Council Regulation (EC) No 172/2008 of 25 February 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia

COUNCIL REGULATION (EC) No 172/2008

of 25 February 2008

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission, by Regulation (EC) No 994/2007[(2)] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of ferro-silicon (FeSi), currently classifiable within CN codes 7202 21 00, 7202 29 10 and 7202 29 90, originating in the People's Republic of China (PRC), Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia.

1.2. Subsequent procedures

(2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures (provisional disclosure), several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(3) The Commission continued its investigation with regard to Community interest aspects and carried out analysis of data within the questionnaire replies provided by some users in the Community after the imposition of the provisional anti-dumping measures.

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(4) In recital 166 of the provisional Regulation the Commission undertook to analyse further and in more detail the effect of provisional measures on the situation of the users, before any final determination is made.

(5) For this purpose, the Commission contacted and sent questionnaires directly and via associations to around 500 foundries located in the Community, since this category of user industry had not shown any particular interest in the current proceeding prior to the imposition of provisional measures. In addition, all steel producers cooperating at provisional stage were requested to provide additional information in order to enable the Commission to analyse the possible effect of provisional measures on their activity.

(6) Questionnaire replies were received from only seven foundries and additional information was received from eight steel producers. All seven of the former and three of the latter undertakings provided the necessary information to analyse in depth the effect of the provisional measures on their economic situation.

(7) In view of the complex structure in which the Chinese exporting producer granted market economy treatment (MET) was operating during the period under investigation, additional information was requested in order to reach definitive findings. Moreover, as indicated in recital 49 of the provisional Regulation, because of the fact that the Chinese exporting producer was purchasing electricity from a related supplier, its costs associated with the production of FeSi were also further investigated.

(8) In view of the above, three additional verification visits were carried out at the premises of the following companies:

— Erdos, Ordos City, Inner Mongolia, electricity supplier in the PRC,

— Trompetter Guss, Chemnitz, Germany, user (foundry) in the Community,

— Arcelor Mittal, Genk, Belgium, user (steel producer) in the Community.

(9) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings have been modified accordingly.

(10) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures on imports of FeSi originating in the PRC, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

(11) It is recalled that the investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (investigation period or IP). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2003 to the end of the IP (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(12) As indicated in recitals 15 and 16 of the provisional Regulation, several exporters alleged that slag containing significantly less then 45 % silicon, i.e. low purity FeSi, should be excluded from the scope of the investigation due to alleged lack of the same basic physical characteristics and the same basic uses. The Commission undertook to clarify the matter further. Further comments were received from several interested parties on this issue after provisional disclosure.

(13) It is firstly noted in this regard that the product concerned by the current investigation refers to FeSi containing at least 4 % iron and more than 8 % and less than 96 % of silicon. The investigation also revealed that slag with silicon content below 45 % can be used in the steel industry under the form of briquettes as it is the case for FeSi with silicon content above 45 %. Therefore, it can be concluded that slag shares the same basic physical characteristics and is interchangeable with other types of FeSi with higher silicon content. On the basis of the above, the provisional conclusions set out in recital 16 of the provisional Regulation that low purity FeSi should be considered as product concerned are hereby confirmed.

(14) One unrelated importer claimed that 'atomised' FeSi powder of 15 % and of 45 % silicon content should be excluded from the product scope of this investigation. However, an exclusion of 'atomised powder FeSi' from the present investigation is not warranted, in particular since FeSi with 15 % and 45 % of silicon content falls under the definition of the product concerned. In addition, following a hearing, this importer did not submit any evidence to substantiate its claim, despite a request by the Commission. The claim had therefore to be rejected.

2.2. Like product

(15) In the absence of any comments concerning the like product, recital 17 of the provisional Regulation is hereby confirmed.

3. DUMPING

3.1. Market economy treatment (MET)

(16) Following the provisional disclosure, one Chinese exporting producer reiterated its comments described in recital 26 of the provisional Regulation as to the change in the estimated useful life of its assets. However, the exporting producer failed to provide any new arguments not brought forward in the earlier stages of the investigation, which would substantiate its claim that the provisional findings concerning the MET situation as described in recital 23 of the provisional Regulation were not correct.

(17) In the absence of any other comments concerning MET, recitals 18 to 26 of the provisional Regulation are hereby confirmed.

3.2. Individual treatment (IT)

(18) In the absence of any comments with regard to IT, recitals 27 to 31 of the provisional Regulation are hereby confirmed.

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3.3. Normal value

3.3.1. Analogue country

(19) Following the provisional disclosure, one Chinese exporting producer argued that Norway is not an appropriate analogue country due to high electricity costs which are allegedly not representative for the industry worldwide, and due to differences in access to raw materials compared to Chinese producers. The exporting producer claimed also that Norwegian producers mainly sell to export markets since most of their domestic consumption is captive and that Norwegian producers focused largely on specialty grades FeSi while Chinese exporting producers manufacture only standard grades during the IP. On that basis, the exporting producer claimed adjustments to the Norwegian normal value.

(20) It should be noted that, while it is true that Norwegian producers sell large quantities on export markets, given the size of the domestic market and the conditions of competition thereon, as stated in recital 35 of the provisional Regulation, Norway is considered to be an appropriate analogue country.

(21) With regard to the other claims of the company, it was found that the share of electricity in the costs of production of Chinese producers was significantly greater than that of Norwegian companies. In addition, the Chinese exporter did not provide any evidence that the price of electricity was higher in Norway or that the alleged difficulty in access to raw material had an impact on normal value in Norway. These claims were therefore rejected.

(22) It was found, however, that the types of FeSi sold by Norwegian producers in Norway were different to those exported from the PRC to the Community, insofar as purity is concerned. It was therefore considered that an adjustment was warranted, as explained in recital 25 below.

(23) In the absence of any other comments concerning the analogue country, recitals 32 to 36 of the provisional Regulation are hereby confirmed.

3.3.2. Methodology applied for the determination of normal value

(24) In the absence of any comments concerning the methodology applied for the determination of normal value, recitals 37 to 47 of the provisional Regulation are hereby confirmed.

3.3.3. Determination of normal value

A. PRC

(25) One Chinese exporting producer which did not obtain MET claimed that the normal value was incorrectly calculated as it did not reflect the differences in the various types of the product concerned sold in Norway and the like product exported from the PRC. Having examined this claim, it was considered appropriate to recalculate the normal value to take into account the differences in physical characteristics between

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product types sold on the Norwegian domestic market and those exported from the PRC to the Community. Normal value was calculated on a product type basis with adjustments for the titanium impurity and FeSi contents in case of product types which could not be matched directly.

(26) The one Chinese exporting producer which was granted MET is part of a very large Chinese group comprising almost one hundred related companies operating in various industrial sectors. Because of the complex structure of the group and the operations of consolidation which concerned companies involved in the production and the sale of FeSi, updated data concerning the group was further requested and examined. Moreover, it had been foreseen in recital 49 of the provisional Regulation that the costs associated with the production and sale of electricity would be further investigated.

(27) The additional investigation showed that the exporting producer's purchase price of electricity from a related supplier had to be rejected as it did not allow for the recovery of all the costs incurred in producing the electricity. Further, the selling, general and administrative (SG&A) costs of the exporting producer were adjusted to take account of the full amount of financial costs associated with the production of the product concerned. Indeed, the investigation showed that some of these costs were borne by related parties and had not been taken into account in the calculation of the provisional normal value.

(28) Having made the above adjustments to costs in accordance with Article 2(5) of the basic Regulation, it was found that the domestic sales prices of all types of the product concerned that were sold for export to the Community were unprofitable. As a result, the normal value for the company had to be constructed. The normal value was constructed on the basis of the company's own cost of manufacturing plus amounts for adjusted SG&A costs as described above. In regard to profit, in the absence of profitable transactions of the company and lack of possibility of using profits for the same general category of products of other Chinese exporting producers, a profit margin of 5 % was applied for the construction of normal value in accordance with Article 2(6)(c) of the basic Regulation. This margin is in line with that used in constructing normal value for the exporting producer in the former Yugoslav Republic of Macedonia as stated in recital 45 of the provisional Regulation. No information was provided that this amount of profit would exceed the profit normally realised by other exporters or producers on sales of products of the same general category on the Chinese market.

B. EGYPT

(29) Following the imposition of provisional measures, one of the Egyptian exporting producers claimed that, when determining the normal value based on constructed value, a lower profit margin should be used in line with that used for the exporting producer in former Yugoslav Republic of Macedonia.

(30) It should be noted that constructed normal values were established in line with the methodology set out in recitals 43 to 45 of the provisional Regulation. The profit margin used reflects the market situation in Egypt and has been applied in accordance with the requirements of the introductory words of Article 2(6) of the basic Regulation.