COUNCIL REGULATION (EC) No 398/2004

of 2 March 2004

imposing a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China

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] (basic Regulation), and in particular Article 11(2) thereof,

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

Whereas:

PROCEDURE

Measures in force

(1) By Regulation (EC) No 2496/97 [2], the Council imposed a definitive *ad valorem* anti-dumping duty on imports of silicon originating in the People's Republic of China (PRC or China). The rate of the definitive duty applicable to the net free-at-Community frontier price, before duty, was 49 %. It should be noted that the original measures were imposed by Regulation (EC) No 2200/90 [3], and that Regulation (EC) No 2496/97 concluded an expiry review.

Request for a review

(2) Following the publication, in March 2002, of a notice [4] of the impending expiry of the anti-dumping measures in force on imports of silicon originating in the People's Republic of China, the Commission received a request for a review pursuant to Article 11(2) of the basic Regulation. The request was lodged on 9 September 2002 by Euroalliages (Liaison Committee of the Ferro-Alloy Industry) (the applicant) on behalf of producers representing 100 % of the Community production of silicon metal. The request alleged that the expiry of measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

(3) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission announced the initiation of an expiry review [5], pursuant to Article 11(2) of the Basic Regulation and commenced an investigation.

Investigation

Procedure

(4) The Commission officially advised the complainant Community producers, exporting producers in the PRC, importers/traders, user industries, and associations of users known to be concerned, as well as the representatives of the Chinese Government of the initiation of the review. Interested parties were given 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.

(5) Questionnaires were sent to all the parties that were officially advised on the initiation of the review and to those who requested a questionnaire within the time limit set out in the notice of initiation.

(6) Replies to the questionnaire were received from the three applicant Community producers, one exporting producer, one importer and two producers in the analogue country.

Interested parties and verification visits

(7) 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 of the Community interest. Verification visits were carried out at the premises of the following companies:

(a) Exporting producer

Dalian DC Silicon Co., Ltd — Dalian, PRC

(b) Related Importer

Dow Corning Ltd, Barry, Wales, United Kingdom

(c) Producers in the analogue country

Fesil ASA, Trondheim, Norway

Elkem ASA, Oslo, Norway

(d) Community producers

Invensil, Pechiney Group, Paris, France

Ferroatlantica, Madrid, Spain

R W Silicium, Pocking, Germany

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ L 345, 16.12.1997, p. 1.
[3] OJ L 198, 28.7.1990, p. 57. Regulation amended by Regulation (EC) No 1607/92 (OJ L 170, 25.6.1992, p. 1).
[4] OJ C 67, 16.3.2002, p. 34.
[5] OJ C 246, 12.10.2002, p. 9.

Investigation period

(8) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 October 2001 to 30 September 2002 (IP). 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 1998 up to the end of the IP (period under consideration).

Proceeding concerning other countries

(9) In October 2002 an anti-dumping proceeding with regard to imports into the Community of silicon originating in Russia was initiated. On 10 July 2003, by Council Regulation (EC) No 2229/2003 [1], a provisional anti-dumping duty of between 22,7 % and 23,6 % was imposed.

Product under consideration and like product

(10) The product under consideration is the same as in the original investigation, i.e. silicon metal originating in the PRC, classifiable 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 Customs 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 semiconductor industry, falls under a different CN code and is not covered by this proceeding.

(11) 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. 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 industry.

(12) As in the previous expiry review, the investigation has shown that the silicon, produced in the PRC and sold domestically, as well as that exported to the Community, the silicon produced and sold on the domestic market of the analogue country (Norway) and that manufactured and sold in the Community by the applicant Community producers have the same basic physical and chemical characteristics, and the same basic uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

(13) Comments regarding the different grades of the product under consideration and the like product were made, one by the Government of China and the other by the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters. However, these submissions were not accompanied by any supporting evidence. Furthermore, they were only made at a very late stage of the proceeding. For these reasons the comments received regarding the product under consideration were rejected.

LIKELIHOOD OF A CONTINUATION OF DUMPING

(14) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the measures would be likely to lead to a continuation of dumping.

Preliminary remarks

(15) Of the six Chinese exporting producers named in the complaint, only one cooperated. Based on Eurostat data, its volume of exports represented more than 80 % of total Chinese exports to the EU. No information was submitted by any other Chinese exporting producer and therefore the findings relating to their situation had to be established on the basis of the facts available, in accordance with Article 18 of the basic Regulation.

(16) During the IP of the previous expiry review, the volume of silicon imports from the PRC to the Community was 10 199 tonnes. After the imposition of the anti-dumping measures the imports concerned decreased to 4 168 tonnes in 1998, but they had increased again to 14 454 tonnes by the end of the IP.

(17) In the original investigation, Chinese imports had a market share of 9,3 % in the IP. The market share of the imports concerned accounted for 3,8 % of total Community consumption during the IP of the previous expiry review. In the period following the imposition of the anti-dumping measures, this market share decreased to 1,4 % in 1998, but during the IP it increased again and accounted for 3,9 % of total Community consumption of the product under consideration.

Dumping during the IP

(18) In accordance with Article 11(9) of the basic Regulation the Commission used the same methodology as in the original investigation.

[1] OJ L 339, 24.12.2003, p. 3.

Analogue country

(19) Since the PRC is an economy in transition, normal value had to be based on information obtained in an appropriate market economy third-country in accordance with Article 2(7) of the basic Regulation.

(20) As in the previous expiry review, in the notice of initiation of this expiry review, Norway was proposed as analogue country for the purposes of establishing normal value.

(21) The Chinese exporting producer opposed this proposal and argued that Brazil or South Africa would be more appropriate choices, mainly because competition and market conditions in these countries were more comparable with the situation in the PRC. The Community industry objected to Brazil and South Africa on the grounds of the strong devaluation of the local currency in Brazil and the lack of competition in South Africa, since there was only one company producing the product under consideration. Moreover, none of the known producers in these two countries agreed to cooperate in the proceeding, although they had been invited by the Commission to do so. Consequently, Brazil and South Africa could not be retained as analogue countries.

(22) With respect to Norway, it was found that it was one of the largest producers of silicon in the world, with two competing local producers. It was also established that Norway was an open market without import duties for silicon and that there were sizeable imports from Brazil and the PRC. It should also be noted that Norway has a natural advantage in terms of access to cheap energy, whereas no submission was made to suggest that the PRC enjoyed a similar advantage.

(23) It is therefore concluded that Norway constituted an appropriate analogue country. The Commission contacted the two known producers of silicon in Norway and both agreed to cooperate.

Normal value

(24) As far as the determination of the normal value is concerned, it was first established that the volume of the Norwegian producers' domestic sales compared with the exported volume from the PRC was representative. Normal value was established either on the basis of the weighted average price paid in the ordinary course of trade by independent customers or on the basis of constructed normal value where these domestic sales were not profitable. In this respect, it should be noted that constructed normal value had to be used only for a minor proportion of the exports. In cases where normal value was constructed, this was done by adding a reasonable amount for selling, general and administrative expenses ('SG&A') and a reasonable margin of profit to the cost of production in Norway. In all cases SG&A and profit were established pursuant to the first method set out in Article 2(6) of the Basic Regulation.

Export price

(25) As regards the exports to the Community, most sales by the cooperating exporting producer in the PRC were sales to a related company in the Community which further processed the imported silicon into silicones. These export prices would not normally be used for the establishment of the export price because they might be influenced by the relationship. However, since it was found that the prices charged were in line with market prices as reported in specialised magazines, as well as with the prices charged by another Chinese exporting producer that did not cooperate but exported to the same company in the EU during the IP, it was decided to use these prices for the calculation of the export price. The export price was thus established on the basis of the data from the cooperating exporting producer, the non cooperating exporting producer and the remaining Eurostat data. It should be noted that the volume of the exports by the cooperating exporter constituted 80 % of the imports registered by Eurostat and was higher than the total volume of the product under consideration imported from the PRC during the IP of the previous expiry review.

Comparison

(26) For the purposes of ensuring a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences that were claimed and demonstrated to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments were made in respect of transport, insurance, handling and credit costs.

Dumping margin

(27) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export prices, as determined above. This comparison showed the existence of dumping. The dumping margin, expressed as a percentage of the cif Community frontier price duty unpaid, was significant, i.e. 12,5 %, although well below the level found in the previous investigations.

Conclusion

(28) The investigation has revealed that the import volume of the product under consideration from China was higher than in the IP of the previous expiry review and that it had clearly remained at dumped levels. The investigation did not reveal any reason why the level of dumping would disappear or decrease if the measures were to be repealed. It was therefore concluded that there was a likelihood of continuation of dumping.

Development of imports should measures be repealed

(29) It was also considered appropriate to examine whether there would be an increase in Chinese import volumes should the existing measures be repealed. For this purpose the following factors were assessed: the evolution of export and/or production capacity and export behaviour of Chinese exporting producers on third country markets.

Export sales and spare capacity of cooperating exporter

(30) The investigation showed that the cooperating company exported 100 % of its production of the product under consideration, mainly to the EU. It also became apparent that this company had considerable excess production capacity which had recently been doubled. It should also be noted that the vast majority of exports to the EU were made under inward processing relief to a related company which used the product under consideration for further processing. In other words, these exports never entered into free circulation on the Community market but they competed with silicon sold by other operators on the Community market. The repeal of the measures would thus be an additional incentive for this exporter to ship further quantities of the product under consideration to the Community market either for free circulation or for inward processing.

Chinese production and capacity utilisation

(31) According to the application for the expiry review, which in this respect was based on information in the Metal Bulletin of August 2001, the total Chinese production capacity for the product under consideration is around 1 203 000 tonnes per year. The application for the expiry review also referred to information from a leading independent research group, which estimated the production capacity at around 600 000 tonnes in 2002. The Chinese production volume was estimated at around 400 000 tonnes in that year. On this basis, the Chinese capacity utilisation rate is between 33 % and 66 % and on the best case scenario their spare capacity is at least half of the total Community consumption. It also appeared that Chinese production capacity could be rapidly increased further if warranted by market conditions.

(32) Consequently, the large production capacity available in the PRC demonstrates that producers are able to quickly increase production and direct it to any export market, including, if the measures are repealed, the Community market.

(33) Since no information was provided by Chinese sources and given that little public information is available about the Chinese silicon industry, it should be noted that according to the Basic Regulation, and in particular Article 18 thereof, the above conclusions rely mainly on the best information available, namely the information contained in the complaint.

Exports to third countries

(34) On the basis of Chinese export trade data it was established that total worldwide exports of Chinese silicon increased by 43 %, from 271 626 tonnes in 1998 to 387 444 tonnes in 2002 [1]. Export prices to the world market are 30 % below the export prices to the Community, so that exporters would have an incentive to increase exports to the Community rather than to third countries should the measures be repealed.

(35) Moreover, a fall of almost 4 % in the Chinese export prices of the product under consideration was observed, i.e. from USD 829 per tonne in 1998 to USD 799 per tonne in 2002 [1].

(36) This clearly shows that, if the measures were repealed, the Chinese exporters would have an incentive to target the Community market in the light of the anti-dumping measures just imposed on the US market and the recent increase from 5 to 20 % in the customs duty imposed by Russia on Chinese imports of the product under consideration.

[1] In the absence of the monthly breakdown for the IP, annual data has been used.

Export prices to the Community

(37) It should also be noted that the generally prevailing price level for the product under consideration in the Community makes the Community market a very attractive one. This is a further incentive for increasing exports to the Community either by increasing production or by diverting to the Community those sales which are currently exported to third countries. Moreover, export prices to third countries were found to be lower than those to the Community. However, the attractive, relatively high prices on the Community market are not likely to be maintained in the long term since, if measures were lifted, the numerous Chinese exporters would compete with each other in order to increase their shares on the Community market. Consequently it is very likely that all operators present on the Community market would have to reduce their prices accordingly.

Trade defence measures applied by third countries

(38) The export behaviour of Chinese producers on other significant markets for the product under consideration was also investigated. In this respect the United States of America initiated a review of the anti-dumping duty on silicon from the PRC in 1999. The investigation established very high margins of dumping (up to 139 %). Therefore, in February 2003, anti-dumping measures were renewed against imports of the product under consideration with the conclusion that the removal of the measures would lead to continuation of injurious dumping ([1]).

(39) Furthermore, in 2002 the Russian administration completed an anti-dumping investigation with regard to imports of silicon from the PRC with a recommendation that an anti-dumping duty of 25 % be imposed. However, following consultations with the Chinese authorities, the import duty of 5 % has been increased to 20 %. This is a clear indication that the Chinese exporters would have to find other markets to sell the product under consideration.

(40) In the light of the above, it may be concluded that there is pressure on Chinese exporting producers to find alternative export markets.

Conclusion

(41) The investigation has shown that the PRC has continued its dumping practices during the IP. Given the fact that the PRC has considerable spare production capacity, and that Chinese exports to third countries are made at even lower prices than those to the Community, there is a strong likelihood that Chinese exporting producers would substantially increase their dumped exports of the product under consideration to the Community if existing measures were repealed. In addition, the exports of the product under consideration by Chinese exporters are limited by the new anti-dumping measures in force in both the United States of America and Russia. In summary, it is highly probable that imports to the Community from China will resume in significant quantities and at dumped prices, should the measures be repealed.

DEFINITION OF THE COMMUNITY INDUSTRY

(42) The three complainant Community producers replied to the questionnaires and fully cooperated in the investigation. During the IP, they represented 100 % of the Community production. During the IP, one of the three Community producers imported the product under consideration from other third countries, principally from South Africa. However, it was found that these imports were essentially made to supplement products that it supplied to its Community customers. These imports decreased over the period under consideration, particularly between 1998 and 1999 when they dropped by half, following the installation of new Community production facilities by the producer under consideration, and its strategic commitment to produce and sell more silicon in the Community market. During the IP the volume of the product under consideration imported by the producer in question represented only 2,1 % of the Community industry's sales of silicon within the Community (3,5 % of the sales of the producer in question) and 1,9 % of the Community industry's production of the product under consideration (3,2 % of the production of the producer in question). In view of the above, it is concluded that the imports made this producer did not affect its status of Community producer.

(43) On this basis, the three complainant Community producers constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

SITUATION OF THE COMMUNITY MARKET

Community consumption

(44) Community consumption was based on the combined volume of supplies made by the Community industry in the Community, and imports from China and other third countries (based on Eurostat).

([1]) US Federal Register/Volume 68, No 25, 11 February 2003.