II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 287/2011

of 21 March 2011

imposing a definitive anti-dumping duty on imports of tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [1] ('the basic Regulation'), and in particular Articles 9(4) and 11(2), 5 and 6 thereof,

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

(4) By Regulation (EC) No 2268/2004 [7], following an expiry review, the Council imposed an anti-dumping duty of 33 % on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China ('PRC').

(5) By Regulation (EC) No 1275/2005 [8], the Council amended the definition of the product scope to also cover tungsten carbide simply mixed with metallic powder.

2. Request for a review

(6) Following the publication of a notice of impending expiry [9] of the definitive anti-dumping measures in force, the Commission received on 30 September 2009 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by the European Association of Metals (Eurometaux) ('the applicants') on behalf of Union producers representing a major proportion, in this case more than 85 %, of the total Union production of tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 264, 27.9.1990, p. 7.
[3] OJ L 264, 27.9.1990, p. 59.
[4] OJ L 248, 23.9.1994, p. 8.
[5] OJ L 64, 22.3.1995, p. 1.
[6] OJ L 111, 9.4.1998, p. 1.
[7] OJ L 395, 31.12.2004, p. 56.
[8] OJ L 202, 3.8.2005, p. 1.
[9] OJ C 115, 20.5.2009, p. 18.

(7) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and recurrence of injury to the Union industry.

3. **Initiation**

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 30 December 2009, by a notice published in the *Official Journal of the European Union* [1] ('the notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. **Investigation**

4.1. *Investigation period*

(9) The investigation of continuation or recurrence of dumping covered the period from 1 January 2009 to 31 December 2009 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a recurrence of injury covered the period from 1 January 2006 to the end of the RIP ('the period considered').

4.2. *Parties concerned by the investigation*

(10) The Commission officially advised the applicant, other known Union producers, exporting producers, importers and users known to be concerned, producers in the analogue country and the representatives of the PRC of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(11) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(12) The Commission sent questionnaires to all parties known to be concerned and to those who made themselves known within the deadlines set in the Notice of initiation. Replies were received from seven Union producers, one exporting producer in the PRC, one exporting producer in the analogue country and three users.

(13) None of the importers replied to the sampling exercise nor supplied the Commission with any information or made themselves known in the course of the investigation. As only one exporting producer from the PRC came forward with the requested information, it was not necessary to select a sample.

(14) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following companies:

(a) *Union producers*

— Wolfram Bergbau und Hütten-GmbH Nfg.KG., St Peter, Austria

— H. C. Starck GmbH & Co. KG, Goslar, Germany

— Eurotungstène poudres S.A., Grenoble, France

— Global Tungsten & Powders spol. s.r.o, Bruntál, Czech Republic

— Treibacher Industrie AG, Althofen, Austria

(b) *Analogue Country*

— Global Tungsten & Powders Corp., USA

(c) *User*

— Sandvik Hard Materials, Epinouze, France

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

(15) The product concerned by the present review is tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide originating in the PRC and currently falling within CN codes 2849 90 30 and ex 3824 30 00.

(16) Tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide are compounds of carbon and tungsten produced by heat treatment (carburisation in the first case, fusion in the third). These 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) The present investigation confirmed that the product concerned manufactured and sold by the exporting producer to the Union is identical in terms of physical and chemical characteristics and uses to the product produced by the Union producers and sold on the Union market or to the one produced and sold in the analogue country and are, therefore, considered to be like products within the meaning of Article 1(4) of the basic Regulation.

[1] OJ C 322, 30.12.2009, p. 23.

C. **LIKELIHOOD OF A CONTINUATION OR A RECURRENCE OF DUMPING**

1. **Preliminary remarks**

(18) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping. It is recalled that in the context of investigation under this Article, market economy treatment ('MET') is not reconsidered.

(19) As explained above, it was not necessary to apply sampling in respect of exporting producers in the PRC.

(20) At the sampling stage, the sole cooperating Chinese exporting producer appeared to represent less that 5 % of total Chinese exports to the Union. The Chinese authorities and the other interested parties were notified of the possibility that Article 18 of the basic Regulation might be applied due to a low level of cooperation by the exporting producers. The Commission did not receive any answer to this communication.

(21) However, further in the investigation, in the reply to the questionnaire, the cooperating exporting producer corrected the error in reporting its export sales to the Union and revised upwards its export volume to the Union. In parallel, the volumes of the product concerned exported to the Union from the PRC were further analysed based on Eurostat figures. As a result, and after the verification of the questionnaire reply, it was established that the export volume of the cooperating exporting producer was very high ([1]). On the basis of these findings, it was concluded that cooperation was high.

2. **Dumping of imports during the RIP**

2.1. *Analogue country*

(22) Since no exporting producer from PRC was granted MET in the previous investigations, the normal value for China was established in accordance with the provisions of Article 2(7)(a) of the basic Regulation.

(23) In the notice of initiation, it was envisaged to use the USA as an appropriate analogue country for the purpose of establishing normal value for the PRC. Interested parties were invited to comment on the appropriateness of this choice. No comments or objections were received from any parties in that respect. The USA was used also as an analogue country in the original investigation and no new or changed circumstances which would justify a change appeared to exist nor were any such circumstances communicated to the Commission. It was considered that the USA was representative as a reference market, especially in view of the openness and competitiveness of the US domestic market. In addition, one producer from the USA agreed to cooperate within the present review.

(24) Therefore, the USA has been used as an analogue market economy country for the purpose of this review.

2.2. *Normal value*

(25) Pursuant to Article 2(7) of the basic Regulation, normal value was established on the basis of the verified information received from the cooperating US producer in the analogue country, i.e. on the basis of prices paid or payable on the domestic market in the USA, for product types which were found to be sold in the ordinary course of trade.

(26) As a result, normal value was established as the weighted average domestic sales price to unrelated customers by the cooperating producer in the USA.

(27) It was first established whether the total domestic sales of the like product to independent customers of the US cooperating producer were representative in accordance with Article 2(2) of the basic Regulation, i.e. whether they accounted for 5 % or more of the total sales volume of the product concerned exported to the Union. The domestic sales of the cooperating US producer were found to be sufficiently representative during the review investigation period.

(28) It was subsequently examined whether the domestic sales of the like product could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for the like product sold on the US market the proportion of profitable domestic sales to independent customers during the RIP.

(29) Since the volume of profitable sales of the like product represented less than 80 % of the total sales volume of the like product, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales.

2.3. *Export price*

(30) As explained above, in view of the fact that the cooperating exporting producer represented more than 90 % of total Chinese imports to the Union, the export price was examined on the basis of data provided by that exporting producer, i.e. the duly adjusted price actually paid or payable for the product concerned when sold for export to the Union.

([1]) The exact percentage cannot be disclosed due to confidentiality reasons.

2.4. *Comparison*

(31) The weighted average normal value was compared with the weighted average export price for each type of product concerned, on an ex-works basis, at the same level of trade and the same level of taxation. In accordance with Article 2(10) of the basic Regulation, and for the purpose of ensuring a fair comparison, differences in factors which were claimed and demonstrated to affect price and price comparability were taken into account. Adjustments were made for ocean and domestic freight, insurance, bank charges and packaging costs. Further, a 5 % adjustment on the export price for the export tax was made and the adjustment for Value Added Tax (VAT) on the normal value.

2.5. *Dumping margin*

(32) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established per product type on the basis of a comparison of the weighted average normal value with the weighted average export price at the same level of trade. This comparison showed the existence of dumping during the RIP amounting to more than 80 %, hence at a significantly higher level than in the last review investigation (31 %). The precise dumping margin cannot be disclosed due to confidentiality reasons. The calculations have been based on data provided by one exporting producer in the PRC and one producer in the analogue country. Disclosure of the dumping margin would allow both the cooperating exporting producer in the PRC and the producer in the analogue country to deduce respectively the other's normal value and export price, which would amount to a clear breach of both parties right to confidentiality.

3. **Development of imports should measures be repealed**

3.1. *Preliminary remark*

(33) The data included in this section were obtained through the analysis of the data provided by the cooperating exporting producer, by Eurostat and by the review request.

3.2. *Spare capacity of the Chinese exporting producers*

(34) Data on spare capacity provided by the cooperating Chinese exporting producer were presented with a 20 % increase or decrease to respect confidentiality. The production capacity in the PRC amounted to around 21 000 tonnes in 2006 and 2007 and increased substantially to around 35 000 tonnes in 2008 and the RIP, an increase of more than 80 % over the period considered. These figures can be considered as conservative, as the review request reported a production capacity in the vicinity of 50 000 tonnes.

(35) In addition the cooperating exporting producer reported a substantial increase in capacity during the period considered.

(36) On the basis of the information collected during the investigation, the total Chinese production capacity exceeded considerably the actual Chinese production (by at least more than 20 000 tonnes in 2008 and in the RIP).

(37) In the RIP the PRC had a spare capacity amounting to a six fold of the Union consumption (25 000 tonnes as related to 3 800 tonnes of Union consumption).

(38) In view of the above, it is clear that a large part of the spare capacity available in the PRC could be used to increase exports to the Union in the absence of anti-dumping measures.

(39) Moreover, information submitted during the investigation indicated important distortions in the raw materials market used to manufacture the product concerned. Firstly, raw materials are subject to quotas granted by the Chinese authorities. Secondly, the Chinese authorities limit the access to raw materials through the imposition of export taxes and VAT rebate policies, which as indicated in recital 31 also applied to the product concerned. These factors constitute additional elements pointing to the likelihood of continuation of dumping in the present case.

3.3. *Attractiveness of the Union market and export prices to third countries*

(40) Price information provided by the cooperating exporter, which cannot be disclosed due to confidentiality reasons, shows that the Union constitutes indeed an interesting market for the Chinese exporting producers. Throughout the period considered the prices achieved on other third-country markets were below (except in 2007) those charged to the Union (roughly between 10 and 20 % lower in different years throughout the period considered).

(41) On these grounds, it can be concluded that in terms of prices achievable, the EU market is definitely an attractive alternative for the Chinese exporters.

(42) On that basis, Chinese exporting producers have an incentive to direct their exports to the Union market, should measures be repealed. The high prevailing prices in the Union market would allow the Chinese exporting producers to achieve better profit margins.

3.4. *Circumvention of measures*

(43) In 2005 the measures have been extended to an additional CN code as it was found that Chinese exporters were circumventing the measures by adding small quantities of another metallic powder (mostly cobalt) to tungsten carbide powder [1]. This confirmed circumvention practice is yet another element pointing to the conclusion of likelihood of continuation of dumping. It constitutes clear evidence that the European market continues to be attractive for the Chinese exporting producers who would likely direct higher volumes of tungsten carbide into the EU in the absence of anti-dumping measures.

3.5. *Conclusion of the likelihood of continuation of dumping*

(44) The foregoing analysis demonstrates that Chinese imports continued to enter the Union market at dumped prices with very high dumping margins. Given most notably the analysis of price levels on the EU and other third-country markets as well as the capacities available in the PRC, it can be concluded there is a likelihood of continuation of dumping should measures be removed.

D. SITUATION ON THE UNION MARKET

1. Definition of the Union industry

(45) Within the Union, the like product is manufactured by seven companies or groups of companies.

(46) They are therefore deemed to constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereinafter be referred to as the 'Union industry'.

2. Preliminary remark

(47) Data relating to imports of the product concerned into the Union originating in the PRC had to be indexed in order to preserve confidentiality pursuant to Article 19 of the basic Regulation.

(48) Regarding import volumes under TARIC code 3824 30 00 10, due to the inclusion of products other than the product concerned in the import data available at CN code level from Eurostat (CN code 3824 30 00), the following analysis has been made on the basis of import data at TARIC code level, supplemented by information from data collected in accordance with Article 14(6) of the basic Regulation. TARIC data are considered confidential as they provide a level of detail which allows for identification of the parties. For this reason some information was presented in ranges.

(49) Union industry data were obtained from the questionnaire responses of the seven Union producers.

3. Consumption in the Union market

(50) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, and import data from Eurostat.

(51) Between 2006 and the RIP, Union consumption decreased by 62 %, with the main decrease occurring between 2008 and the RIP. In the RIP, consumption decreased by 63 % compared to 2008.

Table 1

Consumption

	2006	2007	2008	RIP
Volume (tonnes)				
+ Total imports	1 766	1 885	2 303	755
+ EU production sold on the EU market	8 281	8 334	7 981	3 024
= Consumption	10 047	10 218	10 284	3 779
year-on-year increase		2 %	1 %	– 63 %

4. Volume, market share and prices of dumped imports from the People's Republic of China

(52) The volumes, market shares and average prices of dumped imports from the PRC developed as set out below. The following quantity and price trends are based on Eurostat data.

Table 2

Imports from PRC

	2006	2007	2008	RIP
Volume of imports from the country concerned (tonnes)	More than 700	More than 700	More than 400	More than 60
Index (2006 = 100)	100	104	60	11
Market share of imports from the country concerned	7,1 %	7,3 %	4,2 %	2,1 %
Price of imports from the country concerned (EUR/tonne)	25 622	21 883	22 434	22 110
Index (2006 = 100)	100	85	88	86

[1] 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 (OJ L 202, 3.8.2005, p. 1).

(53) The volume of dumped imports of the product concerned originating in the PRC has decreased by 89 % over the period considered and reached a level of around 80 tonnes during the RIP. Their market share also dropped from 7,1 % in 2006 to 2,1 % in the RIP.

(54) A possible explanation for this decrease is a substantial increase of PRC's domestic consumption during the period considered. In addition, through a system of export quotas and export tariffs Chinese authorities appear to pursue a policy of conserving PRC's tungsten resources.

(55) Prices of Chinese imports decreased by 14 % during the period considered. This evolution reflects the general trend also observed with regard to the Union industry prices.

(56) The comparison also showed that imports from the PRC were undercutting the prices of the Union industry by more than 10 %, after deduction of the anti-dumping duty in place. These results are the same as in the last review investigation ([1]).

5. **Imports from other countries**

(57) The volume of imports from other countries during the period considered are shown in the table below. The quantity and price trends are based on Eurostat data.

Table 3

Imports from other countries

	2006	2007	2008	RIP
Imports from other counties (tonnes)	1 050	1 138	1 873	675
Index (2006 = 100)	100	108	178	64
Market share of imports from other countries	10,5 %	11,1 %	18,2 %	17,9 %
Average price (EUR/tonne)	27 309,1	26 626,0	21 607,5	24 867,4
Index (2006 = 100)	100	97	79	91
US Market share	4,2 %	3,9 %	3,9 %	3,6 %
Average price (EUR/tonne)	32 948,1	32 356,0	29 353,3	32 054,4
South Korea Market share	2,2 %	2,4 %	2,6 %	4,4 %
Average price (EUR/tonne)	33 733,8	29 969,5	25 789,0	24 503,7

(58) The imports from third countries decreased by 36 % over the period considered. They followed a general market trend triggered by the shrinking consumption (a drop by 62 %), but not at the same pace. Thereby the market share of these imports has increased from 10,5 % to 17,9 %. However, the impact of those imports on the Union industry cannot be considered negative as demonstrated in recitals 85 to 88 below.

(59) It should be noted that the market share of the Republic of Korea ('Korea') doubled during the period considered, reaching 4,4 %. The Korean average import prices decreased during the period considered, however remaining consistently higher than the average selling price of Chinese export sales.

6. **Economic situation of the Union industry**

(60) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry.

6.1. *Production*

(61) The Union industry's production first increased by 5,8 % in 2007 and 11,6 % in 2008, compared to 2006, and then declined sharply during the RIP, by 56 % compared to 2008.

([1]) See recital 65 of Regulation (EC) No 2268/2004.

Table 4

Total Union production

	2006	2007	2008	RIP
Volume (tonnes)				
Production	10 094	10 679	11 268	4 861
Index (2006 = 100)	100	106	112	48

6.2. *Capacity and capacity utilisation rates*

(62) Production capacity increased by 10,8 % between 2006 and the RIP. As production decreased, in particular during the RIP, the resulting capacity utilisation showed an overall decrease of 57 % between 2006 and the RIP, reaching a 39 % capacity utilisation during the RIP.

Table 5

Production capacity and capacity utilisation

	2006	2007	2008	RIP
Volume (tonnes)				
Production capacity	11 110	11 610	12 230	12 310
Index (2006 = 100)	100	105	110	111
Capacity utilisation	91 %	92 %	92 %	39 %
Index (2006 = 100)	100	101	101	43

6.3. *Stocks*

(63) The level of closing stocks of the Union industry increased by 20 % in 2008 compared to 2006 and then decreased by 26 % during the RIP.

Table 6

Stocks

	2006	2007	2008	RIP
Volume (tonnes)				
Closing stock	1 714	1 808	2 054	1 514
Index (2006 = 100)	100	106	120	88

6.4. *Sales volume*

(64) The sales of the Union industry on the Union market to unrelated customers slightly increased between 2006 and 2008 and then decreased by 61 % between 2008 and the RIP. Sales volumes increased in 2007 and 2008 but declined sharply, during the RIP. This development is in line with the general trend of decreasing consumption on the Union market.

Table 7

Sales to unrelated customers

	2006	2007	2008	RIP
Volume (tonnes)	5 594	5 630	5 874	2 292
Index (2006 = 100)	100	101	105	41

6.5. *Market share*

(65) The market share held by the Union industry was rather stable between 2006 and 2008, to increase thereafter by 4 percentage points between 2008 and the RIP. Overall, there has been an increase of 5 percentage points during the period considered.

Table 8

EU Market share

	2006	2007	2008	RIP
EU Market share	56 %	55 %	57 %	61 %
Index (2006 = 100)	100	99	103	109

6.6. *Growth*

(66) As the decrease in sales was slightly lower than the decrease in consumption, the Union industry was able to gain some market share.

6.7. *Employment*

(67) The level of employment of the Union industry declined by 17 % between 2006 and the RIP. Employment decreased also in the period 2006-2008, when production slightly increased, showing the efforts made by Union industry to improve its productivity. During RIP however, the sharp decrease of the output lead to a strong deterioration of employment.

Table 9

Employment

	2006	2007	2008	RIP
Average (period considered)				
Total employment	674	667	653	557
Index (2006 = 100)	100	99	97	83

6.8. *Productivity*

(68) Productivity of the Union industry's workforce, measured as output per person employed per year, increased in 2007 and 2008 by 7 % and 15 % respectively, compared to 2006, and then decreased by 49 % between 2008 and the RIP.

Table 10

Productivity

	2006	2007	2008	RIP
Productivity (tonnes per year/employee)	15	16	17	9
Index (2006 = 100)	100	107	115	58

6.9. *Sales prices*

(69) Average ex-works sales price of the Union industry to unrelated customers in the Union followed a declining trend over the period considered. Overall, the Union industry had to decrease its prices by 15,4 % between 2006 and the RIP.

(70) As explained in recitals 55 and 56, the prices of dumped imports from the PRC followed a similar trend to that of the Union industry, but were consistently lower than the prices of the Union industry. During the RIP, prices from the PRC were more than 10 % lower than the Union industry's prices.

Table 11

Unit price EU market

	2006	2007	2008	RIP
Unit prices of Union sales (EUR/tonne)	31 030	29 995	29 072	26 241
Index (2006 = 100)	100	97	94	85

6.10. *Wages*

(71) Between 2006 and the RIP, the average wage per employee increased by 4,8 %.

Table 12

Labour cost

	2006	2007	2008	RIP
Annual labour cost per employee	53 614	54 613	56 564	56 221
Index (2006 = 100)	100	102	106	105

6.11. *Investments and ability to raise capital*

(72) Between 2006 and 2008, the annual flow of investments in the product concerned made by the Union industry increased by 18 %. Investments between 2007 and 2008 increased by 103 %. However, during the RIP investments decreased by 65 % compared to 2008.

(73) Investments were mainly made in the construction of new facilities to produce tungsten material from used materials and scrap. Investments had to be reduced due to: (i) the decrease on the general level of production in the Union market, (ii) the distortions in the raw materials (see recital 39), (iii) the economic crisis.

(74) During the RIP, no significant investments were made. This can be explained in large part by the economic crisis which began in 2008 and reached its deepest point during the RIP when access to new capital was ever more difficult.

Table 13

Investments

	2006	2007	2008	RIP
Net investments ('000 EUR)	18 403	10 711	21 756	7 568
Index (2006 = 100)	100	58	118	41

6.12. *Profitability and return on investments*

(75) Thanks in part to the anti-dumping measures in force and in part to the efforts made by the Union industry to diversify the raw material sources, between 2006 and 2008 the Union industry was able to maintain a positive level of profitability, even if it overall decreased by 26 % during this period. During the RIP, however, the Union industry had a much less favourable result, showing a certain fragility in this respect.

(76) The return on investments ('ROI') broadly followed the profitability trend over the whole period considered.

Table 14

Profitability and ROI

	2006	2007	2008	RIP
Net Profit of EU sales to unrelated customers (% of net sales)	10,3 %	5,8 %	7,6 %	– 19,5 %
ROI (net profit in % of net book value of investments)	34,8 %	22,1 %	28,8 %	– 28,6 %

6.13. *Cash flow*

(77) The trend of cash-flow, which is the ability of the industry to self-finance its activities, remained positive during the period under investigation. However, between 2006 and the RIP, it decreased by around 35 %.

Table 15

Cash flow

	2006	2007	2008	RIP
Cash flow ('000 EUR)	36 125	39 868	44 102	23 540
Index (2006 = 100)	100	110	122	65

6.14. *Magnitude of dumping margin*

(78) Dumping from PRC continued during the RIP at a level which is significantly above the current level of measures. Furthermore, given the distortions on raw materials, the spare capacity and prices of the imports from the PRC, the impact on the Union industry of the actual margins of dumping cannot be considered to be negligible.

6.15. *Recovery from past dumping*

(79) It was analysed whether the Union industry recovered from the effects of past dumping. It was concluded that it managed to recover to a large extent from such effects given that the anti-dumping measures in force proved to be effective. However, the economic crisis stopped that process and has accentuated the difficulties of the Union industry.

7. **Impact of dumped imports and other factors**

7.1. *Impact of the dumped imports*

(80) In parallel to the shrinking consumption in the Union, the market share of Chinese imports decreased from 7,1 % to 2,1 % (see recital 52). The available information indicates that these imports were made at prices which were lower than those of the Union industry and also lower than those of the imports originating in other third countries. As mentioned in recital 56 above, based on a calculation excluding anti-dumping duty, the Chinese imports undercut the Union industry prices by 10,7 % during the RIP. It is recalled that the duty rate amounts to 33 %. Consequently, the level of undercutting demonstrates on one hand the effectiveness of the duties in place and on the other hand the necessity to continue the measures. This conclusion is reinforced by the fact that the undercutting found was at the same level as in the last review investigation. Hence, the price impact of dumped imports from the PRC on the Union industry remained unchanged and, in the absence of any evidence pointing to the contrary, it is likely to continue.

7.2. *Impact of the economic crisis*

(81) Due to the very negative economic conditions prevailing during the RIP in the tungsten's downstream sector, in particular in the sector of steel and cemented carbides, which represents the majority of tungsten consumption in the Union, the Union industry drastically reduced production and sales of the product concerned.

(82) Prior to the crisis, companies operating in the downstream sector had high level of tungsten' stocks that were not built up during the RIP, further affecting the production level of the Union industry.

(83) As production decreased, and as the Union industry is a capital intensive one, thus needing to produce certain volumes to keep down the unit fixed cost, the profitability was seriously affected.

(84) However, the analysis of the Union industry, before the crisis, proves the effectiveness of the anti-dumping measures in force. The investigation showed that the largest Union producers were making important investments in order to avoid the raw material distortions while at the same time they were able to compete in the market keeping a healthy position.

7.3. *Imports from other countries*

(85) It is estimated that the volume of imports from other third countries decreased by 36 % from 1 500 tonnes in 2006 to 675 tonnes in the RIP. The market share of imports from other countries increased from 10,5 % in 2006 to 17,9 % in the RIP. Their average imports price decreased by 8,9 % between 2006 and the RIP. The main importing countries were South Korea and the USA.

(86) The market share of imports from South Korea doubled over the period considered (from 2,2 % to 4,4 %). However, the available information indicates that during the RIP these imports were made at prices only slightly lower than those of the Union industry (by 6,6 %), but higher (by 9,8 %) than those of the imports originating in the PRC.

(87) The market share of imports from the USA decreased by 15,1 percentage points over the period considered (from 4,2 % to 3,6 %). The available information indicates that during the RIP these imports were made at prices which were above those of the Union industry and thus also substantially higher (by 31 %) than those of the imports originating in the PRC.

(88) In conclusion, among the biggest importers of tungsten carbide into the EU, the South Korean and US imports could not have a negative impact on the situation of the Union industry mainly because of their price levels (similar or even higher than the Union industry prices) and in the case of the US also because of the decreasing market share.

8. **Conclusion**

(89) Due to the effective anti-dumping duties in place, the Union industry was able to recover to some extent from the effects of past injurious dumping.

(90) Nevertheless, it cannot be concluded that the situation of the Union industry is secure. Although almost all injury indicators relating to the financial performance of the Union producers — such as profitability, return on investments and cash-flow — improved during the first years of the period considered, the investigation also showed that during the RIP all injury indicators deteriorated.

(91) Notwithstanding the fact that the decrease in demand during the RIP could be partially attributed to the economic crisis, the investigation carefully analysed the impact of low dumped priced exports from the PRC on the situation of the Union industry.

(92) As shown under recital 52, volumes of imports from the PRC indeed decreased between 2006 and the RIP. The prices of those imports decreased by 14 % over the same period, which when analysed from the perspective of the four-year period considered mirrors the development of the Union industry prices. It is notable, however, that the substantial price decrease of the Chinese dumped imports occurred between 2006 and 2007 (by 15 %), i.e. long before the economic crisis in the period when the Union industry was in the process of recovery. The prices of dumped imports from PRC stabilised thereafter and the financial-crisis related decrease appears to be limited. The timing of the substantial price decrease on the part of the Chinese exporters (before crisis) could indicate that they were setting off more concentrated and forceful price strategy in order to undercut the Union industry prices. Indeed the price differential between Chinese export prices and those of the Union industry amounted to 27 % and 22,8 % in 2007 and 2008 respectively.

(93) In 2008, export prices from China were 22,8 % lower than those to the Union industry. During the RIP, the gap decreased to 15,7 %. With the sharp decline in consumption, Union producers had to reduce their prices in order to keep market share.

(94) As shown under recital 57, the volume of imports from other third countries decreased by 36 %, in line with the decrease in consumption. Despite an increase in market share the impact of those imports on the situation of the Union industry cannot be considered negative, as demonstrated in recital 88 above.

(95) With regard to the viability of the Union industry it must be noted that the evidence collected during the investigation showed that the Union industry has been able to compete under normal market conditions against the imports from third countries and even when prices were lower than those of the Union producers the gap was not as significant as with the prices from China, as demonstrated in recitals 85 to 88 above.

(96) As a result of the amelioration of the Union industry situation in the years previous to the RIP, the industry invested in new cutting edge technology to produce the product concerned from scrap and partially circumvent the distortions in place on the raw materials.

(97) Taking into account the overall situation of the Union industry as well as the imports from PRC in the period from 2006 to RIP, in conclusion, in view of the positive developments of some indicators pertaining to the Union Industry, it is considered that the Union industry did not suffer material injury during the period considered. It was therefore examined whether there was a likelihood of recurrence of injury should the measures be allowed to lapse.

E. **LIKELIHOOD OF RECURRENCE OF INJURY**

1. **Preliminary remarks**

(98) As described in recitals 89 to 97, the imposition of anti-dumping measures allowed the Union industry to recover from the injury suffered, but only to some extent. Indeed when the exceptional levels of Union consumption experienced during most of the period considered significantly decreased during the RIP, the Union industry appeared in a fragile and vulnerable situation, still exposed to the injurious effect of the dumped imports from the PRC.

(99) In accordance with Article 11(2) of the basic Regulation, imports from the country concerned were assessed in order to establish if there was a likelihood of recurrence of injury.

2. **Chinese export volumes and prices to third countries**

(100) It was found that export price of Chinese sales on other third-country markets were also lower to those charged to the EU (roughly between 10 and 20 % lower in different years throughout the period considered, except

in 2007). The Chinese exporter's sales to non-EU countries were made in significant quantities, accounting for over 80 % of its total export sales. Therefore, it was considered that, should measures lapse, Chinese exporting producers would have an incentive to shift significant quantities of exports from other third countries to the more attractive Union market.

3. **Spare capacity in the PRC market**

(101) As described in recitals 34 to 42, data collected during the investigation showed that there is a significant spare capacity available in the PRC. Clear indications were found pointing to the conclusion that a large part of this spare capacity could be used to increase exports to the Union in the absence of anti-dumping measures. This is confirmed in particular because there are no indications that third-country markets or the domestic market could absorb any additional production in the PRC.

4. **Conclusion**

(102) The Union industry had been suffering from the effects of the Chinese dumped imports for several years and is still currently in a fragile economic situation.

(103) As shown above, the Union industry managed to recover from the Chinese dumping practice thanks to the anti-dumping measures in force. During the RIP, however, it found itself in a difficult economic situation mainly due to the economic crisis. In this context, should the Union industry be exposed to increased volumes of dumped low priced imports from the country concerned, this would be likely to result in a further deterioration of its sales, market share, sales prices, as well as a consequent deterioration of its financial situation.

(104) In addition, as stated in recital 56 above, it was also found that the fact that the sales price of Chinese producers undercut those of the Union industry on average almost 11 % appears to indicate that in the absence of measures Chinese exporting producers are likely to export the product concerned to the Union market at prices considerably lower than those of the Union industry.

(105) In view of the findings made during the investigation, namely the spare capacity in the PRC, the distortions found in the market for raw materials, the potential of the exporting producers in the country concerned to raise and/or redirect their export volumes to the Union market, the pricing behaviour of the Chinese in other third countries and the attractiveness of the more lucrative Union market, any repeal of the measures would point to a likelihood of recurrence of injury. The latter would be even more serious taking into account the present economic crisis.

F. **UNION INTEREST**

1. **Introduction**

(106) In accordance with Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, importers and users.

(107) It should be recalled that, in the previous investigations, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

(108) On this basis it was examined whether, despite the conclusions on the likelihood of a continuation of dumping and recurrence of injury, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

2. **Interest of the Union industry**

(109) In view of the conclusions on the situation of the Union industry set out in recitals 89 to 97 above, and pursuant to the arguments relating to the analysis on the likelihood of recurrence of injury as explained in recitals 102 to 105, it can also be considered that the Union industry would be likely to experience a serious deterioration of its financial situation in case the anti-dumping duties were allowed to expire.

(110) It is considered that the continuation of measures would benefit the Union industry which should then be able to increase sales volumes and, in all likelihood, sales prices thereby generating the necessary return level which would enable it to continue to invest in new technology for its production facilities. By contrast, the discontinuation of the measures would halt the recovery of the Union industry, seriously threatening its viability, and, as a consequence, putting its existence at risk, thus reducing supply and competition on the market.

3. **Interest of importers/users**

(111) One user came forward and submitted a questionnaire reply. The cooperating user claimed that the continuation of measures would not have a negative impact on competition in the Union market, but that, on the contrary, it would allow the downstream industry to have a wider range of suppliers competing at market prices.

(112) It is recalled that, in the previous investigations, it was found that the impact of the imposition of measures would not be significant for the users ([1]). Despite the existence of measures, importers/users in the Union were able to continue to source their supply, inter alia, from the PRC. No indications were brought forward whether there have been difficulties in finding other sources. It is therefore concluded that the maintenance of the anti-dumping measures is not likely to have a serious effect on importers/users in the Union.

4. **Conclusion**

(113) The effects of the continuation of measures can be expected to assist the Union industry, with consequent beneficial effects on the competitive conditions on the Union market and the reduction of the threat of closures and reductions in employment.

(114) Furthermore, the continuation of the measures can be expected to benefit the users/importers by maintaining a wide range of suppliers in the Union market.

(115) Given the above analysis, it is concluded that the continuation of measures is not against the Union interest.

G. **ANTI-DUMPING MEASURES**

(116) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.

(117) 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 tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten, originating in PRC should be maintained. It is recalled that these measures consist of *ad valorem* duties,

HAS ADOPTED THIS REGULATION:

Article 1

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 currently falling within CN codes 2849 90 30 and ex 3824 30 00 ([2]) (TARIC code 3824 30 00 10) and originating in the People's Republic of China.

2. The rate of duty applicable to the net free-at-Union-frontier price, before duty, for the products described in paragraph 1, shall be 33 %.

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 Union*.

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

Done at Brussels, 21 March 2011.

For the Council
The President
MARTONYI J.

([1]) See recital 101 of Regulation (EC) No 2268/2004.

([2]) 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 flowability can be measured and established by using a calibrated funnel e.g. a HALL flow meter according to ISO standard 4490.