Council Regulation (EC) No 2229/2003 of 22 December 2003 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of silicon originating Russia

COUNCIL REGULATION (EC) No 2229/2003

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imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of silicon originating Russia

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 1235/2003[(2)] ('provisional Regulation'), imposed provisional anti-dumping measures on imports of silicon originating in Russia. The measures were expressed as an *ad valorem* duty, ranging between 24,0 % and 25,2 %.

(2) It is recalled that the investigation of dumping and injury covered the period from 1 October 2001 to 30 September 2002 ('investigation period' or 'IP'). The examination of the trends in the context of the investigation of injury analysis covered the period from 1 January 1998 to the end of the IP ('period under consideration').

1.2. Other measures in force

(3) Anti-dumping duties at an *ad valorem* rate of 49 % are currently in force on imports of silicon originating in the People's Republic of China ('China')[(3)]. A review[(4)] of these measures pursuant to Article 11(2) of the basic Regulation is ongoing.

1.3. Subsequent procedure

(4) Following the imposition of provisional anti-dumping duties, parties received a disclosure of the facts and considerations on which the provisional Regulation was based. Some parties submitted comments in writing. All interested parties who so requested were granted an opportunity to be heard by the Commission.

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(5) 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 duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.

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

(7) The Commission continued to seek all information it deemed necessary for the purpose of its definitive findings.

(8) In addition to the verification visits undertaken at the premises of the companies mentioned in recital 7 of the provisional Regulation, it should be noted that after the imposition of provisional measures, an on-spot visit was carried out at the premises of the following Community users:

— GE Bayer Silicones, Leverkusen, Germany,

— Raffinera Metalli Capra SpA, Brescia, Italy,

— Vedani Carlo Metalli SpA, Milan, Italy.

2. Product concerned and like product

2.1. Product concerned

2.1.1. Comments from exporting producers

(9) In recital 9 of the provisional Regulation, the product concerned was defined as silicon currently classifiable within CN code 2804 69 00. Some exporters queried whether silica fumes, which is a by-product of silica, obtained by a filtering process during the production of Silicon, is covered by the present proceeding.

(10) It should be noted that silica fumes does not correspond to the definition of the product concerned provided in recitals 9 and 10 of the provisional Regulation since it is merely a by-product from the production of silicon taking the form of a powder which is used as an additive to concrete. It is therefore confirmed that this product, covered under CN code ex 2811 22 00, is outside the scope of this proceeding.

(11) The definition of the product concerned was questioned by one Russian exporting producer, which claimed that there are in fact two distinct types of silicon, within this CN code, one type destined to metallurgical users and one type to chemical users. In support of this assertion, the Russian producer claimed that the two grades have significantly different chemical compositions based on their trace element content, with different end uses; that there are two distinct sets of users which do not compete with each other; and that there is no significant interchangeability between the two grades.

(12) The investigation showed that silicon is produced in different grades and that silicon sold on the EU market during the IP, whether produced by the Community industry or imported from Russia, contained more than 95 % silicon by weight. The

grade of the silicon is determined in the first place by the percentage of silicon, and in the second place by the other elements, in particular the content of iron and calcium. For specialist users, particularly chemical users, the proportions of other trace elements determine whether the silicon is suitable for the intended use. Commonly, for a specialist user, silicon is manufactured to specific requirements and is only purchased following a lengthy verification process by the individual user. However, whilst the levels of trace elements are important to chemical users, this is not sufficient to conclude that it is a separate product from silicon consumed by metallurgical users.

(13) Evidence was also provided to show that the high-grade material was not sold exclusively to chemical users, and that chemical users also purchased certain quantities of the lower grade so-called metallurgical silicon. It is also generally accepted that users with lower quality requirements, in particular secondary metallurgical users, are able to use higher-grade silicon. For them the determinant factor is the price, as they are not willing to pay a premium for silicon of a higher grade than they require.

2.1.2. Comments of users

(14) A number of users also questioned the provisional determination of the product concerned. The submissions made were very similar to those received by exporting producers, particularly from the metallurgical users. All metallurgical users argued that there are three distinct product types i.e. chemical, and a split between standard, and low grade silicon for metallurgical users. However, all accepted that they are able to use any of these grades in their production process, although they prefer low grade silicon on cost grounds. These comments were repeated by a metallurgical users' organisation.

(15) One chemical user commented on the issue of product concerned. They confirmed that the silicon they purchase is tailor-made to their specifications and that the trace elements within the silicon are the most important factor for them.

2.1.3. Comments of the Community industry

(16) The Community industry agreed with the provisional determination that all grades of silicon falling under the definition used in recitals 9 and 10 of the provisional regulation should be considered as the product concerned. They also pointed out that many of the arguments are not raised within the context of the product concerned but within the context of the like product determination, and that the exporting producers are confusing these two issues.

2.1.4. Conclusion on product concerned

(17) Silicon is a product which is manufactured in several grades, depending firstly on the iron content, then on the calcium content, and thirdly on other trace elements. The production process employed in the EU and in Russia, i.e. electric arc furnaces, is largely the same.

(18) On the EU market, there are essentially two different user groups: chemical users mainly manufacturing silicones, and metallurgical users manufacturing

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aluminium. The metallurgical users can also be subdivided between primary aluminium producers and secondary (recycled) aluminium producers. However, all of the silicon used contains at least 95 % silicon by weight, and is typically 98 or 99 % silicon.

(19) Three grades of silicon have been identified, high grade, standard grade, and low grade, based upon the percentages of iron and calcium in the silicon. Between these grades, it was found that there is some overlap in the use made by different user groups. It is generally accepted that there are no physical, chemical, or technical characteristics which would prevent secondary aluminium producers from using any of the grades of silicon, or primary aluminium producers from using standard or high grade silicon. There is not the same degree of interchangeability in the opposite direction, although evidence has been submitted of chemical users being prepared to use standard and low grade silicon. The cost of the different grades usually determines which grade is used by which user group.

(20) The investigation has shown, as mentioned above, that all types of silicon, despite any differences in terms of the content of other chemical elements, have the same basic physical, chemical, and technical characteristics. Whilst the silicon can be used for different end uses, it was found that there was substitutability to a greater or lesser degree between the different grades and different uses.

(21) Therefore, the findings at recitals 9 and 10 of the provisional Regulation are definitively confirmed.

2.2. Like product

(22) After analysis, it was found that the claim concerning the product control number (PCN) addressed in recital 14 of the provisional Regulation concerned the price comparison of silicon originating in Russia with Community produced silicon and the correspondent injury elimination level. Differences in prices, quality and in uses do not necessarily lead to the conclusion that the products are not alike. Indeed, what matters in this context is whether the product types in question share the same basic physical and chemical characteristics and basic uses. The aforementioned differences will be taken into account in the comparison between export price and normal value and in determining e.g. price undercutting and the injury elimination level).

(23) One Russian exporting producer referred to the anti-dumping measures currently imposed on imports of silicon from China (see recital 3). In particular, they refer to recital 55 of Council Regulation (EC) No 2496/97 which states that ‘the quality of silicon metal from Russia and Ukraine is not comparable to European or Chinese silicon metal’.

(24) In response to this point, it should first be pointed out that this statement was made in an investigation dating back more than five years, was based on information submitted in that investigation, and that this is not confirmed in the current investigation. In addition recital 55 of the above Regulation deals with the issue of causality only. It is clear from the wording that the product concerned, and indeed the like product from all sources, be it China, Russia, the EU, or the analogue country, i.e. Norway is

silicon. This silicon forms one like product within the definition of Article 1(4) of the basic Regulation. Moreover, to the extent that quality differences can be found between different silicon producers in different countries, such differences can be adequately taken into consideration by means of adjustments. It is also noted that there were quality differences between the various types exported from Russia to the Community.

(25) Based on the above and based on the findings of the investigation, it is confirmed that the silicon produced in Russia and sold domestically as well as that exported to the Community, the silicon sold on the domestic market of the analogue country, and that manufactured and sold in the Community by the Community industry have the same basic physical and chemical characteristics. It is therefore concluded that all types of silicon forms one product family and are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. Dumping

3.1. Normal value

(26) In the absence of any comments, the recitals 15 to 18 concerning market economy treatment of the provisional Regulation are confirmed.

(27) All exporting producers made submissions arguing that the cost of electricity used at provisional stage should be amended. They emphasised that their main electricity supplier is a majority private-owned company and that its low price can be explained by the presence of the world's largest complex of hydro-electric power stations, based on a natural comparative advantage. This matter was further investigated, but since it was found that electricity prices in Russia are regulated and that the price charged by this electricity supplier was very low, even when compared to other suppliers of electricity generated by hydro-electric power stations in the analogue country Norway and also in Canada, it was decided to reject this claim and to confirm the provisional decision to use the electricity price charged by another electricity supplier in Russia. This price was found to be in line with the lowest price of representative electricity producers found in the Community.

(28) In the absence of any other comments, the recitals 19 to 26 concerning the determination of normal value of the provisional Regulation are confirmed.

3.2. Export price

(29) All exporting producers have argued that the companies involved in selling the product concerned to the EC which are located outside Russia are related parties and that these companies should be treated as a single economic entity together with the companies located in Russia. They claimed that the export price used should therefore be the price charged by these related companies to the first independent customer in the EC.

(30) In the case of the importer located in the Community (United Kingdom), no new evidence was presented which demonstrated that it was related to the exporting