Council Implementing Regulation (EU) No 467/2010 of 25 May 2010 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

COUNCIL IMPLEMENTING REGULATION (EU) No 467/2010

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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 Articles 9 and 11(2) and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In March 2004, following an expiry review, the Council, by Regulation (EC) No 398/2004[(2)], imposed a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China (PRC). The rate of the definitive duty applicable to the net free-at-Union frontier price, before duty, was 49 %. The original measures had been imposed by Regulation (EEC) No 2200/90[(3)].

(2) In January 2007, by Council Regulation (EC) No 42/2007[(4)] the definitive anti-dumping duty was extended to imports of silicon consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not.

2. Request for an expiry review and a partial interim review

(3) Following the publication, in October 2008, of a notice of impending expiry of the anti-dumping measures applicable to imports of silicon originating in the PRC[(5)], the Commission received on 1 December 2008 a request for a review pursuant to Article 11(2) of the basic Regulation. In addition, the Commission received on 18

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December 2008 a request for a partial interim review pursuant to Article 11(3) of the basic Regulation.

(4) The expiry review request was lodged by Euroalliages (Liaison Committee of the Ferro-Alloy Industry) on behalf of the producers in the Union representing a major proportion, in this case 100 %, of the total Union production of silicon. The request was based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping and recurrence of injury to the Union industry.

(5) The partial interim review request was lodged by EUSMET (European Users of Silicon Metal) and is limited in scope to the examination of dumping. The request was based on prima facie evidence that the circumstances on the basis of which the measures were established had changed and that the new circumstances were of a lasting nature.

(6) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review and an interim review pursuant to Article 11(2) and 11(3) respectively of the basic Regulation, the Commission published a notice of initiation of these reviews in the *Official Journal of the European Union*[(6)] (notice of initiation).

3. Investigation

(7) The Commission officially advised the applicant Union producers, the exporting producers in the PRC, importers/traders, users in the Union known to be concerned and their associations as well as the authorities of the PRC of the initiation of the reviews.

(8) In view of the apparently large number of Chinese exporting producers listed in the requests, sampling was envisaged in the notice of initiation for the determination of dumping and the likelihood of recurrence or continuation dumping, in accordance with Article 17 of the basic Regulation.

(9) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period from 1 January 2008 to 31 December 2008.

(10) The Commission received replies from 11 companies or company groups in the PRC. However, after examination of the information submitted by these companies, it became apparent that only a small number of replies were made by companies that exported own-produced silicon to the European Union. It was therefore decided that sampling was not necessary in respect of Chinese exporting producers.

(11) All the abovementioned companies or company groups in the PRC also stated their intention to request individual examination in application of Article 17(3) of the basic Regulation.

(12) The Commission sent market economy treatment (MET) or individual treatment (IT) claim forms to the Chinese exporting producers known to be concerned. Claims for MET, or for IT in case the investigation would establish that the exporting producers did not meet the conditions for MET, were received from three Chinese exporters. However, one of these exporters withdrew its claim subsequently, while the other two were found not to be exporting own-produced silicon to the European Union during the IP. The claims of these two companies were therefore not assessed.

(13) In addition, six other Chinese companies or company groups submitted claim forms for IT. However, in the course of the investigation, three companies ceased cooperation. Of the three remaining company groups, one sold the product concerned to an unrelated trader. The investigation could not establish with certainty whether the Union market was the final destination of the sales. As this company group cannot, therefore, be regarded as an exporting producer, the claim for individual treatment had to be rejected. As indicated in recital 30, for one company where cooperation was insufficient within the meaning of Article 18 of the basic Regulation, findings were based on facts available. The IT claim of the remaining company was found to be admissible.

(14) Finally, out of the two remaining companies requesting to be included in the sample and claiming individual examination, only one submitted a questionnaire reply within the deadlines set in the notice of initiation. This company did not, however, export the product concerned to the Union market.

(15) The Commission sent questionnaires to all parties known to be concerned and to those who requested a questionnaire within the time limit set out in the notice of initiation.

(16) The Commission also gave interested parties 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.

(17) Replies to the questionnaire were received from the applicant Union producers, 12 users, two associations of users, six exporters/producers in China and three producers in the analogue country.

(18) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and for the determination of the Union interest. Verification visits were carried out at the premises of the following companies:

Applicant Union producers:

— Ferroatlantica SL, Madrid, Spain

— Ferropem SAS, Chambery, France

— RW Silicium GmbH, Pocking, Germany

Exporting producers in the PRC:

— Jinneng Group

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— Datong Jinneng Industrial Silicon Co., Datong
— Shanghai Jinneng International Trade Co., Ltd, Shanghai
— Chongqing Trust-Glory New Metal Group
— Sichuan Dechang County Guo Yan Silicon Co. Ltd, Dechang
— Chongqing Trust-Glory New Metal Co., Ltd, Chongqing
— Bluestar Group
— Bluestar Silicon Materials Co., Ltd, Lanzhou
— China Bluestar International Chemical Co., Ltd, Beijing
— Jingyu Sunny Silicon Co., Ltd, Jingyu
— Mudanjiang Group
— Mudanjiang Shunda Chemical Co., Ltd, Mudanjiang
— Dongning Xinshun Guangfu Material Co., Ltd, Dongning
— DC/JYKN group
— Dalian DC Silicon Co., Ltd, Dalian- Sichuan Jinyang Kangning Silicon Co. Ltd, Leshan

Producers in the analogue country (Brazil):

— Globe Metais Industria e Comercio S.A., Breu Branco
— Companhia Brasileira Carbureto de Calcio, Santos Dumont
— Rima Industrial S/A, Belo Horizonte

Users:

Aluminium industry

— Trimet Aluminium AG, Essen, Germany
— Raffmetal S.p.A., Brescia, Italy
— Vedani Carlo Metalli S.p.A., Milan, Italy

Chemical industry

— Momentive Performance Materials GmbH, Leverkusen, Germany
— Wacker Chemie AG, Munich, Germany
— Dow Corning Ltd, Cardiff, United Kingdom

4. **Review investigation period and period considered**

(19) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 January 2008 to 31 December 2008 (‘RIP’ or ‘Review Investigation Period’).

(20) The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2005 up to the end of the RIP (period considered).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **The product concerned**

(21) The product concerned is the same as that in the previous investigations, i.e. silicon metal originating in the PRC, currently falling within CN code 2804 69 00 (silicon content less than 99,99 % by weight). 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.

(22) Silicon is produced in electric submerged arc furnaces with carbothermic reduction of quartz (silica) in the presence of various types of carbon reductants. It is marketed in the form of lumps, grains, granules or powder according to internationally accepted technical specifications as regards its purity.

(23) Silicon is used primarily by two industries: the chemical industry for the production of methylchlorosilanes or trichlorosilanes and tetrachlorosilicon, and the aluminium industry for the production of aluminium alloys, primary and secondary smelters, intended for the production of casting alloys for different industries, in particular the automotive and building industries.

2. **Like product**

(24) As in the previous expiry reviews, this investigation has shown that silicon produced in the PRC and exported to the Union, the silicon produced and sold on the domestic market of the analogue country (Brazil) and that manufactured and sold in the Union by the applicant Union producers have the same basic physical and chemical characteristics and the same basic uses.

(25) It was therefore concluded that these products must be considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. **DUMPING**

1. **Market economy treatment**

(26) As mentioned in recital 12, in the course of the investigation, the three companies claiming MET either did not export own-produced silicon to the European Union or dropped their MET claim. MET was not, therefore, granted to any company.

2. **Individual treatment (IT)**

(27) As a general rule, pursuant to Article 2(7)(a) of the basic Regulation, a countrywide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation and therefore qualify to be granted IT.

(28) Briefly, and for ease of reference only, these criteria are set out in a summarised form below:

(a) in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;