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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2305/92

of 4 August 1992

imposing a definitive anti-dumping duty on imports of silicon metal originating in Brazil and definitively collecting the amounts secured by way of the provisional anti-dumping duty

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 originating in countries not members of the European Economic Community [1], and in particular Article 12 thereof,

Having regard to the proposal submitted by the Commission after consultations within the Advisory Committee as provided for by the above Regulation,

Whereas :

A. Provisional measures

(1) Commission Regulation (EEC) No 906/92 imposed a provisional anti-dumping duty on imports into the Community of silicon metal falling within CN code 2804 69 00 originating in Brazil [2].

B. Subsequent proceeding

(2) After provisional duties were imposed, those concerned who had requested it were heard by the Commission. They also made known in writing their views on the provisional findings of the investigation.

(3) At their request, the parties known to be concerned were informed of the essential facts and considerations on which it was intended to base the recommendation to impose defintiive duties and definitively collect the amounts provisionally lodged. They were then allowed a period in which to make known their views.

(4) The parties' oral and written comments were examined and, where appropriate, incorporated in the Commission's findings.

C. The product under consideration and like product

(5) A trade association representing the interests of the Community chemical industry claimed that the definition of the product given in recital 8 of Regulation (EEC) No 906/92 contained inaccuracies regarding the chemical composition of the silicon metal used as a raw material for the manufacture of silicons.

(6) The above trade association claimed furthermore that silicon metal for chemical uses could not be considered a like product to silicon metal for metallurgical uses for the reasons given in recital 10 of Regulation (EEC) 906/92.

(7) It should be pointed out that certain trace elements, such as lead, found in silicon metal constitute impurities inasmuch as they prevent the Rochow chemical synthesis and thus the production of chlorosilanes, a precursor of the siloxanes used in the manufacture of silicones. Similarly, aluminium production is also governed, albeit to a lesser degree, by specifications relating to the content of trace elements, such as phosphorus which must be kept to a minimum.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 96, 10. 4. 1992, p. 17.

(8) While seeing no need to repeat the answer given in Regulation (EEC) No 906/92, the Commission thinks it necessary to emphasize that all grades of silicon metal are the product of the initial manufacturing process described in recital 6 of the said Regulation. The fact that standard-grade silicon metal may subsequently be.further refined to the specifications of a given user, especially in the field of silicon chemicals, by the addition or removal of trace elements does not make chemical-grade silicon metal a different product from other grades, since all have extremely similar physical properties, come from the same factories and pass through the same distribution networks, differing only insignificantly in their production costs.

(9) The Commission also stresses that the list of uses of silicon metal given in recital 8 of Regulation (EEC) No 906/92 is not exhaustive, and that the procedure covers all grades of silicon metal with a silicon content of less than 99,99 % by weight, regardless of its content in trace elements. The Commission confirms that it is technically possible to use the silicon metal usually intended for the chemical industry for the aluminium industry, provided its phosphorus content does not exceed a certain threshold.

(10) The Council consequently confirms that all grades of silicon metal are manufactured by the Community industry and possess technical properties comparable to those of the Brazilian industry as indicated in recital 11 of Regulation (EEC) No 906/92. The Council likewise confirms the Commission's conclusions in recital 7 of the said Regulation that all grades of silicon metal should be regarded as a single product for the purposes of this procedure to assess dumping and the resulting injury to the Community industry.

D. Dumping

1. *Normal value*

(11) For the purposes of the definitive conclusions, normal value was generally established by the same methods as the provisional dumping margin, account being taken, where necessary, of the new circumstances and arguments presented by the parties.

(12) One Brazilian producer claimed that its domestic sales did not reach the 5 % threshold for export sales to the Community in any two consecutive months of the investigation period and could not therefore be deemed a sufficient basis for the calculation of normal value.

The Commission considers that the representativeness of an exporter's domestic sales should generally be tested on the basis of the entire investigation period and not monthly, even if normal value was determined on a monthly basis to eliminate as far possible the impact of inflation in Brazil. the sales ocncerned must therefore be included in the calculation of normal value according to the method described in recital 14 of Regulation (EEC) No 906/92.

The Council confirms these conslusions.

(13) Claiming that the Brazilian government's economic recovery programme (the 'Collor Plan') had led to an abnormal increase in energy costs and to the US dollar being undervalued against the cruzeiro from March to June 1990, several Brazilian producers asked that production costs for those months be excluded from the calculation of constructed normal value.

The Commission, however, sees no reason to exclude the data for the period of the 'Collor Plan'. In the first place, a dumping case must be based on real and exhaustive data, such as a company's costs and sales during the investigation period as confirmed by examination of the evidence and on-site inspections.

Secondly, the alleged impact of the 'Collor Plan' does not mean that the Commission's findings regarding such production cost components as energy misrepresent Brazil's general economic situation in that period or that those components were not calculated in the course of normal trading on the Brazilian market.

Thirdly, even if the 'Collor Plan' did cause the cruzeiro to be temporarily overvalued in comparison with the US dollar, it is not for the Community to question either the soundness or the impact of the Brazilian government's monetary policy. The Commission has therefore followed established practice in the matter and used the official exchange rates applied wherever transactions involved the conversion of currency.

(14) Several Brazilian producers asked that interest earned on currency operations be fully deductible from a firm's financing costs, and that any net financial profit be deducted from the production costs of the firm concerned.

The Commission, however, takes the view that such profits may be taken into account only if connected with a firm's main production activity and the ensuing sales, and then only to offset financial costs resulting directly from that production and those sales. This net financial profit may in no circumstances be offset against the firm's production costs.

The Council confirms these conclusions.

(15) One Brazilian producer asked that constructed normal value be based on production costs for the first half of the investigation period since, as he claimed, the availability of stocks tended to prove transactions in the latter half of that period involved materials manufactured earlier at much lower costs.

The Commission refuses to comply with this request because the figures provided do not corroborate the alleged availability of stocks and because the firm in question failed to support its request with data known to be available on its production costs calculated on the basis of updated costs.

The Council confirms these conclusions.

(16) Another Brazilian producer asked that the export of a sample to an American company, mistakenly recorded as a domestic transaction, be excluded from the calculation of normal value.

The Council confirms the Commission's agreement to exclude that transaction from the scope of this procedure.

(17) Yet another Brazilian producer asked for a review of the method used to calculate its average profit margin : the margin seemed to have been overestimated because the provisional constructed normal value did not take proper account of some of the company's domestic sales of silicon metal.

After examining the matter, the Commission accepted this request and adjusted the company's average profit margin accordingly.

(18) The Council confirms these conclusions and those of recitals 14, 15 and 16 of Regulation (EEC) No 906/92.

2. *Export prices*

(19) For the purposes of the definitive conclusions, the export price was generally established in the same way as the provisional dumping margin, due account being taken of new circumstances and arguments presented by the parties with appropriate supporting evidence.

(20) In view of the above and recitals 17 and 18 of Regulation (EEC) No 906/92, the Council confirms the Commission's findings and conclusions in the matter.

3. *Comparison*

(21) A Brazilian producer submitted several requests regarding adjustments to the transport and packaging costs of certain exports to the Community.

The Council confirms the Commission's refusal to accede to these requests on the grounds that they were not supported by evidence conclusive enough to cast doubt on the data gathered and verified during inquiries at the premises of the company concerned.

(22) Some Brazilian producers claimed there was a need to adjust the normal value based on domestic sales to take account of the impact on price comparability of differing sales costs caused by differences in the quantities sold on the domestic market and exports to the Community.

The Council confirms the rejection of this request on the grounds of the applicants' inability to show that their request was, in this instance, well-founded.

In the absence of other comments, the Council confirms the Commission's conclusions as set out in recitals 19 and 20 of Regulation (EEC) No 906/92.

4. *Dumping margins*

(23) After the adjustments to the normal value and/or export prices, as indicated in the preceding recitals, the weighted average dumping margin, expressed as a percentage of the free-at-Community-frontier cif price, not cleared through customs, for each of the exporters concerned is as follows :

— Rima Eletrometalurgia SA :	67,0 %
— Ligas de Alumínio SA (Liasa) :	50,6 %
— Eletroila SA :	44,1 %
— Companhia Ferroligas Minas Gerais (Minasligas) :	26,4 %
— Camargo Correa Metais SA :	20,4 %
— Companhia Brasileira Carboreto de Cálcio :	18,3 %.

In the light of the above, the Council confirms that all the abovementioned Brazilian exporters are dumping imports of silicon metal originating in Brazil.

(24) Where Brazilian exporters failed to answer the Commission's questionnaire or come forward, dumping was assessed on the basis of the information available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. Given that the cooperating exporters account for almost all sales of Brazilian silicon metal in the Community, the Commission considers the results of its investigation to be the most suitable basis for assessing the dumping margin. Failure to apply the highest dumping margin found in the course of the investigation, 67 %, to those exporters which had not seen fit to cooperate would provide loopholes and an incentive not to cooperate in the future. The Council confirms this approach and the resulting consequences for that group of exporters.

E. Injury

(25) In its preliminary findings, the Commission concluded that the Community silicon metal industry had suffered material injury. This view was founded mainly on the convergence of economic indicators such as falling sales, loss of market share, the erosion of Community producers' prices and the resulting financial losses.

(26) One Brazilian producer argued that the trend in the cif price in ecus of imported Brazilian silicon metal had resulted in the drop in prices being overestimated owing to the growing parity between the US dollar and the ecu. The Commission, however, finds that the price of imports from Brazil, whether in ecus or another Community currency, did actually help depress the Community market from 1986 to 1990.

(27) Several Brazilian producers called for account to be taken of the different marketing stages at which transactions were carried out, i. e. differences at the stages of import and end-use, when prices were being compared to determine undercutting and the margin of injury attributable to the exporters concerned.

Where the information supplied was full, verifiable and consistent, allowances were systematically made to ensure fair comparison with the Community industry's prices.

The Council confirms the Commission's approach and the resulting findings.

(28) The Commission received no further submissions regarding the assessment of injury.

The Council consequently confirms the findings set out by the Commission in recitals 24, 25, 26, 28 and 30 to 35 of Regulation (EEC) No 906/92 and in recitals 26, 27 and 28 of this Regulation.

F. Cause and effect

(29) Seeking to show a close causal link between dumped silicon metal originating in Brazil and the injury to the Community industry, the Commission pointed out in its provisional findings the correlation between the decline in the Community industry's market share and a corresponding increase in that of Brazilian exporters. This was further borne out by the transparency of the world silicon metal market, which is extremely sensitive to price fluctuations.

(30) A Brazilian producer claimed that the Community industry had lost market share because it was unable to meet increased demand for high-quality silicon metal. This is refuted by data in the Commission's possession on the Community industry's capacity utilization and product range during the investigation period.

(31) Another producer claimed that prices for imports from the People's Republic of China were consistently lower than Brazilian exporters', constituting a world reference price of sorts.

The Commission points out that imports of Chinese silicon metal are currently the object of another anti-dumping proceeding and dismisses the claim that the price of Chinese silicon metal imports could be considered a sort of world reference price. Quite apart from the fact that Chinese exporters' share of the Community market is relatively small when compared with that of their Brazilian counterparts, Chinese silicon metal has a much narrower range of potential uses than the Brazilian product and cannot therefore be considered likely to determine prices.

(32) Another producer alleged that the assessment of cause and effect did not take sufficient account of imports from other non-member countries such as Argentina, Australia or China, particularly since recital 17 of Council Regulation (EEC) No 2200/90 (1) tended to absolve imports originating in Brazil of responsibility for the injury to the Community industry.

The Commission feels that these arguments do not controvert the findings of recital 38 of Regulation (EEC) No 906/92, and that the findings of an investigation on which the Council based conclusions in an earlier proceeding concerning imports of the same product from the People's Republic of China are irrelevant to the facts of the present anti-dumping proceeding. They certainly do not diminish the fact that the dumping in question caused clear injury to the Community industry and that, viewed in isolation, this injury is material.

(33) Another Brazilian producer claimed that the injury to the Community industry was largely attributable to the actions of Community producers, to competition between them or the obsolescence of their production apparatus, but failed to substantiate the allegations with evidence likely to call into question the Commission's provisional findings.

The Council therefore confirms the Commission's findings in recitals 37 and 38 of Regulation (EEC) No 906/92 and recitals 30 to 34 of this Regulation.

G. Community interest

1. *General*

(34) The Commission received no new evidence or arguments on this issue. The Council therefore confirms the Commission's findings in recitals 39 and 40 of Regulation (EEC) No 906/92.

2. *The interests of the Community industry*

(35) In the absence of any new evidence, the Council likewise confirms the Commission's conclusions in recitals 41 and 42 of Regulation (EEC) No 906/92.

3. *The interests of other parties*

(36) The trade association mentioned earlier as representing the interests of the Community chemical industry repealed its concern at the weakening of its members' ability to compete on the Community market with non-Community rivals whose inputs were not subject to anti-dumping duties.

(37) Other trade associations representing the interests of the secondary aluminium industry also expressed concern about the increased costs facing processing industries downstream on their intermediate inputs.

Representatives of some international dealers specializing in ferro-alloys made similar objections, arguing that industrial consumers in the Community were effectively losing an attractive source of cheap silicon metal outside the Community.

(38) The Commission is aware of the likely impact of anti-dumping measures on the intermediate input costs of some groups of Community consumers.

However, this increase concerns only the silicon metal originating in Brazil, which represented less than 15 % of the Community market in 1990. Other supplying sources are also available and used, consequently, nothing indicates that this increase would be reflected in the same proportion on the production costs of the finished products downstream. In these circumstances, it cannot be concluded that the imposition of an anti-dumping duty on imports of Brazilian silicon metal would lead the user industries within the Community to suffer from a comparative disadvantage *vis-à-vis* their competitors in the third countries proportional to the amount of the duty imposed. The impact of an increase in the cost of inputs is in no way comparable to dumping's direct and injurious impact on the Community industry.

Moreover, claims that Brazilian silicon metal is irreplaceable are contradicted by the fact that the Community chemical industry carries out Rochow synthesis using non-Brazilian silicon metal, purchasing chemical-grade silicon metal from both Community and non-Community suppliers.

(39) The Council therefore confirms the Commission's remarks in recital 43 together with its findings in recitals 44 and 45 of Regulation (EEC) No 906/92 and the remarks in recitals 35 to 39 of this Regulation, which show that the Community interest requires an end to the injury caused to the Community industry by the dumping found.

(1) OJ No L 198, 28. 7. 1990, p. 57.

However, if changed circumstances occurred, calling into question the preceding conclusions, the Commission would be ready, if the case arose, to reconsider the overall situation of the Community industry in view of these new elements.

H. Duties

(40) The Commission provisionally found that the removal of the injury caused to the Community industry and the restoration of the conditions for normal profitability required anti-dumping measures that would permit the industry to make sufficient profit and increase the proportion of capacity in use. The provisional duties were therefore calculated to cover the difference between the price of Brazilian silicon metal and a reference price allowing the Community industry to cover costs and generate a reasonable profit of 6,5 %.

The Council confirms the Commission's approach and the resulting conclusions.

(41) Several Brazilian producers claimed that the Community reference price used to calculate the margin of injury appeared to exceed the level needed to remove the injury.

The Commission cannot accept this argument. The previous recital shows that the reference price was based on the Community industry's production costs plus a reasonable profit margin guaranteeing the producers concerned an adequate return on investment.

The Council confirms these findings.

(42) For the establishment of the definitive duties to be imposed, the Commission feels that the individual margins of injury specified in recitals 48 and 49 of Regulation (EEC) No 906/92 should also be expressed as a percentage of the cif value of imports. An injury margin represents the increase in the price at Community frontier needed to end the injury caused by a given exporter. After allowing for corrections and other adjustments to the weighted average cif prices charged by the Brazilian exporters concerned, the individual injury margins are as follows :

— Rima Electrometalurgia SA, 34,6 %
— Ligas de Aluminio SA (Liasa), 36,8 %
— Eletroila SA, 29,8 %
— Companhia Ferroligas Minas Gerais (Minasligas), 43,8 %
— Camargo Correa Metais SA — CCM, 24,2 %
— Companhia Brasileira Carboreto de Cálcio — CBCC, 51,0 %.

(43) The Council confirms the Commission's findings in recitals 46, 47 and 48 of Regulation (EEC) No 906/92 and concludes on the basis of the previous recital of this Regulation that the duty to be imposed should equal the dumping margins established for the above exporters, save where they exceed the individual injury margins, which then determine the duty applicable :

— Rima Electrometalurgia SA, 34,6 %
— Ligas de Aluminio SA (Liasa), 36,8 %
— Eletroila SA, 29,8 %
— Companhia Ferroligas Minas Gerais (Minasligas), 26,4 %
— Camargo Correa Metais SA — CCM, 20,4 %
— Companhia Brasileira Carboreto de Cálcio — CBCC, 18,3 %.

(44) For reasons already set out in recital 24 of this Regulation, the Council confirms that the maximum rate of duty, namely 36,8 %, will be applied to the companies which did not reply to the Commission's questionnaire or failed to come forward. To impose on those producer-exporters a rate of duty lower than the highest rate of anti-dumping duty established by the investigation would be to regard their failure to cooperate and create loopholes.

I. Collection of provisional duties

(45) In view of the dumping margins established and the seriousness of the injury to the Community industry, the Council considers that the amounts secured by way of the provisional anti-dumping duty imposed should be definitively collected in full.

J. Undertaking

(46) After provisional anti-dumping duties were imposed, all the Brazilian exporters involved jointly offered an overall quantitative undertaking or, as an alternative, individual price undertakings.

Following consultations, the Commission rejected these undertakings, explaining to the producers concerned that the undertakings offered were not such as to remove the injury and required, moreover, frequent adjustments owing to the fluctuating price of silicon metal on the world market. The Council shares this opinion and considers it necessary to impose anti-dumping duties,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty of 36,8 % of the net, free-at-Community-frontier price, not cleared through customs, is hereby imposed on imports of silicon metal falling within CN code 2804 69 00 and originating in Brazil (Taric additional code : 8654).

2. The rate of duty applicable to silicon metal produced by the following companies shall be :

		Taric additional code
— Rima Electrometalurgia SA, Belo Horizonte,	34,6 %	8649
— Eletroila SA, Belo Horizonte,	29,8 %	8650
— Companhia Ferroligas Minas Gerais (Minasligas), Contagem,	26,4 %	8651
— Camargo Correa Metals SA, São Paolo,	20,4 %	8652
— Companhia Brasileira Carboreto de Cálcio (CBCC), Rio de Janeiro,	18,3 %	8563.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty imposed by Regulation (EEC) No 906/92 shall be definitively collected at the rate definitively imposed.

Sums secured in excess of the definitive rate of duty shall be released.

Article 3

This Regulation shall enter into force on the day following 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 Brussels, 4 August 1992.

For the Council

The President

N. LAMONT