Commission Implementing Regulation (EU) No 360/2014 of 9 April 2014 imposing a definitive anti-dumping duty on imports of ferro-silicon originating in the People's Republic of China and Russia, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009

COMMISSION IMPLEMENTING REGULATION (EU) No 360/2014

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THE EUROPEAN COMMISSION,

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 11(2), (5) and (6) thereof,

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, following an anti-dumping investigation ('the original investigation'), imposed, by means of Regulation (EC) No 172/2008[(2)], a definitive anti-dumping duty on imports of ferro-silicon ('FeSi') currently falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90 originating in the People's Republic of China ('the PRC'), Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia ('the definitive anti-dumping measures').

(2) The measures took 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 %), at 18,0 % on imports from Egypt, with the exception of The Egyptian Ferroalloys Co. (15,4 %), at 33,9 % on imports from Kazakhstan, at 5,4 % on imports from the former Yugoslav Republic of Macedonia and at 22,7 % on imports from Russia, with the exception of Bratsk Ferroalloy Plant (17,8 %).

(3) Council Implementing Regulation (EU) No 1297/2009[(3)] repealed the anti-dumping duty imposed by Regulation (EC) No 172/2008 on imports of FeSi originating in the Former Yugoslav Republic of Macedonia.

(4) On 30 November 2009, the European Commission ('the Commission') received a request for a partial interim review ('the interim review') pursuant to Article 11(3) of the basic Regulation, lodged by an exporting producer from Russia, Joint Stock Company Chelyabinsk Electrometallurgical Integrated Plant and its related company

Joint Stock Company Kuznetsk Ferroalloy Works (hereinafter jointly referred to as 'the Russian group'). The Council, by Regulation (EU) No 60/2012[4] terminated the partial interim review on the grounds of insufficient evidence of a lasting nature of changed circumstances. In particular, the Russian group did not demonstrate that its pricing behaviour was of a lasting nature. Therefore, the dumping margin established for the Russian group in the original investigation was not amended. The undertaking offer made by the Russian group was rejected on the same grounds.

2. Request for an expiry review

(5) Following the publication of a notice of impending expiry[5] of the definitive anti-dumping measures in force, the Commission received on 28 November 2012 a request for the initiation of an expiry review of those measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by Euroalliages ('the applicant') on behalf of producers representing more than 25 % of the total Union production of FeSi.

(6) The request concerned the following two countries: the PRC and Russia.

(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 injury to the Union industry.

3. Initiation of an expiry review

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced, on 28 February 2013, by a notice published in the *Official Journal of the European Union*[6] ('the notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. Investigation

4.1. Review investigation period and period considered

(9) The investigation of a continuation or recurrence of dumping covered the period from 1 January 2012 to 31 December 2012 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2009 to 31 December 2012 ('the period concerned').

4.2. Parties concerned by the investigation

(10) The Commission officially advised the applicants, the other known Union producers, the exporting producers in the PRC and in Russia, the unrelated importers, the users known to be concerned, and the representatives of the exporting countries, of the initiation of the expiry review. The 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) In view of the apparent large number of exporting producers in the PRC and of unrelated importers in the Union involved in the investigation, sampling was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above-mentioned parties were requested to make themselves known to the Commission within 15 days of the initiation of the review and to provide the Commission with the information requested in the notice of initiation.

(13) Given that only one exporting producer in the PRC provided the information requested in the notice of initiation and expressed its willingness to cooperate with the Commission, it was decided not to apply sampling in the case of the exporting producers in the PRC. After having received the questionnaire, the exporting producer decided not to cooperate further. Therefore, it is considered that no exporting producer in the PRC cooperated in the investigation.

(14) Regarding Russia, all known Russian producers were invited to cooperate in the investigation, namely Bratsk Ferroalloy Plant, Serov Ferroalloy Plant, NLMK and the Russian group. Only one Russian group cooperated with the Commission in the current review investigation.

(15) With regard to the unrelated importers, no reply to the questionnaire was received. Therefore, it is considered that no unrelated importer in the Union cooperated in the investigation.

(16) Replies to the questionnaires were received from six out of seven known Union producers of FeSi. In view of the relatively limited number of Union producers, no sampling was envisaged in the review investigation.

(17) Verification visits were carried out at the premises of the following companies:

(a) Union producers:

FERROATLANTICA Group:
Ferroatlantica S.L. — Madrid, Spain
Ferropem — Chambery, France
HUTA LAZISKA S.A. — Laziska Gorne, Poland
OFZ a.s. — Istebne, Slovakia
TDR LEGURE d.o.o. — Ruse, Slovenia
VARGON ALLOYS A.B. — Vargön, Sweden

(b) Union users:

Aperam SA — Luxembourg
Ugitech — Ugine, France

(c) Exporting producer in Russia:

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 360/2014. (See end of Document for details)*

The Russian group:

JSC Chelyabinsk Electrometallurgical Integrated Plant ('JSC CHEMK') — Chelyabinsk, Russia

JSC Kuznetsk Ferroalloy Works ('JSC KF') — Novokuznetsk, Russia

RFA International LP ('RFAI') — Mishawaka, USA

(d) Producers in the analogue country:

Elkem AS, Oslo, Norway

FESIL Rana Metall AS, Trondheim, Norway

Finnfjord AS, Finnsnes, Norway.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(18) The product concerned is ferro-silicon currently falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90, originating in the PRC and Russia.

(19) The production of FeSi takes place in electric arc furnaces by means of reducing quartz using carbon-bearing products. This process is energy-intensive. FeSi is sold in the form of lumps, grains or powder and exists in various qualities, depending on the silicon and the impurity content (e.g. aluminium). FeSi with a silicon content of 70 % and above is considered as a high purity product. With a silicon content of more than 55 % and less than 70 %, it is a medium purity product, and with a silicon content of less than 55 % it is a low purity product. The product concerned is essentially used as a deoxidiser and as an alloying component in the iron and steel industry.

2. Like product

(20) The FeSi produced and sold in the Union by the Union industry and the FeSi produced and sold in Norway ('the analogue country') as the PRC is a non-market economy country and has not been investigated in the course of this investigation, and in Russia was found to have essentially the same physical and chemical characteristics and the same basic uses as the FeSi produced in the PRC and in Russia and sold for export to the Union. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

(21) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping from the two countries concerned.

IMPORTS FROM THE PRC

1. Preliminary remarks

(22) As stated in recital (13) above, no Chinese exporting producers cooperated with the investigation. Thus, in the absence of cooperation from exporting producers

in the PRC, the overall analysis, including the dumping calculation, is based on facts available pursuant to Article 18 of the basic Regulation.

(23) Therefore, the likelihood of a continuation or recurrence of dumping was assessed by using the expiry review request, combined with other sources of information such as trade statistics on imports and exports (Eurostat and Chinese export data) and other information publicly available.

(24) The absence of cooperation affected the comparison of the normal value with the export price of the various product types. As explained in recital (30) below, it was considered appropriate to establish both the normal value and the export price on a global basis, namely based of one single product, in accordance with Article 18 of the basic Regulation.

(25) In accordance with Article 11(9) of the basic Regulation, the same methodology as that used to establish dumping in the original investigation was followed whenever it was found that circumstances had not changed.

2. Dumping of imports during the RIP

2.1. Determination of the Normal Value

(26) In the notice of initiation, the Commission invited all interested parties to comment on its proposal to use Norway as a market economy third country for the purpose of establishing normal value in respect of the PRC. Norway was used as an analogue country in the original investigation. In the absence of comments from any parties on this aspect, it was concluded that Norway should be selected again as an analogue country to establish the normal value for the PRC in accordance with Article 2(7)(a) of the basic Regulation.

(27) In accordance with Article 2(2) of the basic Regulation it was first examined whether the total volume of domestic sales of the like product to independent customers made by the cooperating producers in Norway was representative in comparison with the total export volume from the PRC to the Union, namely whether the total volume of such domestic sales represented at least 5 % of the total volume of export sales of the product concerned to the Union. On that basis, it was found that the domestic sales in the analogue country were representative.

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

(29) Normal value was thus based on the actual domestic price, which was calculated as a weighted average price of the profitable domestic sales made during the RIP.

2.2. Determination of the export price