Commission Implementing Regulation (EU) 2020/909 of 30 June 2020 imposing a definitive anti-dumping duty on imports of ferro-silicon originating in Russia and the People's Republic of China, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036

[[X1]COMMISSION IMPLEMENTING REGULATION (EU) 2020/909

of 30 June 2020

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)] ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) The measures currently in force are a definitive anti-dumping duty on imports of ferro-silicon originating in the People's Republic of China ('the PRC') and the Russian Federation ('Russia') ('the countries concerned') imposed by Commission Implementing Regulation (EU) No 360/2014[(2)] following an expiry review under Article 11(2) of the basic Regulation ('the previous review investigation').

(2) The measures are in force in the form of an ad valorem duty established at 31,2 % on imports from the PRC, with the exception of Erdos Xijin Kuangye Co. (15,6 %) and Lanzhou Good Land Ferroalloy Factory Co., (29,0 %) and at 22,7 % on imports from Russia, with the exception of Bratsk Ferroalloy Plant (17,8 %).

1.2. Request for an expiry review

(3) Following the publication of a notice of impending expiry[(3)] of the anti-dumping measures in force, the Commission received a request for a review pursuant to Article 11(2) of Regulation (EU) 2016/1036.

(4) The request for review was lodged on 3 January 2019 by Euroalliages ('the applicant') on behalf of Union producers representing over 90 % of the total Union production of ferro-silicon.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/909. (See end of Document for details)*

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

1.3. **Initiation**

(6) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated an expiry review regarding imports into the Union of ferro-silicon originating in the PRC and Russia. On 2 April 2019, it published a Notice of Initiation in the *Official Journal of the European Union*[4] ('the Notice of Initiation').

1.4. **Review investigation period and period considered**

(7) The investigation of continuation or recurrence of dumping covered the period from 1 April 2018 to 31 March 2019 ('review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2015 to the end of the review investigation period ('the period considered').

1.5. **Interested parties**

(8) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicants, the other known Union producers, the known producers in the PRC and Russia, known importers, users and traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(9) Interested parties also had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.5.1. *Sampling*

(10) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.5.2. *Sampling of Union producers*

(11) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of four Union producers on the basis of the largest production and sales volumes of the product under review and invited the interested parties to comment. No comments were received.

(12) The final sample of Union producers accounted for more than 90 % of the total estimated Union production volume. The Commission concluded that the sample was representative of the Union industry.

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1.5.3. *Sampling of importers*

(13) In view of the potentially large number of unrelated importers involved in the proceeding, at initiation stage the Commission considered limiting to a reasonable number the unrelated importers investigated by selecting a sample in accordance with Article 17 of the basic anti-dumping Regulation.

(14) As no unrelated importer replied to the sampling questionnaire attached to the notice of initiation, the Commission decided not to apply sampling for unrelated importers.

1.5.4. *Sampling of producers in the PRC and Russia*

(15) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known producers of the product under review in the PRC and in Russia to provide the information specified in the Notice of Initiation.

(16) In addition, the Commission asked the Mission of the People's Republic of China to the European Union and the Mission of the Russian Federation to the European Union to identify and/or contact other producers, if any, that could be interested in participating in the investigation.

(17) One Chinese company returned the sampling form and indicated to produce and have sold ferro-silicon to the Union.

(18) One Russian party returned the sampling forms but that party indicated that it did not produce ferro-silicon as defined in the Notice of Initiation. Two known Russian exporting producers came forward but they did not return the sampling forms.

1.6. **Replies to the questionnaire**

(19) Copies of the questionnaires were made available on DG Trade's website when the case was initiated.

(20) The Commission sent letters to the four sampled Union producers. The Commission also sent questionnaires to the Chinese company mentioned in recital 17 and the two Russian exporting producers referred to in recital 18, requesting them to complete the questionnaire intended for them.

(21) Questionnaire replies were received from the four Union producers and one user.

(22) After having received the questionnaire, the Chinese company mentioned in recital 17 above informed the Commission that it was in fact a trader, not a producer. Therefore it was informed that it should not reply to the questionnaire. The two Russian exporting producers mentioned in recital 18 above replied that in view of market circumstances they had decided not to prepare and provide a reply to the questionnaire. However, they also indicated that they wanted to cooperate 'on all other aspects of the investigation (…)'. These two exporting producers were given interested party status, however they were considered non-cooperating since they never replied to the

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sampling form or attempted to reply to the exporting producer's questionnaire. After final disclosure, the parties concerned contested the Commission's determination to consider them non-cooperating and they submitted that the Commission should have not only have duly assessed but also verified the limited amount of partly information they had submitted in a written submission. That claim was rejected, as explained in recital 189 below.

(23) Therefore, there was no cooperation by producers neither in the PRC nor in Russia.

1.7. **Verification**

(24) The Commission sought and verified all the information deemed necessary for the investigation. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers:

— Ferroatlantica S.L. and Ferropem in Madrid, Spain;

— OFZ, a.s. in Istebne, Slovakia;

— Re Alloys Sp. Z.o.o. in Laziska Gorne, Poland.

1.8. **Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation for the imports of ferro-silicon originating in the PRC**

(25) In view of the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the investigation with regard to the PRC on the basis of Article 2(6a) of the basic Regulation.

(26) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited producers of the PRC to provide the information requested in Annex III to the Notice of the Initiation regarding the inputs used for producing the product under review. No exporting producers/producers submitted the information requested in Annex III.

(27) In order to obtain the necessary information for its investigation, the Commission also sent a questionnaire to the Government of China ('GOC') with regard to the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The GOC did not reply to the questionnaire.

(28) In the Notice of Initiation, the Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of this Notice in the *Official Journal of the European Union*. No submissions or additional evidence was received in that respect.

(29) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it might need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.

(30) On 24 June 2019, the Commission issued a first note for the file ('the first note on production factors') seeking the views of the interested parties on the relevant sources that the Commission may use for the determination of the normal value, in accordance with Article 2(6a)(e) second indent of the basic Regulation. In that note, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified three possible representative countries: Brazil, Russia, and Turkey.

(31) The Commission gave all interested parties the opportunity to comment. The Commission received only comments from the applicant.

(32) The Commission addressed these comments in a second note of 15 October 2019 ('the second note on production factors'). The Commission also established the list of factors of production and concluded that, at that stage, Brazil was the most appropriate representative country under Article 2(6a)(a), first indent of the basic Regulation. The Commission invited the interested parties to comment. The Commission did not receive any comments.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

(33) The product under review is the same as in the original investigation and the previous expiry review namely ferro-silicon currently falling under CN codes 7202 21 00, 7202 29 10 and 7202 29 90, originating in the PRC and Russia ('the product under review').

2.2. Like product

(34) As established in the original investigation as well as in the previous expiry review, this expiry review investigation confirmed that ferro-silicon produced and sold on the domestic market in Russia, the PRC and in the representative country, and ferro-silicon produced and sold by the Union industry on the Union market have the same basic physical and technical characteristics and the same basic uses.

(35) Therefore these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

3.1. Preliminary remarks