Council Implementing Regulation (EU) No 60/2012 of 16 January 2012 terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 of the anti-dumping measures applicable to imports of ferro-silicon originating, inter alia, in Russia

COUNCIL IMPLEMENTING REGULATION (EU) No 60/2012

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terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 of the anti-dumping measures applicable to imports of ferro-silicon originating, inter alia, in Russia

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 11(3) thereof,

Having regard to the proposal submitted by the European Commission after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) The Council, by Regulation (EC) No 172/2008[(2)] ('the original Regulation'), imposed a definitive anti-dumping duty on imports of ferro-silicon originating, inter alia, in Russia. The measures consist of an *ad valorem* duty at a rate ranging from 17,8 % to 22,7 %. The investigation which led to this Regulation will be referred to below as 'the original investigation'.

1.2. Request for a review

(2) On 30 November 2009, the European Commission ('Commission') received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation ('the interim review'). The request, lodged by an exporting producer from Russia, Joint Stock Company (JSC) Chelyabinsk Electrometallurgical Integrated Plant and its related company Joint Stock Company (JSC) Kuznetsk Ferroalloy Works (hereinafter referred to jointly as 'the applicant'),was limited in scope to the examination of dumping as far as the applicant is concerned. The anti-dumping duty rate applicable to the applicant is 22,7 %, based on the applicant's dumping margin.

(3) In its request, the applicant claimed that, as far as the applicant is concerned, the circumstances on the basis of which the existing measures were imposed have changed and that these changes are of a lasting nature.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 60/2012. (See end of Document for details)*

(4) The applicant provided prima facie evidence showing that, as far as the applicant is concerned, the continued imposition of the measure at its current level is no longer necessary to offset dumping. According to the information submitted in the request, the comparison of the applicant's domestic prices and its export prices to the Union indicated that the dumping margin appeared to be substantially lower than the current level of the measure.

1.3. **Initiation of a review**

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission decided to initiate a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping as far as the applicant is concerned. The Commission published a notice of initiation on 27 October 2010 in the *Official Journal of the European Union*[3] ('Notice of initiation') and commenced an investigation.

1.4. **Product concerned and like product**

(6) The product concerned by the interim review is the same as that in the original investigation, i.e. ferro-silicon, originating in Russia, currently falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90.

(7) The product produced and sold in Russia and that exported to the Union have the same basic physical and technical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

1.5. **Parties concerned**

(8) The Commission officially informed the Union industry, the applicant and the authorities of the exporting country of the initiation of the interim review. Interested parties were given the opportunity to make their views known in writing and to be heard.

(9) The Commission sent questionnaires to the applicant and received a reply within the deadline set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping, and verification visits were carried out at the following locations:

— Joint Stock Company JSC Chelyabinsk Electrometallurgical Integrated Plant ('CHEM'), Chelyabinsk, Russia,

— Joint Stock Company JSC Kuznetsk Ferroalloy Works ('KF'), Kuznetsk, Russia,

and

— RFA International LP ('RFAI') in Mishawaka, USA & Nieuwdorp Zld, The Netherlands.

1.6. **Investigation period**

(10) The investigation covered the period from 1 October 2009 to 30 September 2010 (the review investigation period or 'RIP').

2. LASTING NATURE OF CHANGED CIRCUMSTANCES

2.1. Introduction

(11) As a starting point, it is recalled that, according to the case-law of the EU courts[(4)], when assessing the need to continue existing measures in a review based on Article 11(3) of the basic Regulation, the Institutions have a wide discretion, which includes the option of carrying out a prospective assessment of the pricing policy of the exporters concerned. It is in this context that the Institutions must examine the applicant's arguments as to why the circumstances of its situation have changed in a lasting manner, allegedly justifying a reduction or even removal of the duty.

(12) The applicant claimed that changed circumstances could be reasonably said to be of a lasting nature and thus the level of measures should be reduced or the measures should be repealed altogether as far as the applicant is concerned, as it was unlikely that in the foreseeable future there would be a recurrence of dumped imports at all or at levels similar to those established in the original investigation.

2.2. Regarding the question whether the applicant was still dumping on the EU market during the RIP[(5)]

(13) Before replying to the various arguments of the applicant on the (allegedly) lasting nature of the (allegedly) changed circumstances, it is useful to first describe the Institutions' considerations regarding the question whether the applicant may still have been dumping on the EU market during the RIP.

2.2.1. *Normal value*

(14) For the determination of normal value, it was first established whether the company's total volume of domestic sales of the like product to independent customers was representative in comparison with its total volume of export sales to the Union. In accordance with Article 2(2) of the basic Regulation, domestic sales are considered to be representative when the total domestic sales volume is at least 5 % of the total volume of sales of the product concerned to the Union. It was found that the overall sales, by the company, of the like product on the domestic market were representative.

(15) For each product type sold by the company on its domestic market and found to be directly comparable with the product type sold for export to the Union, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold on the domestic market to independent customers during the RIP represented at least 5 % of the total sales volume of the comparable product type exported to the Union.

(16) It was also examined whether the domestic sales of each product type 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 for each exported type of the product concerned during each of the periods.

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(17) For those product types where more than 80 % by volume of sales on the domestic market of the product type were above cost and the weighted average sales price of that type was equal to or above the unit cost of production, normal value, by product type, was calculated as the weighted average of the actual domestic prices of all sales of the type in question, irrespective of whether those sales were profitable or not.

(18) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the unit cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average price of only the profitable domestic sales of that type made during each of the periods.

(19) Wherever domestic prices of a particular product type sold by the company could not be used in order to establish normal value, the normal value was constructed in accordance with Article 2(3) of the basic Regulation.

(20) When constructing normal value pursuant to Article 2(3) of the basic Regulation, the amounts for selling, general and administrative costs and for profits have been based, pursuant to the introductory phrase of Article 2(6), of the basic Regulation, i.e. on the actual data pertaining to the production and sales, in the ordinary course of trade, of the like product, by the company.

2.2.2. *Export price*

(21) The company's export sales to the Union are made through the Swiss branch of its related company RFAI which during the RIP performed all import functions in relation to the goods entering into free circulation in the Union, i.e. that of a related importer.

(22) The export price was thus established in accordance with Article 2(9) of the basic Regulation, on the basis of prices at which the imported products were first resold to an independent buyer, adjusted for all costs, incurred between importation and resale, as well as a reasonable margin for SG&A and for profits. For this purpose, in the absence of new information from independent importers concerning profits accruing, use was made of the profit rate applied in the original investigation, namely 6 %.

(23) The applicant claimed that RFAI should be treated as part of the same single economic entity (SEE) and that consequently when determining the export prices no deduction should be made for SG&A and profit of RFAI.

(24) This claim can not be accepted for the following reasons:

— the two exporting producers have their own export sales department,

— RFAI is strongly involved in the international activity of the Group (customer assistance, logistics and schedule of the deliveries, purchasing of capital goods and key raw materials, etc.),

— the Swiss branch of RFAI is performing all the functions normally performed by a related importer in the EU,

— RFAI sells ferro-silicon in its own name and for its own account to unrelated customers in the EU and elsewhere,

— RFAI has a purchase-sales relationship with the two related Russian producers KF and CHEM,

— each company drafts its own financial report and no consolidated financial report exists, and

— each company files its own tax return with the respective authorities.

Accordingly, the claim that no deduction should be made for SG&A and profit in the construction of the export price had to be rejected. The applicant's comments on this point in reply to the final disclosure will be discussed below (point 2.3).

(25) The applicant also claimed that no deduction of the anti-dumping duty should be made in the calculation of the export price in accordance with the Article 11(10) of the basic Regulation, since the duty is duly reflected in resale prices and the subsequent selling prices in the Union. With respect to this claim, the investigation has established that the weighted average resale prices of ferro-silicon in the Union have increased in comparison with the prices in the original investigation and the current resale export prices are largely more than 22,7 % higher than such prices in the original investigation. Therefore, it can be concluded that the anti-dumping duty is duly reflected in the applicant's resale prices. As a result, this claim of the applicant could be accepted and, in the calculation of the constructed export prices in accordance with Article 2(9) of the basic Regulation, no deduction of the anti-dumping duties has been carried out.

2.2.3. *Comparison*

(26) The normal value and the export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and export price, due allowance in the form of adjustments was made for transport costs, insurance costs, terminal and handling costs, credit costs, and commissions, where applicable and justified, in accordance with Article 2(10) of the basic Regulation.

2.2.4. *Dumping margin*

(27) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. The outcome showed the existence of dumping.

(28) In order to calculate the dumping margin, the Institutions, as in the original investigation, noted that CHEM and KF are closely related. As in the original investigation, and in line with the Institutions' standard practice, a single dumping margin was calculated for the whole Group. In the method used for doing so in the final disclosure, the amount of dumping was calculated for each individual exporting producer before determining a weighted average rate of dumping for the group as a whole. It should be noted that this methodology was different from the methodology applied in the original investigation, where the dumping calculation was done by collapsing all relevant data with regard to domestic sales, cost of production,