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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1607/92

of 22 June 1992

amending Regulation (EEC) No 2200/90 by imposing an additional anti-dumping duty on imports of silicon metal originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), and in particular Articles 12 and 13 (11) thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee as provided for under the abovementioned Regulation,

Whereas :

A. Procedure

(1) By Regulation (EEC) No 2200/90 (2), a definitive anti-dumping duty of ECU 198 per tonne was imposed on imports of silicon metal originating in the People's Republic of China.

(2) The Commission received a complaint lodged by the Liaison Committee of Ferroalloy industries in the European Economic Community on behalf of all Community producers of silicon metal alleging that all or part of the anti-dumping duty had been borne by the exporters concerned.

(3) Since the complaint contained sufficient evidence of absorption of anti-dumping duty by an exporter, the Commission announced the initiation of an investigation provided for in Article 13 (11) of Regulation (EEC) No 2423/88, in a notice published in the *Official Journal of the European Communities* (3).

(4) The Commission officially advised the exporters and importers known to be concerned and gave the parties concerned the opportunity to make their views known in writing.

(5) None of the exporters and only three of the importers concerned, accounting for a fraction of the total imports, made their views known in writing.

(6) Only one organization representing user industries made comments.

(7) None of the interested parties requested the Commission to review Regulation (EEC) No 2200/90. Moreover, on the basis of the information available, the Commission did not find that changed circumstances justified the need for such a review on the Commission's initiative.

(8) The investigation into absorption of the anti-dumping duty by the exporters was concerned with the comparison between the period 1 January 1988 to 31 December 1988, which had been taken into account for calculation of the anti-dumping duty, and the period starting from imposition of a provisional anti-dumping duty until publication of the notice of initiation of an investigation, i.e. from 1 April 1990 to 30 September 1991.

B. Product under consideration

(9) The product under consideration is silicon metal falling within CN code 2804 69 00, as in the original procedure.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 198, 28. 7. 1990, p. 57.
(3) OJ No C 273, 18. 10. 1991, p. 20.

C. Absorption of the anti-dumping duty by the exporter

I. *Existence of absorption of duty*

(10) In the absence of satisfactory cooperation from either exporters or Community importers, the Commission based its findings on the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88.

(11) A valid assessment of the import price of a raw material, such as the product concerned, can generally be made on the basis of customs statistics.

In this case, moreover, the prices revealed by the statistics were corroborated by the information obtained from those Community importers who cooperated and from the representative of user industries.

(12) That information shows clearly that, following the imposition of a provisional anti-dumping duty on imports of silicon metal originating in the People's Republic of China by Commission Regulation (EEC) No 720/90 [1], the import price at Community borders (the cif price before payment of customs duties and anti-dumping duty) of silicon metal originating in the People's Republic of China fell considerably.

(13) In these circumstances, it would appear that, by reducing their prices for export to the Community after imposition of an anti-dumping duty, the exporters of silicon metal originating in the People's Republic of China have borne the anti-dumping duty either completely or partially.

II. *Amount of absorption of duty*

(14) The amount of absorption of duty is calculated on the basis of the difference between the import price of silicon metal origianting in the People's Republic of China during the period 1 January 1988 to 31 December 1988, the period of the initial investigation, and the import price during the period following imposition of a provisional anti-dumping duty, from 1 April 1990 to 30 September 1991.

(15) Expressed as a percentage of the amount of duty, the amount of absorption as defined above came to an average monthly figure of 178 % for the period from 1 April 1990 to 30 September 1991.

In view of the extent of absorption, the effect of a possible variation in the cif costs (cost, insurance, freight) need not be taken into account.

D. Other factors

(16) The Commission has examined two additional factors which might have had a bearing on the evolution of the export price of silicon metal originating in the People's Republic of China.

(17) Firstly, the organization representing user industries alleged that the quality of the product concerned justified a price lower than that of the same product originating in other countries. Since this does not constitute a new fact in relation to the situation at the time of the original investigation, the alleged difference in quality cannot justify the considerable decrease in the export price of silicon metal originating in the People's Republic of China following the imposition of an anti-dumping duty. In addition, it has been established that the difference between the export price to the Community of silicon metal originating in the People's Republic of China and of the same metal originating in other countries increased during the investigation period.

(18) Secondly, the organization representing user industries suggested that the decrease in the import price of silicon metal originating in the People's Republic of China could be linked to an overall trend in the market for imports of the product concerned into the Community. However, examination of the customs statistics clearly reveals a considerable fall in the price of silicon metal originating in the People's Republic of China while the import price of the metal from other countries remained stable over the same period.

E. Community interest

(19) The purpose of the additional anti-dumping duty provided for in Article 13 (11) of Regulation (EEC) No 2423/88 is to compensate for the amount of the anti-dumping duty borne by the exporter.

(20) The Commission has no reason to believe that the findings concerning Community interest expressed in recitals 18 to 21 of Regulation (EEC) No 2200/90 need to be amended.

[1] OJ No L 80, 27. 3. 1990, p. 9.

(21) Moreover, given, firstly, that the absorption of an anti-dumping duty by the exporter cancels out the effect of the anti-dumping duty and therefore prevents the removal of the injury suffered by the Community industry, and, secondly, that the imposition of this duty had been considered to be in the Community's interest, a measure aimed at restoring the effect of the said duty is therefore in the Community's interest.

F. **Additional anti-dumping duty**

(22) Article 13 (11) (a) of Regulation (EEC) No 2423/88 limits the additional amount to strict compensation for the amount of anti-dumping duty borne by the exporter which cannot, logically, be greater than the amount of the anti-dumping duty concerned.

(23) In this case, since the decrease in the import price as a percentage of the amount of anti-dumping duty has been calculated at 178 %, the anti-dumping duty has been borne completely. An additional anti-dumping duty of an amount equal to the existing duty (ECU 198 per tonne) must therefore be imposed.

(24) Since the anti-dumping duty currently in force is fixed at ECU 198 per tonne, an additional duty for the same amount must be imposed. For practical reasons, the imposition of this additional duty takes the form of an amendment to Regulation (EEC) No 2200/90. This does not constitute a modification of the anti-dumping duty within the meaning of Article 15 (1) of Regulation (EEC) No 2423/88 and, therefore, the expiry date of the anti-dumping duty, including the additional duty, remains unchanged. The total amount of the anti-dumping duty imposed on imports of silicon metal originating in the People's Republic of China must, therefore, be ECU 396 per tonne,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 (2) of Regulation (EEC) No 2200/90 is hereby replaced by the following:

'2. The duty shall be ECU 396 per tonne of the imported product.'

Article 2

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

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

Done at Luxembourg, 22 June 1992.

For the Council

The President

Joaquim FERREIRA DO AMARAL