Commission Regulation (EU) No 596/2012 of 5 July 2012 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 467/2010 on imports of silicon originating in the People's Republic of China by imports of silicon consigned from Taiwan whether declared as originating in Taiwan or not, and making such imports subject to registration

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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 Articles 13(3) and 14(5) thereof,

After having consulted the Advisory Committee in accordance with Articles 13(3) and 14(5) of the basic Regulation,

Whereas:

A. **REQUEST**

(1) The European Commission ('the Commission') has received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of silicon originating in the People's Republic of China and to make imports of silicon consigned from Taiwan, whether declared as originating in Taiwan or not, subject to registration.

(2) The request was lodged on 15 May 2012 by Euroalliages (Liaison Committee of the Ferro-Alloy Industry) ('the applicant') on behalf of producers representing a major proportion, namely 100 %, of the Union production of silicon.

B. **PRODUCT**

(3) 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 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.

(4) The product under investigation is the same as that defined in the previous recital, 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').

C. EXISTING MEASURES

(5) The measures currently in force and possibly being circumvented are anti-dumping measures imposed by Council Implementing Regulation (EU) No 467/2010[(2)] imposing a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China, as extended to imports of silicon consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009.

(6) An anti-circumvention investigation concerning imports of silicon was also carried out in 2006-2007 which led to Council Regulation (EC) No 42/2007[(3)] extending the definitive anti-dumping duty imposed by Regulation (EC) No 398/2004 on imports of silicon originating in the People's Republic of China to imports of silicon consigned from the Republic of Korea whether declared as originating in the Republic of Korea or not.

D. GROUNDS

(7) The request contains sufficient *prima facie* evidence that the anti-dumping measures on imports of silicon originating in the People's Republic of China are being circumvented by means of transhipment via Taiwan.

(8) The *prima facie* evidence at the Commission's disposal is as follows:

(9) There is a significant change in the pattern of trade involving exports from the People's Republic of China and Taiwan to the Union which has taken place following the imposition of measures on the product concerned, without sufficient due cause or justification for such a change other than the imposition of the duty.

(10) This change appears to stem from the transhipment of silicon originating in the People's Republic of China via Taiwan to the Union.

(11) Furthermore, the evidence points to the fact that the remedial effects of the existing anti-dumping measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of the product under investigation appear to have replaced imports of the product concerned. In addition, there is sufficient evidence that imports of the product under investigation are made at prices well below the non-injurious price established in the investigation that led to the existing measures, adjusted for the increase in the costs of the raw material.

(12) Finally, the Commission has sufficient *prima facie* evidence that the prices of the product under investigation are dumped in relation to the normal value previously established for the product concerned, adjusted for the increase in the costs of the raw material.

(13) Should circumvention practices via Taiwan covered by Article 13 of the basic Regulation, other than transhipment, be identified in the course of the investigation, the investigation may also cover these practices.

E. PROCEDURE

(14) In light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13 of the basic Regulation and to make imports of the product under investigation, whether declared as originating in Taiwan or not, subject to registration, in accordance with Article 14(5) of the basic Regulation.

(a) Questionnaires

(15) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the known exporters/producers and to the known associations of exporters/producers in Taiwan, to the known exporters/producers and to the known associations of exporters/producers in the People's Republic of China, to the known importers and to the known associations of importers in the Union and to the authorities of the People's Republic of China and Taiwan. Information, as appropriate, may also be sought from the Union industry.

(16) In any event, all interested parties should contact the Commission forthwith, but not later than the time-limit set in Article 3 of this Regulation, and request a questionnaire within the time-limit set in Article 3(1) of this Regulation, given that the time-limit set in Article 3(2) of this Regulation applies to all interested parties.

(17) The authorities of the People's Republic of China and Taiwan will be notified of the initiation of the investigation.

(b) Collection of information and holding of hearings

(18) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) Exemption of registration of imports or measures

(19) In accordance with Article 13(4) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if the importation does not constitute circumvention.

(20) Since the possible circumvention takes place outside the Union, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to producers

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 596/2012. (See end of Document for details)*

of silicon in Taiwan that can show that they are not related[4] to any producer subject to the measures[5] and that are found not to be engaged in circumvention practices as defined in Articles 13(1) and 13(2) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time-limit indicated in Article 3(3) of this Regulation.

F. REGISTRATION

(21) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied from the date on which registration of such imports consigned from Taiwan was imposed.

G. TIME-LIMITS

(22) In the interest of sound administration, time-limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— producers in Taiwan may request exemption from registration of imports or measures,

— interested parties may make a written request to be heard by the Commission.

(23) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time-limits indicated in Article 3 of this Regulation.

H. NON-COOPERATION

(24) In cases in which any interested party refuses access to or does not provide the necessary information within the time-limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(25) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available.

(26) If an interested party does not cooperate or cooperates only partially and findings are therefore based on the facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

I. SCHEDULE OF THE INVESTIGATION

(27) The investigation will be concluded, pursuant to Article 13(3) of the basic Regulation, within nine months of the date of the publication of this Regulation in the *Official Journal of the European Union*.

J. PROCESSING OF PERSONAL DATA