Council Regulation (EC) No 83/2008 of 21 January 2008 repealing the anti-dumping duty on imports of ferro molybdenum originating in the People's Republic of China and terminating the proceeding in respect of such imports, following review pursuant to Article 11(3) of Regulation (EC) No 384/96

COUNCIL REGULATION (EC) No 83/2008

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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 Articles 11(2), 11(3) and 11(7) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In January 2002, the Council, by Regulation (EC) No 215/2002[(2)], imposed a definitive anti-dumping duty on imports of ferro molybdenum (FeMo) originating in the People's Republic of China (PRC), falling under CN code 7202 70 00 (the product concerned). The investigation period that led to these measures was 1 October 1999 to 30 September 2000 and will be referred to as 'the original investigation'. The measures imposed by Regulation (EC) No 215/2002 consisted of an *ad valorem* duty of 22,5 %.

(2) In October 2006, the Commission, by Decision 2006/714/EC[(3)], suspended for a period of nine months the definitive anti-dumping duty imposed by Regulation (EC) No 215/2002 on imports of the product concerned originating in the PRC. The decision to suspend the definitive anti-dumping duty imposed by Regulation (EC) No 215/2002 was taken in line with the provisions of Article 14(4) of the basic Regulation.

(3) The Commission concluded, in its Decision 2006/714/EC, that the injury linked to the imports of the product concerned originating in the PRC was unlikely to resume as a result of the suspension because of the temporary change in market conditions, in particular the high level of prices of the product concerned on the Community market, which was far above the injurious level found in the original investigation, together with the alleged demand-supply imbalance for the product concerned.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 83/2008. (See end of Document for details)*

(4) In July 2007, the Council, by Regulation (EC) No 856/2007[(4)], extended until 31 January 2008 the suspension of the definitive anti-dumping duty imposed by Regulation (EC) No 215/2002 on imports of the product concerned originating in the PRC.

(5) The Council concluded, in Regulation (EC) No 856/2007, that the situation in the Community market with respect to the product concerned has remained unchanged following the suspension of the anti-dumping duty in October 2006 and decided, pending the outcome of the review (see recitals (6) to (8)), to extent the suspension of the measures in force in accordance with the provisions of Article 14(4) of the basic Regulation.

2. Review of the measures

(6) On 31 October 2006 an *ex officio* full interim review of the anti-dumping measures applicable to imports of FeMo originating in the PRC was initiated, in line with the provisions of Article 11(3) of the basic Regulation, by a notice published in the *Official Journal of the European Union*[(5)] since the corpus of evidence at the Commission's disposal indicated *prima facie* that the circumstances on the basis of which the existing measures were established have changed to the extent that the existing measures might no longer be adequate and that certain of these changes appeared to be of a lasting nature.

(7) It is recalled that in line with the provisions of Article 11(7) of the basic Regulation where an interim review of anti-dumping measures pursuant to Article 11(3) of the basic Regulation is in progress at the end of the period of application of anti-dumping measures as defined in Article 11(2) of the basic Regulation, the interim review shall also cover the circumstances set out for expiry reviews in Article 11(2) of the basic Regulation.

(8) Account taken of the above, and given that the measures imposed by Regulation (EC) No 215/2002 were due to expire in January 2007, the *ex officio* full interim review referred under recital (6) covered the circumstances set out for expiry reviews. Therefore, the *ex officio* full interim review had to reach conclusions on whether the expiry of measures would be likely or unlikely to lead to the continuation or recurrence of dumping and injury.

3. Investigation

(9) The Commission officially advised the producers in the PRC and their association, users and their associations in the Community known to be concerned, the representatives of the PRC and known Community producers and their association, of the initiation of the *ex officio* full interim 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.

(10) In view of the large number of Chinese exporters/producers expected to be involved, it was considered appropriate, in conformity with Article 17 of the basic

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Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the abovementioned parties were requested to make themselves known within 15 days of the initiation of the review and to provide the Commission with the information requested in the notice of initiation. However only one Chinese producer came forward and provided the requested information for sampling. Therefore, it was decided that sampling was not necessary.

(11) In order to allow exporters/producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the exporters/producers known to be concerned, to the authorities of the PRC and to the China Chamber of Commerce of Metals Minerals and Chemicals Importers and Exporters (CCCMC).

(12) The Commission sent questionnaires to the sole cooperating Chinese producer, to users and unrelated importers known to be concerned, to the Community producers known to be concerned and to known producers of FeMo in the United States of America (USA), which was chosen as analogue country in the original investigation.

(13) Replies to the questionnaires were received from three Community producers (representing 100 % of production in the Community), one producer in the PRC, two users and one USA producer. The Commission also received comments and information from two users, the European Foundries Association, the Cast Metals Federation, the European Confederation of Iron and Steel Industries (EUROFER), the Association of European Ferro Alloys Producers (EUROALLIAGES), the CCCMC, one Chinese producer and one USA producer.

(14) The Commission sought and verified all the information it deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

(a) *Community producers*

Climax Molybdenum UK Ltd, Stowmarket, United Kingdom

Sadaci, N.V., Gent, Belgium

Treibacher Industrie AG, Treibach-Althofen, Austria

(b) *Producer in the PRC*

Nanjing Metalink International Co. Ltd, Nanjing

(c) *Producer in the USA*

Bear Metallurgical Company, Butler, Pennsylvania

(d) *Community users*

Corus UK Limited, Scunthorpe, United Kingdom

Böhler-Uddeholm AG, Vienna, Austria

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(15) The investigation on the circumstances with regard to dumping and injury and on the continuation and/or recurrence of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (review investigation period or RIP). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2003 up to the end of the RIP (period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(16) The definition of the product concerned corresponds to that used in the original investigation mentioned under recital (1) above.

(17) The product concerned is ferro molybdenum originating in the PRC, currently classifiable within CN code 7202 70 00.

(18) FeMo is a ferro-alloy containing usually between 45 % and 80 % of molybdenum, the remaining part being iron and small quantities of impurities. The actual molybdenum (Mo) content of FeMo is variable and it is expressed as a percentage of the total weight of FeMo. The two main types of production process used in the production of FeMo are the thermic and the electrolytic processes. In both cases, technical grade molybdenum trioxide (MoO_3) is reduced in the presence of iron. However, because of practical reasons and higher costs the electrolytic method is practically not used. In the thermic production process aluminium and silicon metals are used for the reduction of a charge consisting of a mixture of MoO_3 and iron oxide.

(19) FeMo is used in the melts during the production of alloyed steel and cast iron because of the ability of molybdenum to enhance the resistance to corrosion and to heat of the alloyed steel and cast iron.

(20) The product is sold in different product grades according to the proportion of molybdenum content and the proportion of impurities. The investigation has shown that all product grades have the same basic physical and chemical characteristics and the same uses. Therefore, and for the purposes of the current review, all types of the product concerned are considered as one product.

2. Like product

(21) The current review has shown that the product concerned and the FeMo produced and sold on the domestic markets of the PRC and the USA as well as the FeMo manufactured and sold in the Community by the Community producers have the same basic physical and chemical characteristics and the same uses. Therefore, these products are considered to be a like product within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

(22) In accordance with Articles 11(2), 11(3) and 11(7) of the basic Regulation, it was examined whether dumping was currently taking place and whether the expiry of the measures would be likely to lead to a continuation or a recurrence of dumping.

(23) During the RIP, there were practically no imports to the Community of FeMo originating in the PRC (the country concerned). According to Eurostat, imports from the country concerned amounted to only 13,8 tonnes in EU 27 during the RIP (practically representing some 0,04 % of Community consumption), whilst they were more than 13 200 tonnes in EU 15 during the original investigation. It is noted that all FeMo data in the Regulation are adapted as to correspond to the Mo content.

(24) The sole Chinese cooperating producer did not have export sales of FeMo either to the Community or to anywhere else during the RIP and, thus, no representative dumping calculations on the basis of its own data could be made in order to determine the likelihood of recurrence of dumped exports.

(25) Consequently, the likelihood of recurrence of dumping analysis had to take account of information relating to the period after the RIP, i.e. when the anti-dumping duty was suspended.

2.1. Market economy treatment (MET)

(26) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting 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 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.

(27) The sole cooperating Chinese producer of FeMo requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines. Although this Chinese producer did not have any export sales of FeMo, it was considered appropriate to examine its MET claim in view of the very low level of Chinese cooperation.