Commission Regulation (EC) No 994/2007 of 28 August 2007 imposing a provisional anti-dumping duty on imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 30 November 2006, 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 ferro-silicon (FeSi) originating in the People's Republic of China (PRC), Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia (countries concerned).

(2) The proceeding was initiated as a result of a complaint lodged on 16 October 2006 by Comité de liaison des industries Ferro-Alliages (Euroalliages) (the complainant), on behalf of producers representing a major proportion, in this case more than 90 % of the total Community production of FeSi. The complaint contained prima facie evidence of dumping of the said product and of material injury suffered by the Community industry resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

1.2. Parties concerned by the proceeding

(3) The Commission officially advised the complainant, Community producers, the exporting producers, importers, suppliers and users known to be concerned, and representatives of the countries concerned and the EU-former Yugoslav Republic of Macedonia Stabilisation and Association Council of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

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(4) The complainant, a producer who supported the complaint, exporting producers, importers, raw material producers, users and user associations made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(5) In the notice of initiation, the Commission indicated that in view of the apparent large number of importers sampling may be applied in this investigation. However, given the lower than expected number of importers in the Community which indicated their willingness to cooperate, it was decided that sampling was not necessary.

(6) 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 and the authorities of the two countries.

(7) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation.

(8) Replies were received from the five complainant Community producers, one Community producer who supported the complaint and cooperated fully, seven unrelated importers, three raw material suppliers, eight users, and one association of users.

(9) With regard to the countries concerned by this investigation the Commission received replies from three exporters in the PRC, two exporters in Egypt, one exporter in Kazakhstan, one exporter in the former Yugoslav Republic of Macedonia and two exporters in Russia.

(10) The Kazakh exporter subsequently did not allow an on-the-spot verification of its MET claim and questionnaire reply. Due to this non-cooperation in the meaning of Article 18(1) of the basic Regulation, its data could not be verified and had to be disregarded. The company was informed accordingly.

(11) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) Producers located in the Community:

— Ferroatlantica, Cee, Dumbria and Madrid, Spain
— Ferropem, Laudun and Chambéry, France
— Vargön Alloys, Vargön, Sweden
— OFZ, Istebné, Slovakia
— Huta Laziska, Laziska Gorne, Poland
— TDR Metalurgija, Ruse, Slovenia.

(b) Community user:

— Thyssen Krupp Steel AG, Germany.

(c) Exporting producers and related companies in the exporting countries:

PRC

— Dragon Northwest Ferroalloy Co., Ltd, Liangchen Town,

— Lanzhou Good Land Ferroalloy Factory Co., Ltd, Xicha Town, and Rich Trading Co. Ltd. (related exporter), Lanzhou City,

— Erdos Xijin Kuangye Co., Ltd, Qipanjing Town, and Inner Mongolia Erdos International Trade Co., Ltd (related exporter), Dangshen Town.

Egypt

— The Egyptian Ferroalloys Company, Cairo,

— Egyptian Chemical Industries KIMA, Cairo and Aswan.

The former Yugoslav Republic of Macedonia

— SILMAK DOOEL Export Import, Jegunovce.

Russia

— Chemk Group (Chelyabinsk Electrometallurgical Integrated Plant and Kuznetsk Ferroalloy Works), Novokuznetsk,

— ICT Group of Companies (Bratsk Ferroalloy Plant and its related trading companies: TD North West Ferro Alloy Company and Bakersfield Marketing Ltd), Bratsk and Saint Petersburg.

(d) Related importer in the Community:

— Interalloys RFA Limited, Limassol.

1.3. Investigation period

(12) The investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (IP). The examination of trends relevant for the assessment of injury covered the period from January 2003 to the end of the IP (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(13) FeSi is a ferro-alloy containing by weight more than 8 % and less than 95 % silicon and at least 4 % iron. Production of FeSi takes place in electric arc furnaces by means of reducing quartz using carbon-bearing products. The product is essentially used as a deoxidiser and as an alloying component in the iron and steel industry. FeSi is sold in the form of lumps, grains or powder and exists in various qualities depending on the silicon and the impurity content (e.g. aluminium). FeSi with a silicon content of 70 % and higher was considered as high purity, with a silicon content of more than

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55 % and less than 70 % as medium purity, and with a silicon content of less than 55 % as low purity FeSi.

(14) FeSi exported to the EC and originating in the PRC, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia (the product concerned) is normally declared within CN codes 7202 21 00, 7202 29 10 and 7202 29 90.

(15) In the course of the investigation it was alleged by several exporters that slag, which often contains significantly less then 45 % silicon, should be excluded from the scope of the investigation, because of an alleged lack of the same basic physical characteristic and the same basic uses.

(16) However, this issue needs to be clarified further. In this context interested parties are invited to submit information as to whether the basic physical characteristics and usages of low purity FeSi (i.e. slag) differ substantially from other types of FeSi and to which extent the exclusion of slag could significantly increase the risk of circumvention of measures. However, on the basis of information received so far, it is provisionally determined that low purity FeSi should be considered as product concerned.

2.2. Like product

(17) No differences were found between the product concerned and the FeSi produced and sold on the domestic market in the countries concerned, to the extent domestic sales were verified, and in Norway, which served as an analogue country for the purpose of establishing the normal value with respect to imports from the PRC and Kazakhstan. Indeed, FeSi has the same basic physical and chemical characteristics and uses compared with that exported from the countries concerned to the Community. Likewise, no differences were found between the product concerned and the FeSi produced by the Community industry and sold on the Community market. It is therefore provisionally concluded that all types of FeSi are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Market economy treatment (MET)

(18) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports inter alia 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 exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown 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 a summarised form below:

1. business decisions and costs are made in response to market conditions, and without significant State interference;

2. accounting records are independently audited, in line with International Accounting Standards (IAS) and applied for all purposes;

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

4. legal certainty and stability is provided by bankruptcy and property laws;

5. currency exchanges are carried out at the market rate.

(19) Three Chinese and one Kazakh exporting producers requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the given deadlines.

(20) One Chinese producer demonstrated during an on-the-spot verification visit that it meets all five MET criteria. Consequently its MET claim was accepted and the dumping and injury analysis were based on its data.

(21) For the other two Chinese exporting producers, it was established during the verification visit that MET was not warranted.

(22) The verification established that one Chinese exporting producer did not meet criteria one to three. Firstly, it did not demonstrate to be free from State interference, inter alia because the Communist party, which was not a shareholder, interfered in basic company decisions and the organisational responsibility for profit distribution decisions remained unclear (criterion one). Secondly, it did not substantiate that it had one clear set of basic accounting records which were prepared and audited in compliance with IAS, because its depreciation technique was neither in line with IAS nor Chinese accounting principles and led to the overstating of costs. Furthermore, as the above breaches of IAS were not mentioned in the audit report, the company did not demonstrate that its records were audited in line with the international accounting standards, (criterion two). Finally, it did not demonstrate to be free from significant distortions carried over from the former non-market economy, in particular because it obtained from the State land use rights without payment and its assets evaluation during the foundation process of the company remained unclear (criterion three).

(23) Another Chinese exporting producer was unable to demonstrate that it had one clear set of basic accounting records which were prepared and audited in line with IAS: it changed its estimates regarding the useful lives of its assets between two financial years without clear notice, which led to the understating of costs, a practice which is neither in compliance with IAS nor Chinese accounting principles. Moreover, it failed to disclose in its financial statements, and for any class of its assets, the depreciation methods used and the useful lives of the assets or the depreciation rates used. Finally, as this incompliance of IAS was not mentioned in the audit report, it did not demonstrate that its records were audited in line with the international accounting standards (criterion two).

(24) Consequently, it was concluded that both Chinese exporting producers did not fulfil the conditions set out in Article 2(7)(c) of the basic Regulation.