum, including special types, and to be competitive with regard to the product concerned. Moreover, this industry has made significant investments, in particular to comply with environmental requirements, and is overall modernized.

5.4. *Conclusion on causation*

(59) No other factors were found which could have had a particular impact on the situation of the Community industry. It is therefore concluded that the imports from China, because of their increased volumes and low prices have, in isolation, continued to cause material injury to the Community industry.

6. Likelihood of continuation of dumping and injury

(60) In the light of the above analysis and in order to assess the effect of the expiry of the measures in force, the following was considered:

(61) — since measures were first imposed in 1984, the Community artificial corundum industry has undergone considerable restructuring, with some companies closing down and others merging. Furthermore, the industry has tended to develop the production of more specialized types of artificial corundum, in particular that of white artificial corundum. In spite of these restructuring efforts, the present review has shown that continued dumping and price undercutting has jeopardized the possibility of the industry's recovery, with low financial results incurred by all producers. Should measures be allowed to lapse, this could only worsen the difficulties faced by this industry,

(62) — as regards the issue of dumping, it is noted that the measures in force have, in recent times, generally been insufficient to prevent dumping from continuing with a consequent substantial increase in the volume of the imports concerned. The market share of Chinese imports increased from 5 % in 1992 to 16 % in 1996. Moreover, it is noted that the undertakings in force between 1991 and 1994 were not adhered to, and the *ad valorem* duty subsequently imposed in 1994 as a result has been largely absorbed by a significant decrease in the export price. In the light of the behaviour of the exporters concerned and the rate of increase of Chinese imports, the indications are that dumping is likely to continue, causing further injury in the absence of effective measures.

(63) It follows from the foregoing that an expiry of the measures would be likely to increase the injurious effects of dumping and, consequently, further weaken the situation of the Community industry. A continuation of the measures appears therefore warranted, but they have to be adapted in the light of findings on dumping and injury based on the results of this investigation, in order to ensure that the measures are appropriate in the circumstances found.

G. COMMUNITY INTEREST

1. The Community artificial corundum industry

(64) The Community artificial corundum industry was in the investigation period composed of large companies located in different Member States. Artificial corundum represents an important branch of their activities for which constant investment has been made in the recent years in order, in particular, to ensure compliance of production methods with environmental requirements. Furthermore, this industry is able to supply a wide range of types of artificial corundum, including a number of specialities which are designed for specific applications, in particular in the steel and car manufacturing industries. The maintenance of this industry is therefore, from the viewpoint of variety and capacity for specialization, in the interest of users in the Community. In this context, it is noted that although not all types of the product have been imported from China, the investigation has shown that the continued imports at low prices of certain types of corundum are putting at risk the viability of the Community industry as a whole and that a further deterioration could be expected in the absence of effective measures.

(65) One association of abrasive producers pointed out that the anti-dumping measures have been in force for a considerable period. This association claimed that in the recent past a number of producers had closed down and others merged, with the result that the number of suppliers on the side of the Community industry had been considerably reduced and might therefore no longer justify the continued imposition of the measures.

In this respect, it is noted that the present producers of artificial corundum account for a significant production capacity, which would allow the supply of approximately 90 % of the artificial corundum consumption in the investigation period. Furthermore, the industry has undergone considerable restructuring over the past years in an attempt to rationalize production; however, these efforts have been largely undermined by the continuous and increasing presence of the dumped imports. In particular, it is noted that the duty imposed in 1994 was almost entirely absorbed, thus undermining any useful effects of the measures to the industry.

(66) It was also claimed that the Community producers had a dominant position due to recent consolidations in the market and that this position would jeopardize the conditions of competition on the Community market. It should be noted that the merger referred to, which concerned one complainant producer and another producer in Austria was authorized pursuant to the Community competition legislation. Furthermore, given the existence of other Community producers in the market (a total of four producers following the said merger) and the presence of imports from a number of countries, this claim does not appear to be justified.

2. **The user industry**

(67) It is recalled that Community users of artificial corundum are mainly the manufacturers of abrasives (such as grinding and cutting wheels and disks, sandpaper and abrasive paper) and the refractory products industry (refractory masses for furnaces and safes).

The abrasive applications account for 70 % of the Community consumption and refractory applications for 30 %.

(68) No users contacted the Commission following the publication of the notice of initiation. The Commission has nonetheless sent questionnaires to a number of known major users of artificial corundum in the Community which represented a variety of possible uses of the product either imported from China or Community-produced. Several replies were received from companies and from one association of users.

(69) The information provided was mostly of a general nature and to a large extent incomplete, containing insufficient indications on the impact of measures. On the basis of all the information provided for both abrasive and refractory uses, it appears that the potential impact of the anti-dumping measures would vary considerably according to the content of artificial corundum in the end-products which, in turn, depends on the applications in both the abrasive and refractory industries. Indeed, the cost of artificial corundum in the final production cost of the end-products was estimated to range in the abrasive industry from 5 % to 25 % and in the refractory industry from 8 % to 40 %. However, any potential effect of a duty would be minimized by the fact that all users provide themselves with artificial corundum from a large number of countries as well as from the Community industry.

Considering that users purchase artificial corundum from different sources, and taking into account the level of consumption of Chinese artificial corundum in the Community in the investigation period, it was estimated that the average impact of an increase in the rate of duty on the costs of these industries' products would be for the abrasive industry 1,2 % and for the refractory industry 3 %.

(70) Furthermore, there appear to be users for whose specific applications artificial corundum from China could not be used. These users reported that they were dependent on Community industry supplies.

(71) One manufacturer of abrasive products commented that the duty could result in an encouragement to the Chinese producers no longer to trade artificial corundum but to manufacture and export finished products instead. However, no evidence was provided that this would be a probable consequence of maintaining the anti-dumping duties and it would in any event not be a sufficient reason in itself for not imposing duties.

(72) It was also submitted that some users of artificial corundum were suffering from the adverse effects of competition both on the Community market and the third country markets from third country competitors which could purchase raw materials not subject to anti-dumping measures. Given the wide diversity of applications of the product concerned, the general nature of these allegations, which were not sustained by substantiated evidence, were too imprecise to show to what extent such negative effects would affect the users

concerned. In any event, it is to be recalled that the investigation has proved that the existing anti-dumping duty has been absorbed by the Chinese exporters and that the measures in force previous to *ad valorem* duties were not adhered to. As a consequence, any alleged decrease in fair competition cannot be attributed to the anti-dumping duties in force. That argument has therefore to be rejected.

(73) It was also claimed by two abrasive users of artificial corundum that anti-dumping duties on artificial corundum from China would lead to relocation of production and job losses.

In the present case, one of the two companies which claimed that relocation could take place because of anti-dumping measures has already relocated part of its production to a third country, justifying this notably by the lower labour costs outside the Community; the other user admitted that relocation was an alternative to high costs of production and expenses related to importation and was a common trend among its competitors, irrespective of anti-dumping measures.

Given, in addition, that anti-dumping duties can hardly be blamed for being responsible for relocation decisions taken previously, since it was clearly established during the investigation that the anti-dumping duty has been absorbed completely by the Chinese exporters and has not had the expected effect on prices, this argument has to be rejected.

(74) A shortage of supply of certain types of artificial corundum was also alleged by one user which had contacted one Community producer which could not at that time deliver all the requested quantities. Another user, on the contrary, wrote that no shortage of supply took place to his knowledge. No other user raised this argument, which has consequently to be rejected.

(75) One user claimed that, in the context of trade globalization, no anti-dumping duties should be imposed.

It is recalled that anti-dumping measures are imposed in order to maintain fair conditions of trade and competition in accordance with Community legislation adopted in conformity with the World Trade Organisation rules. Given that this is not contested by the user in question, the allegation was not considered to be valid.

(76) It must also be noted that some users expressly indicated that anti-dumping measures would have a favourable effect on them since, quality and proximity being reported to be the decisive factors for the choice of the supplier of artificial corundum by certain types of user, the defence of the situation of the Community industry would provide such advantages in the future and therefore be in these users' interest.

(77) Finally, it is considered that, although anti-dumping duties should allow the prices of the Community industry to increase, any increase would be limited by the high level of competition in the Community market and the number of alternative sources. Overall, the amended measures should therefore not result in any significant adverse effect on users.

3. Conclusion on Community interest

(78) In the light of the above, it is considered that there are no compelling reasons for not maintaining the measures in the present case. Furthermore, it should be noted that the Community industry has made considerable investments and that this restructuring has led to improved efficiency. It is therefore concluded that the Community interest calls for anti-dumping measures to be maintained in order to eliminate the injurious effects of dumped imports and that the measures should be amended in accordance with the present findings.

H. MEASURES

(79) When calculating the adequate amount of duty, the Council has noted that the injury caused to the Community industry consists mainly of substantial financial losses due to depressed prices resulting from price undercutting. It is thus necessary that the measures taken allow the Community industry to improve its financial situation in the future.

(80) In this respect, an injury elimination level has been calculated, based on the weighted average cost of production per product type of the Community producers plus a profit of 5 % considered reasonable for this type of industry. This injury elimination level was then compared to the weighted average import prices on a CIF basis, duties paid, for the same product types as used for the undercutting calculations and adjusted to take account of import and processing costs incurred by the importers.

Since the result of this comparison showed a higher injury level than the dumping margin established, the duty should be based on the dumping margin found, i.e. 88,7 % in accordance with Article 7 (2) of the Basic Regulation.

(81) In order to ensure the effectiveness of the measures and minimize the risk that the duty be evaded by price manipulation, it is considered appropriate to express the duty as a fixed amount of ECU per tonne.

The amount of the duty has been calculated on the basis of the dumping level mentioned above and amounts to ECU 204 per tonne,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EEC) No 2552/93 shall be replaced by the following:

'Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of artificial corundum, falling within CN codes 2818 10 10 and 2818 10 90 originating in the People's Republic of China.

2. The rate of the duty applicable to the net free-at-Community-frontier price, before customs clearance, shall be ECU 204 per tonne.

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

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 6 October 1997.

For the Council

The President

J. POOS