Council Regulation (EC) No 42/2007 of 15 January 2007 extending the definitive anti-dumping duty imposed by Regulation (EC) No 398/2004 on imports of silicon originating in the People's Republic of China to imports of silicon consigned from the Republic of Korea whether declared as originating in the Republic of Korea or not

COUNCIL REGULATION (EC) No 42/2007

of 15 January 2007

extending the definitive anti-dumping duty imposed by Regulation (EC) No 398/2004 on imports of silicon originating in the People's Republic of China to imports of silicon consigned from the Republic of Korea whether declared as originating in the Republic of Korea or not

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 13 thereof,

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

Whereas:

A. PROCEDURE

1. Existing measures

(1) By Regulation (EEC) No 2200/90[(2)], the Council imposed definitive anti-dumping measures in the form of a fixed duty per tonne of silicon originating in the People's Republic of China (China) imported into the Community.

(2) Shortly thereafter, following a request lodged by the Community industry, the Council, by Regulation (EEC) No 1607/92[(3)], concluded that the anti-dumping measures in force had been absorbed by Chinese exporters and imposed an additional duty on imports of silicon originating in China.

(3) In 1997, both expiry and interim reviews were initiated. These reviews were concluded by Council Regulation (EC) No 2496/97[(4)]. As a result of these reviews, measures were maintained but it was considered more appropriate to change the form of the measures from a fixed duty to an *ad valorem* duty. The duty rate amounted to 49 % of the cif price of the imports in question. In accordance with the lesser duty rule, this rate corresponded to the injury margin.

(4) Following an expiry review, the Council concluded by Regulation (EC) No 398/2004[(5)] that the anti-dumping duty should be maintained.

2. Request

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(5) On 6 March 2006, the Commission received a request pursuant to Article 13(3) of the basic Regulation to investigate the alleged circumvention of the anti-dumping measures imposed on imports of silicon, classifiable within CN code 2804 69 00 (silicon content less than 99,99 % by weight) originating in China. The request was submitted by Euroalliages (Liaison Committee of the Ferro-Alloy Industry) (the applicant) on behalf of producers representing a major proportion, namely 100 %, of the Community production of silicon. The request alleged that the anti-dumping measures in force on imports of silicon originating in China were being circumvented by means of transhipment via the Republic of Korea (Korea).

(6) The request further alleged that there was insufficient due cause or justification other than the imposition of anti-dumping measures for such change in the pattern of trade and that the remedial effects of the existing anti-dumping measures were being undermined both in terms of quantity and price. Significant volumes of imports of silicon from Korea appeared to have replaced imports of silicon from China. In addition, there was sufficient evidence that these imports were made at prices below the cost of production and reasonable profit established for the Community industry in the investigation that led to the existing measures.

(7) Finally, the applicants alleged that the prices of silicon consigned from Korea were dumped in relation to the normal value previously established for silicon originating in China.

3. Initiation

(8) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission initiated an investigation by Regulation (EC) No 607/2006[6] (the initiating Regulation). Pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of silicon consigned from Korea, whether declared as originating in Korea or not.

4. Investigation

(9) The Commission officially advised the authorities of China and Korea, the producers/exporters and the importers in the Community known to be concerned as well as the applicant Community industry of the initiation of the investigation. Questionnaires were sent to the producers/exporters in Korea and to the Chinese and Korean authorities. 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 initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being made on the basis of the facts available.

(10) No questionnaire replies were received from exporters/producers in China, nor did the Commission receive any comments from the Chinese authorities.

(11) Two Korean companies offered to cooperate in the investigation. Only one of these imported silicon from China into Korea, but did not export it to the Community. The second cooperating Korean company neither produced nor imported silicon at all.

5. Investigation Period

(12) The investigation period covered the period from 1 April 2005 to 31 March 2006 (the IP). Data was collected from 2001 up to the end of the IP to investigate the alleged change in the pattern of trade.

B. RESULTS OF THE INVESTIGATION

1. General considerations/degree of cooperation

(13) As mentioned in recital 10, no producers/exporters of silicon in China cooperated in the investigation nor did any Community importer submit information relevant for the investigation. As mentioned in recital 11, only two companies in Korea cooperated but they did not export silicon to the Community during the period considered. Accordingly, findings in respect of silicon consigned from Korea to the Community had to be made on the basis of the facts available in accordance with Article 18 of the basic Regulation.

2. Product concerned and like product

(14) The product concerned is the same as in the original investigation, i.e. silicon originating in China classifiable within CN code 2804 69 00 (silicon content less than 99,99 % by weight). It is recalled that silicon with a higher purity, that is containing by weight not less than 99,99 % of silicon, used mostly in the electronic semi-conductor industry, falls under a different CN code and is not covered by this proceeding.

(15) From the information received from the two cooperating Korean companies as well as information available in the request submitted by the applicant, it was concluded that silicon exported to the Community from China and silicon consigned from Korea to the Community have the same basic physical characteristics and the same uses. Therefore, they are considered as like products within the meaning of Article 1(4) of the basic Regulation. No submissions to the contrary were made during the investigation.

3. Change in the pattern of trade between third countries and the Community

(16) As stated above, the change in the pattern of the trade was alleged to stem from transhipment via Korea.

(17) Due to the absence of cooperation from Korean exporting companies, the volume and value of Korean exports of the product concerned to the Community were determined on the basis of the information available, which in this case was Eurostat import statistics.

(18) The change in the pattern of trade is based on data from the first table reproduced below. Large volumes of silicon started to be imported from Korea into the Community in 2002 and 2003, and continued at a high level until the IP. The significant

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volumes of imports consigned from Korea between, in particular, 2003 and the IP, while fluctuating during this period, coincided with a substantial and continuing reduction (more than 50 %) of imports from China.

Table 1

Imports of silicon from China and Korea (volume)

Country	**2002**	**2003**	**2004**	**2005**	**IP (April 2005-March 2006)**
China (tonnes)	39 705	56 226	55 939	30 346	22 358
Korea (tonnes)	1 070	5 540	2 340	4 380	3 658

Source: Eurostat.

4. Circumvention process found and insufficient due cause or economic justification

(19) Since no Korean company which exported silicon to the EU cooperated in the present investigation, the assessment of circumvention was based on information available in accordance with Article 18 of the basic Regulation, including information provided in the complaint. The investigation did not reveal information suggesting that that silicon was produced in Korea. On the contrary, both Korean cooperating companies confirmed that no production of silicon exists in Korea.

(20) It is therefore concluded that, in the absence of any other sufficient due cause or economic justification within the meaning of the second sentence of Article 13(1) of the basic Regulation, the change in the pattern of trade stemmed from the anti-dumping duty imposed on imports of silicon originating in China and must be assumed, as the complainant states, to consist in transhipment through Korea.

5. Undermining of the remedial effects of the duty in terms of the prices and/or the quantities of the like product

(21) It is evident from the data mentioned in recital 18 that a quantitative change in the pattern of Community imports of the product concerned occurred and that Chinese imports into the Community decreased significantly in 2005, while at the same time there was a surge of exports of the product concerned to the Community from Korea, a country where there is no production of silicon. It is therefore clear that the marked change in trade flows undermined the remedial effects of the measures in terms of the quantities imported into the Community market even if the imports from Korea during the IP amounted to significantly less than the reduction of imports from China between 2004 and the IP.