# COMMISSION REGULATION (EEC) No 1361/87

## of 18 May 1987

## imposing a provisional anti-dumping duty on imports of ferro-silico-calcium/ calcium silicide originating in Brazil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Article 11 thereof,

After consultations within the Advisory Committee as provided for by the above Regulation,

Whereas :

### A. Procedure

(1) On 30 September 1986 the Commission received a complaint lodged by the Comité de Liaison des Producteurs de Ferro-Alliages de la Communauté Economique Européenne on behalf of French, German, Italian, Spanish and Portuguese producers of ferro-silico-calcium/calcium silicide whose collective output constitutes practically all Community production of the product in question. The complaint contained evidence of dumping and of material injury resulting therefrom which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding concerning imports into the Community of ferro-silico-calcium/calcium silicide falling within Common Customs Tariff subheadings 73.02 G and 28.57 D, corresponding to NIMEXE codes ex 73.02-98 (now : ex 73.02-99) and ex 28.57-40, originating in Brazil, and commenced an investigation.

The proceeding covers ferro-silico-calcium/calcium silicide containing between 28 % and 35 % calcium and up to 8 % iron, either in lumpy or powder form.

(2) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(3) The majority of the known producers, two exporters and two importers made their views known in writing. Some of these companies requested and were granted hearings. A Portuguese producer, Companhia Portuguesa de Fornos Electricos Sarl, suspended production after the initiation of the proceeding and therefore did not cooperate in the investigation. Consequently, this producer has been eliminated from the scope of the investigation.

(4) No submissions were made on behalf of Community purchasers of ferro-silico-calcium/calcium silicide.

(5) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

*EEC producers :*

— Pechiney Electrométallurgie, Paris, France,

— SKW Trostberg Aktiengesellschaft, Trostberg, Germany ;

*Brazilian producers/exporters :*

— Bozel Mineração e Ferroligas SA, São Paulo,

— Electrometalur SA Indústria e Comércio, Belo Horizonte ;

*EEC importer :*

Hofflinghouse & Co (UK) Ltd, London, United Kingdom.

The Commission requested and received detailed written submissions from the complainant Community producers, the exporters and one importer and verified the information therein to the extent considered necessary.

The investigation of dumping covered the period from 1 January to 30 September 1986.

### B. Normal value

(6) Normal value was provisionally determined on the basis of the domestic prices of those producers who exported to the Community and who provided sufficient evidence. Since, on the Brazilian market, sales prices are set according to specific granular sizes, different normal values were established on the basis of the prices for these sizes.

### C. Export price

(7) Export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community.

[1] OJ No L 201, 30. 7. 1984, p. 1.
[2] OJ No C 244, 30. 9. 1986, p. 13.

## D. Comparison

(8) In comparing normal value with export prices the Commission took account, where appropriate, of differences affecting price comparability. The exporters claimed and could show that such differences existed in respect of payment terms, handling, taxes, transport and packaging costs, and commissions paid to third parties. In addition, one exporter claimed that one particular granular form of the product, a powder, was sold on the domestic market in a different granular composition and therefore had different physical characteristics from that exported to the Community. Domestic price data in Brazil were not available because the exported variety was not sold in Brazil, however it was demonstrated to the satisfaction of the Commission that the different production processes for these two forms of the product gave rise to different costs. Consequently, an allowance for differences in physical characteristics was granted.

All comparisons were made at ex-works level.

## E. Margins

(9) The above preliminary examination of the facts shows the existence of dumping with regard to one exporter only : Bozel Mineração e Ferroligas SA, the margins of dumping being equal to the amount by which the normal value as established exceeds the prices for export to the Community.

These margins vary according to the granular size of the material concerned. When determining the aggregate dumping margin, account was taken of the fact that not all quantities exported to the Community had been entered for free circulation in the Community during the period investigated. The aggregate dumping margin related to, and when expressed as a percentage of, the quantities entered for free circulation in the Community equals 16,52 %.

## F. Injury

(10) The evidence available to the Commission shows that imports into the Community from Brazil of ferro-silico-calcium/calcium silicide, increased from zero or almost zero in 1983 and 1984 to 1 490 tonnes in 1985 and 2 256 tonnes in the first nine months of 1986 with a consequent increase in market share held by the exporting country for the same periods from almost 0 % to 6,4 % and 15,1 %, and in the most important Community market from 0 % to about 38 %. The Commission investigated the sales prices at which the imported Brazilian product was sold in the Community. It was established that the sales prices of these imports for the majority of sales undercut the prices of the Community industry by more than 18 %.

(11) The Community industry in respect of which the impact of the dumped imports must be assessed is the entire Community industry which produces ferro-silico-calcium/calcium silicide, as defined under point (1), with the exception of the Portuguese producer, (see point (3)).

Since virtually no ferro-silico-calcium/calcium silicide, as defined above, of any origin other than the Community or Brazil is sold in the Community, the consequent impact on the Community industry has been the mirror-image of the findings referred to under point (10). In particular, the market share held by the Community industry has decreased from 100 % to 84,9 % (and to 62 % in the most important Community market) during the reference period, representing a loss of sales equal to the imported quantities.

The Commission further investigated whether the dumped imports had had any effects on production, capacity utilization and stocks. It was found that, in the ferro-alloys sector, producers normally manufacture a wide range of different alloy products. In addition, production within one furnace can normally be switched from one product to another with the result that, theoretically, the global production facility could be considered to be the production facility of any given product within the whole range. In general, however, the producers manufacture products in quantities that they can reasonably expect to sell.

Although, under these conditions, a decreased sales volume implies a decrease in production destined for the Community market and although, on the assumption of a planned use of the same production facility, this would have logically resulted in a lower capacity utilization, the Commission does not consider these conclusions to be meaningful elements in its injury determination.

As to stocks, it was found that certain producers do not manufacture on a regular monthly basis, in order to benefit as much as possible from reduced electricity rates at certain times of the year, and that stock figures are generally influenced by this fact.

It was found, however, that prior to mid-1985 stocks were generally low and destined to supply expected and already placed orders. Stocks increased considerably in the latter half of 1985 and remained relatively high in the first nine months of 1986. These stock increases corresponded to the trend in sales of the Brazilian product on the Community market, see point (10), and did not correspond to any trend in Commu-

nity• consumption. However, to a lesser degree, a reduction in demand for the product in question due to a decline in steel production generally, combined with its gradual replacement by other products, are also considered to be contributory factors.

As to employment, the available figures were not found to lend themselves to any meaningful conclusion because the Community producers manufactured a variety of products for which their workforce would be equally available.

As to the profitability of the Community producers it was established that the two biggest producers have seen their profitability being seriously eroded in 1985 and the first nine months of 1986. The profit margin of one company was more than halved during this period, putting in jeopardy its investment plans, whilst the other company made reasonable profits in 1985, but incurred substantial losses in the first three quarters of 1986.

(12) It was claimed by the Brazilian exporters that the Community industry could not have suffered any injury from dumped imports because the Community producers refused to supply a specific group of customers, namely the producers of cored wire, a manufactured product for which ferro-silico-calcium/calcium silicide is the main ingredient.

The Commission accepts that such an allegation, where substantiated, ought to be taken into account during the Commission's investigation since it could influence its finding of whether injury has occurred or not.

However, it is noted that the allegations in this context centre on the period between the latter half of 1984 and the first half of 1985. The Commission examined this in the context of the present anti-dumping investigation and has provisionally concluded that — subject to the possibility of a further examination — during the period for which dumping was investigated the customers in question were supplied, with the exception of one customer with whom there was a disagreement about the purchase price.

The exporters also alleged that the Community producers interfered with the attempts by European cored-wire producers to obtain ferro-silico-calcium/calcium silicie from intermediaries and, furthermore, that the Community producers made an effort to bring the Brazilian exporters into their cartel and to attempt to make them agree to stop exporting to Europe.

The Commission takes the view that the purpose of anti-dumping proceedings is not and cannot be to enforce or encourage restrictive business practices, and that the opening of such a proceeding does not therefore deprive an enterprise of its right to avail itself of the provisions of Articles 85 and 86 of the Treaty establishing the European Economic Community.

It might be appropriate, therefore, for the Commission to review a proceeding pursuant to Article 14 (1) of Regulation (EEC) No 2176/84 if and when an infringement under Articles 85 or 86 has been discovered and a proceeding has been opened under Council Regulation No 17, first Regulation implementing Articles 85 and 86 of the Treaty [1].

(13) The Commission has considered whether injury has been caused by other factors such as the stagnation of demand. Consumption in the Community has declined for the reasons outlined at point (11) above ; it has, however, been established that this decline has affected Community production more than it has affected the dumped imports. The substantial increase in dumped imports and the prices at which they are offered for sale in the Community has led the Commission to determine that the effect of the dumped imports of ferro-silico-calcium/calcium silicide originating in Brazil, taken in isolation, has to be considered as constituting material injury to the Community industry concerned.

## G. Community interest

(14) It was claimed that it was not in the Community interest that Community producers of cored wire, a product for which ferro-silico-calcium/calcium silicide is used, and which is manufactured both by the Community producers of ferro-silico-calcium/calcium silicide and by other enterprises, be put in a situation in which they are dependent upon their competitiors for their raw materials.

The Commission has no reason to believe that the cored-wire producers would become dependent on the Community ferro-silico-calcium/calcium silicide industry when Brasilian imports could offer an alternative source, albeit at non-dumped prices.

(15) When considering the interests of the Community, the Commission also took into account the fact that the Community ferro-alloys industry as a whole is being subjected to low-priced non-dumped imports of other ferro-alloy products to such an extent that it would not serve the Community's interests if the Commission allowed it to be exposed to dumped imports of this product as well.

[1] OJ No 13, 21. 2. 1962, p. 204/62.

In view of the serious difficulties facing the Community ferro-alloys industry and its economic and strategic importance, the Commission has come to the conclusion that it is in the Community's interest that action be taken. In order to prevent further injury being caused during the remainder of the proceeding, this action should take the form of a provisional anti-dumping duty.

## H. Rate of duty

(16) In view of the provisional finding that no dumping exists in respect of exports to the Community by Eletrometalur SA, no anti-dumping duty should be imposed on imports of the product in question from this exporter.

(17) Having regard to the extent of the injury caused, the rate of duty to be imposed on imports from other exporters should correspond to the margin of dumping provisionally estimated. A lesser duty would not suffice for the elimination of injury as provisionally established.

A period should be fixed within which the parties concerned may make their views known and request a hearing,

HAS ADOPTED THIS REGULATION :

*Article 1*

1. A provisional anti-dumping duty is hereby imposed on imports of ferro-silico-calcium/calcium silicide falling within Common Customs Tariff subheadings 73.02 G and 28.57 D, corresponding to NIMEXE codes ex 73.02-99 and ex 28.57-40, originating in Brazil.

2. The amount of the duty shall be 143 ECU per tonne, net.

The duty shall not apply to products manufactured and exported by Eletrometalur SA Indústria e Comércio.

For the purposes of this Regulation, ferro-silico-calcium/calcium silicide is a product containing between 28 % and 35 % calcium and up to 8 % iron, either in lumpy or powder form.

3. The provisions in force concerning customs duties shall apply.

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

*Article 2*

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2176/84, the parties concerned may make known their views in writing and apply to be heard by the Commission within one month of the entry into force of this Regulation.

*Article 3*

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2176/84, it shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 May 1987.

*For the Commission*

Willy DE CLERCQ

*Member of the Commission*