COMMISSION REGULATION (EC) No 1235/2003
of 10 July 2003
imposing a provisional anti-dumping duty on imports of silicon originating in Russia

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), as last amended by Regulation (EC) No 1972/2002 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 12 October 2002, the Commission announced by a notice (notice of initiation) published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of silicon originating in Russia.

(2) The anti-dumping proceeding was initiated following a complaint lodged on 30 August 2002 by Euroalliages (Liaison Committee of the Ferro-Alloy Industry) (the complainant) on behalf of producers representing 100 % of the Community production of silicon. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The Commission officially advised the complainant, the exporting producers, importers/traders, suppliers and users, as well as their associations known to be concerned and the representatives of Russia, 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.

(4) The complainant, the exporting producers, importers, suppliers and users made their views known in writing. All parties who so requested within the time limit and showed that there were particular reasons why they should be heard were granted a hearing.

(5) In order to allow exporting producers in Russia to submit a claim for market economy treatment (MET) or individual treatment (IT), the Commission sent claim forms to the three Russian companies listed in the complaint. All three Russian companies requested MET pursuant to Article 2(7) of the basic Regulation or individual treatment, should the investigation establish that they did not meet the conditions for MET.

(6) 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. Replies were received from the complainant Community producers, the cooperating exporting producers, three importers, three suppliers, five users and one users' association.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 246, 12.10.2002, p. 12.

(7) The Commission sought and verified all the information it 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) *Exporting producers*

— OJSC Bratsk Aluminium Plant, Bratsk, Irkutsk Region, Russia (belonging to the RUSAL Holding Group)

— SUAL-Kremny-Ural LLC (SKU), Kamensk, Ural Region, Russia (belonging to the SUAL Holding Group)

— JSC ZAO Kremny, Irkutsk, Irkutsk Region, Russia (belonging to the SUAL Holding Group)

(b) *Importer*

— Pultwen Ltd, Maidenhead, United Kingdom

(c) *Community producers*

— Invensil, Pechiney Group, Paris, France

— Ferroatlantica, Madrid, Spain

— R W Silicium, Pocking, Germany

(d) *Analogue country producers*

— Fesil ASA, Trondheim, Norway

— Elkem ASA, Oslo, Norway.

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

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(9) The product concerned is silicon originating in Russia, currently classifiable within CN code 2804 69 00 (silicon content less than 99,99 % by weight).

(10) 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. 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 it is not covered by this proceeding.

2. **Like product**

(11) All Russian exporting producers cooperating in the investigation argued that silicon produced in Russia and exported to the Community market could not be considered comparable with that produced in the Community. In particular, they claimed that the silicon manufactured in Russia was of a much lower quality than that produced by the Community industry due to differences in its chemical composition.

(12) The Commission considers that, despite some differences in the chemical composition and purity of the product produced, silicon produced in the Community, in Russia, and indeed in the analogue country (Norway) is essentially the same product, since the chemical differences relate to trace elements and do not alter the fundamental nature of the product. It was also found that the silicon from the EU, Russia and Norway all had the same physical characteristics and that they were all sold to different user groups for different applications. Quality differences were taken into account when comparing exports from Russian producers with the product produced and sold in the EU market. The claim is therefore provisionally rejected.

(13) Accordingly it is provisionally considered that silicon manufactured in Russia and sold domestically as well as that exported to the Community, the silicon sold on the domestic market of Norway and that manufactured and sold in the Community by the Community industry have basically the same physical, chemical and technical characteristics and the same uses. It is therefore provisionally concluded that these products constitute one like product within the meaning of Article 1(4) of the basic Regulation.

(14) One Russian exporting producer claimed that the product control number (PCN) table provided by the Commission in the anti-dumping (AD) questionnaire did not include sufficient details of the chemical composition of the different types of silicon and it was therefore not possible to make a proper comparison of the different grades of silicon. As this claim was substantiated by a concrete proposal well after the deadline for returning the reply to the AD questionnaire, the Commission can not, at this stage of the proceeding, make the necessary analysis to justify a modification to the PCN table in the questionnaire. Nevertheless, the Commission will continue to analyse this issue in more depth during the remainder of the proceeding.

C. **DUMPING**

1. **Normal value**

(a) *Market economy treatment*

(15) As the current investigation was initiated before the date of entry into force of the amendment to the basic Regulation, i.e. by Regulation (EC) No 1972/2002, the new regime defined by this amendment does not apply to the present investigation. Therefore, pursuant to Article 2(7)(b) of the basic Regulation normal value was determined in accordance with paragraphs 1 to 6 of Article 2 for those exporting producers which were able to show that they met the criteria laid down in Article 2(7)(c) of that Regulation, i.e. that market economy conditions prevailed in respect of the manufacture and sale of the like product concerned.

(16) Claims for MET were received from all cooperating Russian exporting producers. The claims were analysed on the basis of the five criteria required by Article 2(7)(c) of the basic Regulation. The investigation showed that all three companies fulfilled the required criteria.

(17) The Community industry was given the opportunity to comment and in particular questioned whether the raw material prices were market prices. The subsequent investigation showed that prices for the main raw materials of the three Russian exporting producers were in line with world market prices as well as with the purchase prices of the Community industry. With regard to electricity prices it was clearly indicated that, should any distortion appear in the course of the further investigation, this would be corrected by an appropriate adjustment.

(18) However, in view of the fact that the cooperating Russian exporting producers represented 100 % of the Russian production of silicon, and all received market economy status, the use of analogue country's items was not necessary.

(b) *Determination of normal value*

(19) As far as the determination of normal value is concerned, the Commission first established, for each exporting producer, whether its total domestic sales of the product concerned were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community. The comparison showed that domestic sales were representative.

(20) For each type sold by the exporting producers on their domestic markets and found to be directly comparable with the type of the product concerned sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of the product concerned were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type exported to the Community.

(21) The Commission subsequently examined whether the domestic sales of each company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

(22) An examination was made as to whether the domestic sales of each type of the product concerned could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the type in question. In cases where the sales volume of silicon, sold at a net sales price equal to or above the calculated cost of production, represented 80 % or more of the total sales volume and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of silicon represented less than 80 % of the total sales volume or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only, provided that these sales represented 10 % or more of the total sales volume.

(23) In cases where the volume of profitable sales of any type of silicon represented less than 10 % of the total sales volume, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(24) In all cases where constructed normal value was used and in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses (SG & A) and a reasonable margin of profit.

(25) With regard to the manufacturing costs, and in particular energy costs, it was found that the price charged by Russian electricity suppliers to two silicon producers could not reasonably reflect the costs associated with the production of electricity, when compared to prices of representative electricity producers in the Community, the analogue country and Russia, including those in Russia. It was therefore concluded that the energy cost was not reliable for these two producers. It was therefore provisionally decided to use the power price charged to another producer in Russia.

(26) As regards SG & A and profits, in accordance with Article 2(6) of the basic Regulation, the amounts for SG & A and profits used were those pertaining to the exporting producer concerned.

2. **Export price**

(27) All three cooperating exporting producers sold most of the product concerned to importers, located in the European Union (United Kingdom), Switzerland and the British Virgin Islands. On the basis of the information available at this stage of the proceeding, these importers must be considered independent. Therefore the export prices for the three cooperating exporting producers were established provisionally on the basis of their sales prices to these importers.

3. **Comparison**

(28) 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 level of trade, inland freight, ocean freight, packing, credit costs and other charges, such as handling and loading and customs declarations. Two companies requested an adjustment for differences in quantities. This adjustment was not granted, as these differences in quantities have been taken into account by granting the level of trade adjustment for different types of customers. One company requested an adjustment for differences in physical characteristics. Within the evidence given for the request, it was found that more than 95 % of the types were sold to both markets, the European Community and domestic. Therefore, a comparison was made within the PCNs having similar characteristics. Consequently, an adjustment for differences in physical characteristics could not be granted, since they were not sufficiently substantiated on a transaction by transaction basis.

4. **Dumping margin**

(29) 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 provisional dumping margin was expressed as a percentage of the cif Community frontier price duty unpaid.

(30) With regard to SKU LLC and ZAO Kremny, as they both belong to the same group (SUAL), only one weighted average dumping margin has been calculated, as it is the Commission's standard practice to establish one dumping margin for related exporting producers, in order to preclude the possibility that future exports to the Community might be channelled through the companies having the lower margin.

(31) The provisional dumping margins are:

OJSC 'Bratsk Aluminium Plant' (RUSAL group)	24,0 %
SKU LLC, Sual-Kremny-Ural and ZAO Kremny (SUAL group)	33,4 %

(32) As the level of cooperation for Russia was 100 %, the residual provisional dumping margin was set at the same level as that of the highest margin level of a cooperating company, i.e. 33,4 %.

D. **INJURY**

1. **Definition of the Community industry**

(33) 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. It was found that, during the IP, one of the three complainant Community producers imported the product concerned from other third countries, principally from South Africa. This Community producer imported the product concerned essentially to supplement products supplied to their 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 concerned and a strategic commitment to the EU silicon market. During the IP the quantities imported represented, by volume, only 2,1 % of the Community industry's sales of silicon within the Community (3,5 % of the sales of the producer in question). In respect of production, the percentages are 1,9 % and 3,2 % respectively. In view of the small proportion represented by those imports, it is concluded that they do not affect the status of Community producer for the producer in question.

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

2. **Injury**

2.1. Community consumption

(35) Community consumption was based on the combined volume of supplies made by the Community industry in the Community, imports from other third countries (based on Eurostat), as well as verified sales into the Community from the country concerned.

TABLE 1

Community consumption (based on sales volumes)

	1998	1999	2000	2001	IP
Tonnes	290 684	325 234	388 938	373 950	371 540
Index *Y/Y trend*	*100*	*112* *+ 12 %*	*134* *+ 20 %*	*129* *– 4 %*	*128* *– 1 %*

Source: verified questionnaire replies and Eurostat.