COMMISSION REGULATION (EEC) No 906/92

of 30 March 1992

imposing a provisional anti-dumping duty on imports of silicon metal 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 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 Article 11 thereof,

After consultation with the Advisory Committee as provided for in Regulation (EEC) No 2423/88,

Whereas:

A. PROCEDURE

(1) In June 1990 the Commission received a complaint lodged by the Liaison Committee of Ferroalloy Industries in the European Economic Community, acting on behalf of producers representing all Community production of silicon metal, concerning imports of that product originating in Brazil.

The complaint contained evidence of dumping and consequent material injury which was judged sufficient to justify the initiation of a proceeding.

In a notice published in the *Official Journal of the European Communities* (2), the Commission accordingly announced the initiation of an anti-dumping proceeding concerning imports of the product in question, which falls within CN code 2804 69 00, originating in Brazil, and commenced an investigation.

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

(3) All the exporters and the Community producers replied to the Commission's questionnaire and made their views known in writing.

A number of independent importers in the Community and a non-Community trader also replied to the abovementioned questionnaire.

Lastly, various trade associations representing two categories of Community consumers of the product, namely the metallurgical industry and the chemical industry, submitted comments in writing.

(4) The Commission sought and verified all the information it deemed necessary for the purposes of making a preliminary determination of dumping and consequent injury and carried out on-the-spot inspections of records at the premises of the following:

(a) Community producers:

- Industria Elletrica Indel (Indel), Belluno, Italy
- Pechiney Electrometallurgie (PEM), Paris, France
- Sociedad Española de Carburos Metalicos, SA, Barcelona, Spain
- Vereinigte Aluminium Werke AG (VAW), Bonn, Germany;

(b) Brazilian producers:

- Camargo Correa Metais SA, São Paulo
- Companhia Brasileira Carboreto de Cálcio (CBCC), Rio de Janeiro
- Companhia Ferroligas Minas Gerais (Minasligas), Contagem
- Eletroila SA, Belo Horizonte
- Ligas de Alumínio SA (Liasa), Belo Horizonte
- Rima Electrometalurgia SA (RIMA), Belo Horizonte;

(c) Importer linked to a Brazilian producer:

- Lilleby Metal Dortmund, Germany;

(d) Independent importer:

- Rhône-Poulenc, Courbevoie, France.

(5) The dumping investigation covered the period 1 January to 31 October 1990 (the investigation period).

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 296, 27. 11. 1990, p. 3.

B. THE PRODUCT

1. Definition

(6) The product in question is silicon metal generally produced in an electric arc furnace by reducing silicon quartz with the help of various carbonaceous products.

It is marketed in the form of lumps, granules or powder.

(7) The silicon metal covered by this proceeding is that whose silicon content is less than 99,99 % by weight. Below that upper limit, even where the chemical composition of the metal may include widely varying quantities of impurities, it constitutes a single product. By contrast, where the silicon content exceeds 99,99 % by weight, the product in question is a different one, used in the electronic semiconductor industry and not covered by this proceeding.

(8) Thus defined, silicon is chiefly used as an alloying element in the production of primary and secondary aluminium grade castings and as a raw material in the production of an intermediate chemical synthesis in the manufacture of silicons.

Internationally accepted technical specifications make it possible to distinguish between different qualities of silicon metal depending on their end-use, i.e. the production of silicons ('chemical grade') or the production of primary aluminium grade or standard grade, or of secondary aluminium grade.

2. Like product

(9) The physical characteristics of silicon metal originating in Brazil, as well as its principal industrial applications, whether it is sold on the Brazilian domestic market or for export to the Community, are comparable to those of silicon metal produced in the Community and the products of either origin may accordingly be regarded as having characteristics that closely resemble one another within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

(10) In this regard it was claimed by a trade association representing the interests of the Community chemical industry that the differences between the physical characteristics of silicon metal used for chemical purposes and that used for metallurgical purposes, the different manufacturing processes used to produce them and the considerable difference between their respective prices meant that the different qualities of silicon metal described in point (9) could not be regarded as like products within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88. These claims must, however, be rejected for the reasons set out below.

(11) First, it should be pointed out that the concept of 'like product', as defined in Article 2 (12) of Regulation (EEC) No 2423/88, is used, for the purposes of determining whether dumping is taking place, to compare the product sold for export with the product sold on the exporter's domestic market. To that end the abovementioned Regulation provides that an identical product or a product which has characteristics closely resembling those of the product under consideration may be taken as the like product.

As the Commission ascertained in the course of its investigation, the three main quality standards, determined by the impurities contained in the silicon metal produced (principally iron, aluminium, calcium and phosphorus), fall, in fact, within a single generic category which is chemically identified and classified as silicon metal. It is clear that the product originating in Brazil can, like the silicon metal manufactured by the Community industry, also be of any of the said three qualities, whether sold on the domestic market or for export to the Community.

(12) Secondly, in the course of its investigation the Commission also established that the silicon metal used for chemical purposes and that used for metallurgical purposes was produced using the same manufacturing process. The end-use of the product is then determined by analysing the chemical composition of the samples taken when the product leaves the furnace.

It must also be added that the physical characteristics of both categories of silicon metal are very alike since the only relevant difference lies in the very faint traces of impurities which are apparent in the chemical composition of the product.

(13) Lastly, the argument based on the difference in price between the two main categories of silicon metal in no way implies that they constitute different products with disparate physical characteristics. In this regard, as the Commission was able to ascertain in the course of its investigation, the difference is neither systematic nor significant. In the case in point, the difference is accounted for by price fluctuations on the world market for the category in question, which are the result of traders' expectations. It must, moreover, be pointed out that from a technical standpoint the two categories can, to some degree, be substituted for one another in so far as the aluminium metal-working industry can make use of silicon metal that is used for chemical purposes.

C. DUMPING

(a) Normal value

(14) In order to establish the representative character of the sales by each Brazilian producer on the domestic market for the purposes of determining the normal value, the Commission checked that the domestic transactions were equivalent to not less than 5 % of the transactions involving exports to the Community by each Brazilian producer during the investigation period.

It was found that the domestic sales of all the exporters exceeded the 5 % threshold and that they therefore represented a volume that was sufficient to constitute an economically viable market and an adequate basis for calculating the normal value.

(15) The Commission also examined whether the said sales had been made in the ordinary course of trade. The unit value of each domestic transaction was accordingly compared with the monthly production cost per tonne of each producer/exporter during the investigation period.

In the case of certain exporters it was apparent that during the investigation period domestic sales of significant quantities had taken place at prices that did not permit recovery of all costs reasonably allocated.

Normal value was therefore determined either on the basis of the remaining sales on the domestic market made at a price which was not less than the cost of production or on the basis of the constructed value determined by adding the cost of production and a reasonable profit margin determined by reference to the profits made by the exporting producer in question or by another exporting producer, where appropriate, on profitable sales of like products on the domestic market in accordance with Article 2 (4) of Regulation (EEC) No 2423/88.

(16) Lastly, in view of the significant price variations which are the result of the endemic inflation in Brazil, the normal value was determined on a monthly basis either by reference to domestic sales or, where necessary, by reference to the constructed value as definited in point (15).

(b) Export prices

(17) The export prices of the Brazilian producers were determined on the basis of the prices actually paid or payable for the product sold for export to the Community.

(18) The export prices of one of the Brazilian producers trading in the Community through a related company were calculated on the basis of those at which silicon metal was first resold to an independent buyer in the Community in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88. In so doing, allowances were made tot take account of all costs incurred bewtween importation and resale, including a profit margin.

(c) Comparison

(19) The monthly normal value figure was compared with the price of each export transaction carried out in the course of the relevant month.

(20) All comparisons were made at the same stage in trade, ex-works, making the allowances needed to eliminate the differences affecting the comparability of prices, particularly as regards transport and handling costs, harbour dues, financing and insurance costs and commissions paid to agents.

(d) Dumping margins

(21) The preliminary examination of the facts showed that silicon metal originating in Brazil was being dumped by all the exporters covered by the investigation. The dumping margin established for each exporter equals the amount by which the normal value, defined as indicated above, exceeds the export price to the Community.

(22) The weighted average dumping margins established in this way vary depending upon the exporter concerned. Expressed as a percentage of the free-at-Community frontier cif price, before duty, they are as follows:

Rima Eletrometalurgia SA	67,16 %
Ligas de Alumínio SA (Liasa)	59,12 %
Eletroila SA	44,51 %
Companhia Ferroligas Minas Gerais (Minasligas)	51,20 %
Camargo Correa Metals SA	28,33 %
Companhia Brasileira Carboreto de Cálcio	18,55 %.

(23) In the case of the exporting producers who failed to reply to the Commission's questionaire or did not make themselves known, dumping was determined on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. The Commission takes the view that the results of its investigation are the most appropriate basis for determining the dumping margin and that

if the margin for these exporting producers were considered to be less than the highest dumping margin (67,16 %) established for an exporting producer who cooperated in this investigation, there would be an incentive not to cooperate. On these grounds the Commission considers it appropriate to apply that dumping margin to the said group of exporting producers.

D. INJURY (1)

(a) The Community market in silicon metal

(24) Recorded consumption of silicon metal on the Community market increased from 178 598 tonnes in 1986 to 213 191 tonnes in 1990, an increase of 34 593 tonnes (up 19,4 %). The annual trend in volume terms on the Community market shows a rate of increase of between 3,6 % and 9,2 %. By contrast, recorded consumption on the Community market declined by 2,7 % in 1990.

(b) Volume, market share and prices of the imports covered by this proceeding

— Volume

(25) The information in the Commission' possession shows that imports of silicon metal originating in Brazil increased from 4 681 tonnes in 1986 to 31 202 tonnes in 1990, an increase of 26 521 tonnes (up 566 %). In other words the volume of sales by Brazilian exporters on the Community market increased more than sixfold between 1986 and 1990. It should be added that the annual rate of increase of Brazilian sales on the Community market remained constantly high throughout the period (between 36 and 81 %) and exceeded 60 % in 1989 and 1990.

— Market share

(26) In spite of a very modest market share in 1986 (less than 3 %), the Brazilian exporters secured alsmost 15 % of the market in 1990. It should be emphasized in this regard that the greatest increase in Brazilian imports (from 8,7 to 14,6 %) was achieved between 1989 and 1990, a period during which recorded consumption declined by 2,7 %. Among all the Community's trading partners, Brazil secured the greatest penetration of the silicon metal market between 1989 and 1990, against the background of a recession.

— Prices

(27) The cif price for Brazilian silicon metal fell by 33,2 % between 1986 and 1990. The investigation shows an inital fall (almost 20 %) in 1986 and 1987 followed by a period of stability until 1989 with prices of the order of ECU 1 110 per tonne The second fall occurred during the investigation period when the average price declined further by more than 17 %.

(28) Price trends on the Community market defined by the weighted average net selling price of the four Community producers, show a steady decline that was particularly significant between 1986 and 1987 (down 6,9 %) and especially between 1989 and 1990 (down 7,3 %). This trend reflects a drop of 13,6 % in the Community producers' prices over the period taken as a whole.

(29) The Commission examined the level of price undercutting calulated as the average differential between the cif value, duty paid, of the Brazilian imports and the ex-works packaged price of the Community product at the same stage of trade, on the Community market, expressed as a percentage of the total cif value, before duty, of the imports.

The statistical data gathered by the Commission departments during the first 10 months of 1990 showed that this weighted average differential varied between 25 and 42 % depending upon the exporter concerned.

(c) Situation of the Community industry concerned

(30) The Commission took account of the following economic indicators in order to determine whether the Community producers had suffered material injury :

(i) *Production, production capacity and stocks*

(31) The output volume figures for the Community for the period between 1986 and 1990 reveal a measure of stability, except in 1989 when there was a slight increase cause by the favourable outlook on the world market. From 1990 onwards, however, the outlook was less optimistic and all the Community producers scaled down their operations. Over the period taken as a whole, Community production therefore declined from 108 422 tonnes to 95 456 tonnes, a drop of 12 %. It should also be noted that two of the four Community producers are operating with one half of their production capacity.

(1) All figures for 1990 have been calculated by extrapolating the data relating to the investigation period.

The trend in stocks again bears witness to increasing difficulty in securing sales on the Community market. In this regard, stocks held by the Community producers more than doubled during the period 1986 to 1990, increasing from 15 170 tonnes to 37 745 tonnes.

(ii) *Sales*

(32) Sales by the Community industry on the Community market declined from 89 166 tonnes in 1986 to 78 967 tonnes in 1990, down by 11,4 % over the period as a whole.

(iii) *Market share*

(33) The Community industry's market share fell from 49,9 % in 1986 to 37 % in 1990, down by 12,9 % over five years. This significant decline recorded by the Community industry should be compared with the considerable increase in recorded consumption (up 19,4 %) and the growth in imports originating in Brazil whose share of the Community market increased from 2,6 % to 14,6 % during the same period.

(iv) *Financial results*

(34) In 1990 the Community industry was obliged to sell at a loss to a significant extent since the weighted average net selling price was 8 % lower than the weighted average cost. On account of this constant pressure on prices the Community producers' results were adverse, especially in 1990 (ranging from 7,4 to 20,5 %), and an Italian producer was obliged to discontinue its production of silicon metal.

(v) *Employment*

(35) The employment situation also deteriorated constantly between 1986 and 1990 since the total workforce of the entire Community industry was reduced by 18 %. This sector of Community production thus lost almost one employee in five between 1986 and 1990.

(d) **Conclusions**

(36) An assessment of the economic factors taken as a whole and the convergence of their general trends, in particular the decline in the volume of sales, the drop in market share and the substantial financial losses sustained by the Community producers led the Commission to find, on completion of its preliminary examination of the facts, that the Community industry had suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

E. CAUSE AND EFFECT

(37) The concurrent but opposite trends in the shares of the Community market held by the Brazilian exporters (up 12 %) on the one hand, and by the Community producers (down 13 %) on the other, led the Commission to take the view that there was a close causal link between the dumping on the Community market by the Brazilian exporters and the damage sustained by the Community industry. This finding is also underpinned by the particularly transparent nature of the world market in silicon metal, the result of which is to augment the effect of price undercutting in the case of a product whose price constitutes the main competitive factor.

(38) The Commission also examined whether other factors, particularly exports from other third countries, could be regarded as having had an effect on the losses sustained by the Community industry. In this regard it found that the market share held by the other third country exporters of silicion metal, with the exception of China, had also declined by almost 5 % between 1986 and 1990 despite the substantial increase in recorded consumption (up 19,4 %) on the Community market. Those exporters have accordingly also suffered as a result of the substantial quantities of silicon metal exported to the Community market at low prices by the Brazilian producers.

In these circumstances, even if the imports originating in the said third countries may have had an impact on the economic situation of the Community industry, the Commission takes the view, for the reasons set out above, that the dumped imports originating in Brazil, considered separately, caused material injury.

F. COMMUNITY INTEREST

1. General

(39) The purpose of anti-dumping duties is to eliminate dumping that is harmful to the Community's economic activity and to restore conditions of fair competition on the Community market, which is in keeping with the general interests of the Community.

(40) The Commission recognizes that the imposition of anti-dumping duties affects the level of prices of the exporters concerned within the Community and can, accordingly, affect the relative competitiveness of their products to some extent. The adoption of anti-dumping measures can not however, be regarded as resulting in a restriction of competition

on the Community market. On the contrary, the elimination of the unwarranted advantages secured through the dumping of products by the Brazilian exporters is intended to avert the decline of the Community industry and will result in an improvement of the competitive situation in the Community. It is clear that a reduction in the number of Community suppliers of silicon metal of itself leads to a restriction of consumer choice by increasing consumer dependence on non-Community supplies.

2. The interests of the Community industry

(41) In view of the material injury suffered by the Community industry, the Commission takes the view that if no trade protection measures are taken against the dumped imports which have caused the Community industry to suffer serious financial losses the industry would be obliged to reduce its capacity substantially.

(42) It is also evident that if the damage sustained by the Community industry continues this will result in the near future in the closure of a number of quartz furnaces in the factories of the Community producers which will again lead the Community industry concerned to cut back the general level of its workforce.

3. The interests of other parties

(43) Certain importers have contended that it is necessary to safeguard supplies from Brazil without any type of constraint on the grounds that they had concluded long-term supply contracts with exclusive technical specifications. In this regard it must be emphasized that the proposed anti-dumping measures in no way entail any exclusion of Brazilian exporters of silicon metal from the Community market nor do they prevent Community consumers of the product from maintaining their trading links with Brazil on condition that the latter operate in a context of fair competition.

The said Community consumers cannot call for the continuation of advantages that have been secured improperly by reason of unfair trading practices.

4. Findings

(44) In conclusion, having compared the various interests at stake, the Commission takes the view that the effect of imposing provisional anti-dumping measures will, in this case, restore fair competition on the Community market in the product concerned by eliminating the harmful effects of the dumping of imports. It also considers that it is necessary to avert any further injury being inflicted during the proceeding.

(45) The Commission accordingly considers that it is in the Community's interest that anti-dumping measures be taken by the imposition of provisional anti-dumping duties.

G. PROVISIONAL ANTI-DUMPING DUTIES

(46) In order to eliminate the injury suffered by the Community industry and, in particular, to meet its need to become profitable again at the earliest opportunity in order that it may remain in existence, it is essential that the measures taken enable the industry in question to make adequate profits and increase the rate at which its production capacity, which has suffered seriously as a result of the dumped imports, is used.

(47) It is accordingly essential that the provisional duties to be imposed cover the difference between the price of silicon metal originating in Brazil and the minimum reference price needed by the Community industry to cover its costs and make a reasonable profit.

(48) In the present case and for the purposes of making a preliminary determination, the Commission considers, as in the case of the previous anti-dumping proceeding concerning imports of silicon metal originating in the People's Republic of China, that a 6,5 % profit margin is essential to guarantee Community producers a reasonable return on their investments. On that basis the Commission has calculated a reference price on the basis of the production costs of the Community industry with which the weighted average prices of each Brazilian exporting producer have been compared.

(49) In order to calculate the level of duty, the resulting price difference was expressed as a percentage of the weighted average cif value of the imports in question. As a result of these calculations it is possible to establish the following injury margins for each of the Brazilian exporting producers:

Rima Eletrometalurgia SA	37,72 %
Ligas de Alumínio SA (Liasa)	42,13 %
Eletroila SA	33,04 %
Companhia Ferroligas Minas Gerais (Minasligas)	40,19 %
Camargo Correa Metals SA	47,06 %
Companhia Brasileira Carboreto de Cálcio	51,03 %.

(50) In the case of two of the six exporters in question, the injury margin, calculated in this manner, exceeds the dumping margin found. In accordance with Article 13 (3) of Regulation (EEC) No 2423/88, the rate of the provisional anti-dumping duties applicable to these two Brazilian exporters of silicon metal will accordingly be determined on the basis of the dumping margins established for each exporter. In the case of the four other exporters, the injury margin so calculated determines the level of the provisional anti-dumping duty applicable in each case to eliminate the injury suffered.

(51) In the case of the companies which failed to reply to the Commission's questionnaire or which failed to make themselves known, the Commission considers that it is appropriate to impose the highest level of duty, namely 42,13 %, calculated on the basis of the data collected in the course of the investigation. If a duty lower than the highest rate of anti-dumping duty established following the investigation were to be imposed on the said exporting producers, this would act as an incentive not to cooperate.

(52) A time limit should be set within which the parties concerned may make known their views in writing and request a hearing. It must also be made clear that all the findings made for the purposes of this Regulation are preliminary and may be reviewed when calculating any definitive duty to be proposed by the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty of 42,1 % of the net free-at-Community frontier price before duty 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 Eletrometalurgia SA, Belo Horizonte	37,7 %	(8649)
Eletroila SA, Belo Horizonte	33,0 %	(8650)
Companhia Ferroligas Minas Gerais (Minasligas), Contagem	40,1 %	(8651)
Camargo Correao Metais SA, São Paulo	28,3 %	(8652)
Companhia Brasileira Carboreto de Cálcio (CBCC), Rio de Janeiro	18,5 %	(8653)

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

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be conditional on 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 2423/88, 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 following its publication in the *Official Journal of the European Communities.*

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2423/88, it shall apply for a period of four months unless the Council adopts definitive measures before that period has elapsed.

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

Done at Brussels, 30 March 1992.

For the Commission

Frans ANDRIESSEN

Vice-President