# Council Implementing Regulation (EU) No 311/2013 of 3 April 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 467/2010 on imports of silicon originating in the People's Republic of China to imports of silicon consigned from Taiwan, whether declared as originating in Taiwan or not

## COUNCIL IMPLEMENTING REGULATION (EU) No 311/2013

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## extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 467/2010 on imports of silicon originating in the People's Republic of China to imports of silicon consigned from Taiwan, whether declared as originating in Taiwan or not

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 Article 13 thereof,

Having regard to the proposal from the European Commission after having consulted the Advisory Committee,

Whereas:

1. **PROCEDURE**

1.1. **Existing measures**

(1) By Implementing Regulation (EU) No 467/2010[(2)] ('the original Regulation') the Council imposed a definitive anti-dumping duty of 19 % on imports of silicon originating in the People's Republic of China ('the PRC') for all companies other than the one mentioned in Article 1(2) of that Regulation, following the expiry review and a partial interim review of the measures imposed by Council Regulation (EC) No 398/2004[(3)]. The original Regulation also maintained the duty which was extended by virtue of Council Regulation (EC) No 42/2007[(4)] to imports of silicon consigned from the Republic of Korea whether declared as originating in the Republic of Korea or not. The measures imposed by the original Regulation are hereinafter referred to as 'the measures in force' or 'original measures' and the investigation that led to the measures imposed by the original Regulation is hereinafter referred to as 'the original investigation'.

1.2. **Request**

(2) On 15 May 2012, the European Commission ('the Commission') received a request pursuant to Articles 13(3) and 14(3) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of silicon

originating in the PRC and to make imports of silicon consigned from Taiwan, whether declared as originating in Taiwan or not, subject to registration.

(3) The request was lodged by Euroalliages (Liaison Committee of the Ferro-Alloy Industry) ('the applicant') on behalf of producers representing 100 % of the Union production of silicon.

(4) The applicant argued that there is no genuine production of silicon in Taiwan and the request contained sufficient prima facie evidence that following the imposition of the measures in force, a significant change in the pattern of trade involving exports from the PRC and Taiwan to the Union occurred, for which there was no sufficient due cause or justification other than the imposition of the measures in force. That change allegedly stemmed from the transhipment of silicon originating in the PRC via Taiwan to the Union.

(5) Furthermore, the applicant argued that the evidence pointed to the fact that the remedial effects of the measures in force were being undermined both in terms of quantity and price. The evidence showed that the increased imports from Taiwan were made at prices below the non-injurious price established in the original investigation. Finally, there was evidence that the prices of silicon consigned from Taiwan were dumped in relation to the normal value previously established for the product concerned during the original investigation.

1.3. **Initiation**

(6) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission initiated an investigation by Regulation (EU) No 596/2012[(5)] ('the initiating Regulation') of the possible circumvention of the anti-dumping measures imposed on imports of silicon originating in the PRC and also directed the custom authorities to register imports of silicon consigned from Taiwan, whether declared as originating in Taiwan, or not.

1.4. **Investigation**

(7) The Commission officially advised the authorities of the PRC and Taiwan, the exporting producers in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation.

(8) Exemption forms were sent to the producers/exporters in Taiwan known to the Commission and through the Authorities of Taiwan to the European Union. Questionnaires were sent to the producers/exporters in the PRC known to the Commission and through the Authorities of the PRC to the European Union. Questionnaires were also sent to the known importers in the Union.

(9) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.

(10) Three Taiwanese producers/exporters, belonging to one group, and three unrelated importers in the Union made themselves known and submitted replies to the exemption forms and to the questionnaires, respectively.

(11) The Commission carried out verification visits at the premises of the three following related companies, part of the Group referred to in recital 10:

— Asia Metallurgical Co. Ltd (Taiwan),

— Latitude Co. Ltd (Taiwan),

— YLB Co. Ltd (Taiwan).

1.5. **Reporting period and investigation period**

(12) The investigation period covered the period from 1 January 2008 to 30 June 2012 (‘the IP’). Data were collected for the IP to investigate, inter alia, the alleged change in the pattern of trade. More detailed data were collected for the reporting period from 1 July 2011 to 30 June 2012 (‘the RP’) in order to examine the possible undermining of the remedial effect of the measures in force and existence of dumping.

2. **RESULTS OF THE INVESTIGATION**

2.1. **General considerations**

(13) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was made by analysing successively whether there was a change in the pattern of trade between the PRC, Taiwan and the Union; if that change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty; if there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the product under investigation; and whether there was evidence of dumping in relation to the normal values previously established for the product concerned in the original investigation, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2.2. **Product concerned and product under investigation**

(14) The product concerned by the possible circumvention is silicon metal, originating in the PRC, currently falling within CN code 2804 69 00 (silicon content less than 99,99 % by weight) (‘the product concerned’). Purely by reason of the current classification set out in the Combined Nomenclature, it should be read ‘silicon’. Silicon with a higher purity, that is containing by weight not less than 99,99 % of silicon, used mostly in the electronic semi-conductor industry, falls under a different CN code and is not covered by this proceeding.

(15) The product under investigation is the same as that defined above, but consigned from Taiwan, whether declared as originating in Taiwan or not, currently falling within the same CN code as the product concerned (‘the product under investigation’).

(16) The investigation showed that silicon, as defined above, exported from the PRC to the Union and silicon consigned from Taiwan to the Union has the same basic physical and technical characteristics and has the same use, and is therefore to be considered as a like product within the meaning of Article 1(4) of the basic Regulation.

2.3. **Findings**

2.3.1. *Level of cooperation*

(17) As stated in recital 10, only three Taiwanese companies belonging to the same group of companies submitted exemption form replies. A comparison of their exports into the Union to the Eurostat import data, showed that the cooperating companies were representing 65 % of the Taiwanese exports of the product under investigation to the Union in the RP.

(18) There was no cooperation from the exporting producers of silicon in the PRC. Therefore, findings in respect of imports of silicon from the PRC into the Union and exports from the PRC into Taiwan had to be made on the basis of data from Eurostat import data, Taiwanese import statistics and data gathered from the cooperating Taiwanese companies.

2.3.2. *Change in the pattern of trade*
*Imports of silicon into the Union*

(19) Table 1 shows imports of silicon from the PRC and Taiwan into the Union between 2004 and the end of the RP.

*Table 1*

(in MT)

| | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | RP |
|---|---|---|---|---|---|---|---|---|---|
| **PRC** | 1 268 | 27 635 | 1 435 | 9 671 | 5 353 | 6 669 | 11 448 | 13 312 | 5 488 |
| **Taiwan** | 0 | 2,7 | 0,2 | 340 | 3 381 | 5 199 | 11 042 | 5 367 | 2 707 |

*Source:* Eurostat.

(20) The data from Eurostat clearly show that there were no imports from Taiwan into the Union at all in 2004. They went up with more than 300 % in 2008 and remained very high. The imports doubled again in 2010, following the imposition of new measures against the PRC.

(21) In 2011, the imports into the Union from Taiwan decreased. This development may be attributable to an anti-fraud investigation which was launched by OLAF around that time. The Commission was informed that the Taiwanese issuing authority, the Bureau of Foreign Trade of Taiwan (BOFT) withdrew the certificates of origin of silicon from all Taiwanese producers in 2011. That decision to withdraw the certificates was appealed by the three Taiwanese exporters referred to in recitals 10 and 11 above

('Group of exporters'). The board of appeal quashed the decision of the BOFT, and the certificates in question were re-issued to those three Taiwanese producers/exporters, but not to the other Taiwanese producers.

(22) In this context, the Commission also observes that the presentation of a non-preferential certificate of origin is not required for the customs formalities at importation into the Union and that in the event of serious doubt, such a certificate cannot serve as proof of the non-preferential origin of the declared product (Article 26 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[6]).

(23) The imports of silicon from the PRC into the Union have been increasing since 2008. In particular, it is observed that these imports are still increasing after the imposition of the measures in 2010. This development can be explained by the fact that the anti-dumping duty went down significantly in 2010, namely from 49 % to 19 %.
*Exports of silicon from the PRC to Taiwan*

*Table 2*

(in MT)

| 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | RP |
|---|---|---|---|---|---|---|---|---|---|
| 16 530 | 16 600 | 7 101 | 10 514 | 3 675 | 15 893 | 16 007 | 17 912 | 9 177 | 10 507 |

*Source:* Chinese export statistics.

(24) Table 2 shows imports from the PRC into Taiwan. The data from the Chinese exports database show that imports were at their highest in 2010 following the imposition of the original measures. The decrease in 2011 can be explained by the anti-fraud investigation as explained in recital 21.
*Conclusion on the change in the pattern of trade*

(25) It is considered that there is a change in the pattern of trade since there were no imports of silicon from Taiwan into the Union at all in 2004. They really started as from 2007 and became very important in 2008. They remain at a very high level up to the RP, with a reduction in 2011 because of the possible reason which is explained in recital 21.

2.3.3. *Nature of the circumvention practice and insufficient due cause or economic justification*

(26) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes, inter alia, the consignment of the product subject to measures via third countries. The Commission takes the view that in the present case, the change in the pattern of trade stems from the consignment of the product subject to measures via a third country.