Council Regulation (EC) No 1420/2007 of 4 December 2007 imposing a definitive anti-dumping duty on imports of silico-manganese originating in the People's Republic of China and Kazakhstan and terminating the proceeding on imports of silico-manganese originating in Ukraine

COUNCIL REGULATION (EC) No 1420/2007

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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:

A. PROCEDURE

1. Initiation

(1) On 6 September 2006, pursuant to Article 5 of the basic Regulation, the Commission announced by a notice (notice of initiation) published in the *Official Journal of the European Union*[(2)], the initiation of an anti-dumping proceeding with regard to imports into the Community of silico-manganese (including ferro-silico-manganese) (SiMn) originating in the People's Republic of China (PRC), Kazakhstan and Ukraine (the countries concerned).

(2) The proceeding was initiated following a complaint lodged on 24 July 2006 by the Comité de Liaison des Industries de Ferro-Alliages (EUROALLIAGES) (the complainant) on behalf of producers representing a major proportion, in this case more than 50 % of the total Community production of SiMn (the complainant producers). The complaint contained prima facie evidence of dumping of SiMn originating in the countries concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) One interested party claimed that the Commission should have initiated this proceeding also against imports originating in India. At the time of the initiation of the current proceeding, however, the Commission did not have sufficient evidence of injurious dumping at its disposal that would have justified the initiation of a proceeding

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against imports originating in India in line with the requirements of Article 5(2) of the basic Regulation.

2. Parties concerned by the proceeding

(4) The Commission officially advised the complainant, the complainant producers and other known Community producers, exporting producers in the countries concerned, importers/traders and their associations, suppliers and users known to be concerned and the representatives of the exporting countries concerned, of the initiation of the proceeding. 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 notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(5) In order to allow exporting producers in the PRC and in Kazakhstan to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned as well as to the authorities of the PRC and Kazakhstan. Four exporting producer groups in the PRC and one exporting producer in Kazakhstan claimed MET pursuant to Article 2(7) of the basic Regulation, or IT should the investigation establish that they did not meet the conditions for MET.

(6) In view of the apparent large number of exporting producers in the PRC and importers in the Community, sampling was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation.

(7) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in the PRC and Community importers were requested 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 of 1 July 2005 to 30 June 2006.

(8) As far as the exporting producers in the PRC are concerned, given that only four groups of companies having export sales of SiMn to the Community during the IP indicated their willingness to be included in the sample, it was decided that sampling was not necessary.

(9) With regard to importers into the European Community, only two unrelated importers made themselves known and provided the requested information in due time. Therefore, it was decided that sampling was not necessary.

(10) The Commission sent questionnaires to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Questionnaire replies were received from four Community producers, four exporting producer groups in the PRC, the sole Kazakh exporting producer, three Ukrainian exporting producers, two unrelated importers and nine

unrelated users in the Community. In addition, two users submitted comments without replying to the questionnaire.

(11) One of the exporting producer groups in the PRC, however, subsequently did not agree to an envisaged on-the-spot verification of the information provided in their MET/IT claims and questionnaire replies. Consequently, after having advised the companies concerned of the consequences of non-cooperation as stipulated in Article 18(1) of the basic Regulation, the Commission has in accordance with the provisions of Article 18 considered the said companies as not cooperating in the proceeding and all submissions made by them have been disregarded.

(12) The Commission sought and verified all the information it deemed necessary for the purpose of MET/IT, in the case of the PRC and Kazakhstan, and for the determination of dumping, resulting injury and Community interest for all countries concerned. Verification visits were carried out at the premises of the following companies:

(a) *Community producers*
- Eramet Comilog Manganese, Paris, France
- Ferroatlantica S.L., Madrid, Spain
- Huta Łaziska SA, Łaziska Górne, Poland
- OFZ, a.s., Istebne, Slovakia.

(b) *Users in the Community*
- Compañía Española de Laminación, S.L., Castellbisbal, Spain
- Mittal Steel Poland SA (Arcelor SA), Kraków, Poland.

(c) *Unrelated importers*
- Metalleghe S.P.A., Brescia, Italy.

(d) *Exporting producers in the PRC*
- Minmetals Group
  - Minmetals (Guizhou) Ferro-Alloys Co., Ltd, Guiyang
  - Guiyang Huaxi Minmetals Ferro-Alloys Co., Ltd, Qingzhen
  - China Minmetals Shenzhen Co., Ltd, Shenzhen
  - Minmetals Shanghai Pudong Trading Co., Ltd, Shanghai
  - China National Minerals Co., Ltd, Beijing
  - Minmetals Orient Import & Export Trading Co., Ltd, Beijing.
- Jilin Group
  - Jilin Ferroalloys Co., Ltd, Jilin City
  - Jilin Ferroalloy Imp & Exp Co., Ltd, Jilin City.
- Shanxi Jinneng Group
  - Shanghai Jinneng International Trade Co. Ltd, Shanghai

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— Datong Jinneng Jinli Ferroalloy Co. Ltd, Datong
— Shanxi Jinneng Group Jinguan Ferroalloy, Datong
— Datong Jinneng Industrial Silicon Co. Ltd, Datong.

(e) *Exporting producer in Kazakhstan*
— OJSC Kazchrome (Kazchrome), Aktyubinsk and Aksu.

(f) *Exporting producers in Ukraine*
— PJSC Nikopol Ferroalloys Plant (NFP), Nikopol and its related traders
— SPIG 'Interpipe' Corporation, Dniepopetrovsk
— Nikopolskie Ferrosplavy LLC, Dniepopetrovsk
— JSC Stakhanov Ferroalloys Plant (Stakhanov), Stakhanov
— OJSC Zaporozhye Ferroalloys Plant (Zaporozhye), Zaporozhye.

(g) *Related traders in Switzerland*
— Steelex SA, Lugano, related to PJSC Nikopol Ferroalloys Plant
— ENRC, Kloten, related to OJSC Kazchrome.

(13) In light of the need to establish a normal value for the exporting producers in the PRC and Kazakhstan to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country took place at the premises of the following producer and its related sales company in the United States of America (USA):
— Eramet Marietta, Inc., Marietta, Ohio (producer)
— Eramet North America, Inc., Coraopolis, Pennsylvania (related sales company).

3. Investigation period

(14) The investigation of dumping and injury covered the period from 1 July 2005 to 30 June 2006 (the investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 2002 to the end of the investigation period (period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(15) The product concerned is silico-manganese (including ferro-silico-manganese) (SiMn) originating in the PRC, Kazakhstan and Ukraine (the product concerned), normally declared under CN codes 7202 30 00 and ex 8111 00 11.

(16) The product concerned is used in the steel industry for deoxidization and as an alloy. It is mainly produced from manganese ore and silicon which are mixed together and brought to fusion temperatures in a furnace.

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(17) SiMn exists in different qualities and it can have different contents of iron (Fe), manganese (Mn), silicon (Si) and carbon (C). As far as the carbon content is concerned, a distinction can be made between SiMn with a very low content of carbon, which is of a higher quality (and attracts a higher price), and SiMn with higher carbon content, which can be considered as the normal quality. SiMn is sold in different powder, grain or lump sizes. Despite these differences, all qualities and sizes have been considered as a single product since they share the same main chemical and physical characteristics and main uses.

2. Like product

(18) The investigation showed that SiMn produced and sold in the Community by the Community industry, SiMn produced and sold on the domestic markets of PRC, Kazakhstan and Ukraine, and on the domestic market of the USA, which finally served as an analogue country, and SiMn imported into the Community from the PRC, Kazakhstan and Ukraine, have essentially the same basic chemical and physical characteristics and the same basic uses. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

(19) One exporting producer claimed that unwrought manganese, normally declared under CN code 8111 00 11, should not be covered by the investigation. In this regard, it is confirmed that the product concerned is silico-manganese, as stated at recital 15 and not unwrought manganese, but it also includes unwrought silico-manganese. While SiMn is generally declared under CN code 7202 30 00, it may also, depending on the iron content, be declared as unwrought silico-manganese or silico-manganese powders under CN code 8111 00 11.

C. DUMPING

1. Market Economy Treatment (MET)

(20) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC and in Kazakhstan, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which have shown that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is demonstrated by such exporting producers that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in summarised form below:

(1) business decisions are made in response to market signals, without significant State interference, and costs reflect market values;

(2) firms have one clear set of basic accounting records, which are independently audited in line with international accounting standards and are applied for all purposes;

(3) there are no significant distortions carried over from the former non-market-economy system;