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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 3359/93

of 2 December 1993

imposing amended anti-dumping measures on imports of ferro-silicon originating in Russia, Kazakhstan, Ukraine, Iceland, Norway, Sweden, Venezuela and Brazil

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European 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 Community (1), and in particular Articles 14 and 15 thereof,

Having regard to the proposal from the Commission, presented after consultations within the Advisory Committee as provided for by the aforementioned Regulation,

Whereas :

A. PROCEDURE

(1) By Regulation (EEC) No 2409/87 (2), the Commission imposed a provisional anti-dumping duty on imports of ferro-silicon originating in Brazil and accepted undertakings offered by a Brazilian company and by Promsyrio-Import of the USSR.

(2) By Regulation (EEC) No 3650/87 (3), the Council imposed a definitive anti-dumping duty on imports of ferro-silicon originating in Brazil.

(3) In February 1990, the Council, by Regulation (EEC) No 341/90 (4), accepted undertakings and imposed a definitive anti-dumping duty on imports of ferro-silicon originating in Iceland, Norway, Sweden, Venezuela and Yugoslavia, except ferro-silicon sold for export to the Community by companies whose undertakings had been accepted.

(4) By Regulation (EEC) No 1115/91 (5), the Council imposed a definitive anti-dumping duty following the review of anti-dumping measures concerning imports of ferro-silicon originating in Brazil.

By Decision 91/240/EEC (6), the Commission accepted undertakings offered by certain exporters following the review of anti-dumping measures concerning imports of ferro-silicon originating in Brazil and terminated the investigation as far as those exporters were concerned.

(5) In February 1992, the Commission published a notice (7) of the impending expiry of the undertaking accepted from the Soviet company, Promsyrio-Import, in accordance with Article 15 of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the Basic Regulation').

(6) In its request lodged in February 1992, the Liaison Committee of Ferro-Alloys Industries in the European Community (CLIFA), which acts on behalf of Community producers and represents, allegedly, 98 % of the Community's ferro-silicon production, asked for a review of all the measures mentioned in recitals 1 to 4.

(7) Having decided, after consultation, that there was sufficient evidence to justify a review, the Commission decided to institute a review of the Regulations and Decision mentioned in recitals 1 to 4 in accordance with Articles 14 and 15 of the Basic Regulation, and opened an investigation by a notice published in May 1992 (8).

(8) In August 1992, in accordance with the provisions of Article 15 (4) of the Basic Regulation, the Commission published a notice (9) concerning the

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 219, 8. 8. 1987, p. 24.
(3) OJ No L 343, 5. 12. 1987, p. 1.
(4) OJ No L 38, 10. 2. 1990, p. 1.
(5) OJ No L 111, 3. 5. 1991, p. 1.
(6) OJ No L 111, 3. 5. 1991, p. 47.
(7) OJ No C 37, 15. 2. 1992, p. 22.
(8) OJ No C 115, 6. 5. 1992, p. 2.
(9) OJ No C 186, 23. 7. 1992, p. 25.

continuation, during the review proceeding, of the anti-dumping measures in force against the former Soviet Union.

(9) The Commission officially notified the exporters and the Community producers known to be concerned of the opening of the proceeding and gave them the opportunity to make known their views in writing and to request a hearing.

(10) Furthermore, the Commission, at the request of an importer and in accordance with the provisions of Article 7 (6) of the Basic Regulation, gave the parties directly concerned opportunity to meet.

(11) The Commission sought and verified all information it considered necessary for a determination of dumping and injury and carried out investigations at the premises of the following:

(a) *Community producers*

— Sociedad Española de Carburos Metálicos, Spain

— Péchiney Electrométallurgie, France

— SKW Trostberg AG, Germany

(b) *Exporting producers*

— Fesil KS, Norway

— Elkem A/S, Norway

— Icelandic Alloys, Iceland

— Vargön Alloys, Sweden

— CVG Fesilven, Venezuela

— Companhia Brasileira Carbureto de Cálcio (CBCC), Brazil

— Companhia de Ferroligas de Bahia Ferbasa, Brazil

— Italmagnésio SA, Brazil

— Companhia Paulista de Ferroligas, Brazil

— Tovarna Dusika Ruse, Slovenia

(c) *Unrelated importers*

— Considar, Belgium

— SA des Minerais, Luxembourg

(d) *Related importers*

— Elkem GmbH, Germany

— Elkem Alloys Ltd, UK

— Fesil Alloys Ltd, UK

— Fesil GmbH, Germany.

(12) The Commission requested, and received, submissions from the complainants, from the exporters named and from a number of related and unrelated importers and verified the information provided to the extent considered necessary.

(13) The exporters, related importers, one unrelated importer and the complainant industry requested, and were informed of, the essential facts and considerations on the basis of which it was planned to recommend the imposition of amended anti-dumping duties. Due account was taken of the representations of the parties concerned in the findings of the Commission.

(14) The investigation into dumping practices covered the period from 1 January 1991 to 30 April 1992.

B. PRODUCT

1. Description of the product

(15) The product under investigation is ferro-silicon containing between 20 and 96 % of silicon by weight and exported by the countries under review, falling within CN codes 7202 21 90, 7202 21 10 and ex 7202 29 00.

(16) An exporter and an importer claimed that the physical characteristics of frequently traded grades of ferro-silicon, namely ferro-silicon containing 45 % of silicon and ferro-silicon containing 75 % of silicon, are substantially different as far as chemical composition, gravity, weight, bulk, density, colour, hardness and chill-factor are concerned and that their metallurgical properties are not the same. They also asserted that the production process for the two types of products requires different production facilities and therefore leads to differences in classification, handling, consumption, supply and pricing.

Furthermore, those two parties pointed out that ferro-silicon containing 45 % of silicon is not interchangeable with ferro-silicon containing 75 % of silicon. For all these reasons, ferro-silicon containing 45 % of silicon should, they claimed, be excluded from the proceeding.

(17) In that respect, the Commission recalls that where the product concerned consists of several grades or qualities, the question as to whether those different types of product have to be regarded as forming one product has to be answered on the basis of the physical or chemical characteristics and uses of those grades or qualities.

(18) The investigation has shown that both ferro-silicon containing 45 % and that containing 75 % of silicon have the same basic physical and chemical characteristics. In addition, they are interchangeable in their main applications as a deoxidizer in steel manufacture and/or as an alloying component for high-temperature steel alloys and sheet metal and have therefore to be regarded as forming one product for the purpose of this proceeding.

2. Like product

(19) The Commission established that the ferro-silicon produced in the Community and the ferro-silicon sold or produced in Brazil, Venezuela, Iceland, Norway, Sweden and the Republics of the former Yugoslavia are alike in all respects to the product concerned as exported from the countries concerned by this proceeding.

(20) The Council confirms those findings.

C. NORMAL VALUE AND EXPORT PRICE

1. Norway

(a) *Normal value*

(21) The Norwegian producers formed part of two separate corporate groups and sold through related sales companies which exported most of their merchandise to related importers in the Community.

(22) In no case did the volume of sales on the Norwegian domestic market attain 5 % of the volume of exports of the product to the Community, which has consistently been considered by the Commission to be a minimum representative volume for comparison.

(23) Normal value for the Norwegian producers has therefore been calculated in accordance with Article 2 (3) (b) (ii) of the Basic Regulation. It has been constructed on the basis of the fixed and variable raw material and manufacturing costs for the product exported to the Community, together with a reasonable amount for selling, administrative and other general costs, as well as a reasonable margin of profit. As regards each of the two Norwegian groups, a weighted average of the manufacturing costs of their producing subsidiaries was calculated.

Since there were, in both cases, no domestic sales in representative quantities of ferro-silicon or of products in the same business sector, the selling, general and administrative costs and profit were established on the basis of data available to the Commission concerning this product sector in Norway. This basis was considered reasonable and thus in accordance with Article 2 (3) (b) (ii) of the Basic Regulation.

A profit margin of 6 % was added to the full costs of the product. That profit was in line with the profit considered necessary for the Community industry to remain viable.

(b) *Export price*

(24) Where sales were made direct to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community.

(25) Where exports were made to related importers in the Community, export prices were constructed in accordance with Article 2 (8) (b) of the Basic Regulation on the basis of resale prices to the first independent purchaser, adjusted to take account of all costs incurred between importation and resale, together with a 3 % profit margin which was considered reasonable in view of the information available to the Commission on the product sector concerned.

2. Iceland

(a) *Normal value*

(26) Since there were no sales of ferro-silicon on the domestic Icelandic market, normal value was constructed in accordance with Article 2 (3) (b) (ii) of the Basic Regulation. As far as selling, general, administrative expenses and profit were concerned, the situation was the same as for Norway and the determination was therefore made on the same basis (see recital 23).

(b) *Export price*

(27) The sole producer in Iceland, Icelandic Alloys Ltd, channelled its sales to the Community through a Norwegian group which has a significant shareholding in this producer (see recital 21).

(28) Therefore, in order to achieve comparability between the normal value and export price, the latter had to be constructed on the basis of the price at which the product concerned was resold by the Norwegian company to independent Community customers, as provided for by Article 2 (8) (b) of the Basic Regulation. In accordance with that provision, allowance was made for an estimated margin of 3 % arising from profits realized on sales on the sector concerned.

3. Sweden

(a) *Normal value*

(29) Domestic sales of the Swedish producer exceeded 5 % of exports to the Community and therefore represented a volume sufficient to constitute a representative market and an adequate basis for calculating the normal value.

(30) Normal value has therefore been calculated on the basis of the weighted average domestic prices for ferro-silicon sold on the domestic market at prices made in the ordinary course of trade, in accordance with Article 2 (3) (a) of the Basic Regulation.

(31) The prices were net of all discounts and rebates directly linked to the sales under consideration.

(b) *Export price*

(32) Since all exports were made direct to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community.

4. **Venezuela**

(a) *Normal value*

(33) Domestic sales of the Venezuelan producer exceeded 5 % of exports to the Community and therefore represented a volume sufficient to constitute a representative market and an adequate basis for calculating the normal value.

(34) 70 % of the sales on the domestic market were sold to related companies for processing and could not be considered reliable and made in the ordinary course of trade. The remaining sales were made at prices which did not permit the recovery in the normal course of trade of all costs reasonably allocated. Normal value was therefore constructed in accordance with Article 2 (3) (b) (ii) of the Basic Regulation.

Given the volume of domestic sales, the Commission was in a position to calculate the selling, general and administrative expenses by reference to the expenses incurred by the producer on its sales on the domestic market.

A profit margin of 6 % on the total costs of production was considered reasonable (see recital 23).

(b) *Export price*

(35) Since sales were made direct to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community.

5. **Brazil**

(a) *Normal value*

(36) Domestic sales of all the Brazilian producers exceeded 5 % of export sales to the Community and therefore represented a volume sufficient to constitute a representative market and an adequate basis for calculating the normal value.

(37) In view of the significant price variations which are the result of the high inflation in Brazil, normal value was determined on a monthly basis, either by reference to domestic sales or, where necessary, by reference to the constructed value as defined hereafter.

(38) The Commission examined whether the domestic sales had been made in the ordinary course of trade, by comparing each domestic transaction with the production cost per tonne of each producer during the same monthly period.

During the months when sales were considered profitable, normal values were determined for that month, on the basis of the domestic prices in accordance with Article 2 (3) (a) of the Basic Regulation.

In all other cases, normal value was constructed in accordance with Article 2 (3) (b) (ii) of the Basic Regulation.

Given the volume of domestic sales, the Commission was in a position to calculate the selling, general and administrative expenses by reference to the expenses incurred by the producer on its sales on the domestic market. A profit margin of 6 % was also added (see recital 23).

(b) *Export price*

(39) Since sales were made direct to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community.

6. **Kazakhstan, Ukraine, Russia**

(a) *Normal value*

(40) On the basis of the information available to the Commission, of the countries of the former USSR, production facilities for ferro-silicon existed only in Kazakhstan, Ukraine and Russia. It was, however, not possible to distinguish the products by origin, since they were exported to the Community by a Russian trader which made no such distinction.

Since all three countries are non-market economy countries within the meaning of Article 2 (5) of the Basic Regulation, normal value was based on information obtained from a market economy in which the product was manufactured.

For this purpose, the Commission chose Norway. The choice was not questioned by the producers in the three countries concerned. The Norwegian ferro-silicon industry reported high production volumes and low production costs and appeared, by comparison with all other known producing countries, to be an efficient producer given the ease of access to hydroelectrical power, the most costly input in the production of ferro-silicon. Norway was therefore considered to be an appropriate and not unreasonable choice of analogous market.

(41) Normal value for Norway was established as explained in recital 23.

(b) *Export prices*

(42) The producers from Ukraine and Russia did not cooperate, while the questionnaire completed by the producer from Kazakhstan was found to be inaccurate as far as export prices were concerned and the information contained therein could therefore not be used.

The Commission verified more than 70 % of the total imports made through the trading organization, Promsyrio-Import, which represented producers in Kazakhstan, Ukraine and Russia. This quantity was considered representative of all transactions of the producers in Kazakhstan, Ukraine and Russia during this period.

Accordingly, export prices were determined on the basis of the prices to the first independent buyer.

D. COMPARISON

(43) For each country concerned, in comparing the normal value with export prices, transaction by transaction, the Commission, in accordance with Article 2 (9) and 2 (10) of the Basic Regulation, took account, where warranted, of the differences directly affecting price comparability, such as certain selling expenses, namely credit terms, transport, insurance and handling costs, packing and ancillary costs.

For Kazakhstan, Ukraine and Russia, an allowance was made for differences in physical characteristics, in particular screening, crushing and weighing. Normal value for all three countries was adjusted, since the alleged difference was substantiated, by an amount based on a reasonable estimate of the value.

(44) All comparisons were made at the same level of trade.

E. DUMPING MARGIN

(45) The margins of dumping equalled the amount by which the normal value established exceeded the price for export to the Community.

1. Norway

(46) The weighted average dumping margin for the companies Elkem and Fesil, expressed as a percentage of the cif-Community-frontier prices, customs duty unpaid, was 6,8 %.

(47) Since it was established that those two companies were responsible for all exports of ferro-silicon of Norwegian origin to the Community, it was considered appropriate that the above margin should be applicable to Norway as a whole.

2. Iceland

(48) The weighted average dumping margin for the company concerned, expressed as a percentage of the cif-Community-frontier prices, customs duty unpaid, is 6,8 %.

(49) Since it was established that the company was responsible for all exports of ferro-silicon of Icelandic origin to the Community, it was considered appropriate that the above margin should be applicable to Iceland as a whole.

3. Sweden

(50) The weighted average dumping margin for the company concerned, expressed as a percentage of the cif-Community-frontier prices, customs duty unpaid, is 7,4 %.

(51) Since it was established that the company was responsible for all exports of ferro-silicon of Swedish origin to the Community, it was considered appropriate that the above margin should be applicable to Sweden as a whole.

4. Venezuela

(52) The weighted average dumping margin for the company CVG Fesilven, expressed as a percentage of the cif-Community-frontier prices, customs duty unpaid, was 20,4 %.

(53) In the case of firms which had failed to cooperate in the investigation or had not replied satisfactorily to the Commission's questionnaire, the Commission considered that the dumping should be determined on the basis of the facts available, in accordance with Article 7 (7) (b) of the Basic Regulation. In this respect, it was considered that the margin found for the company Fesilven would be the most appropriate.

5. Brazil

(54) The weighted average dumping margins for the companies concerned, expressed as a percentage of the cif-Community-frontier prices, customs duty unpaid, were as follows:

— Companhia Brasileira Carbureto de Cálcio:	9,2 %
— Ferbasa:	22,8 %
— Italmagnésio:	25 %.

(55) In the case of Brazilian companies which cooperated in the investigation and were found not to

have exported during the investigation period (Rima Electrometalurgia SA, Companhia Paulista de Ferroligas, Companhia Ferroligas Minas Gerais Minasligas), the Commission considers that the best evidence available in the weighted average dumping margin found for the companies which did export. This was found to be 20,53 %.

(56) In the case of firms which had failed to cooperate in the investigation or had not replied satisfactorily to the Commission's questionnaire, the Commission considered that the dumping should be determined on the basis of the facts available in accordance with Article 7 (7) (b) of the Basic Regulation. In this respect, the Commission considered that the most reasonable facts were those established in the investigation and that, in order to prevent duty-circumvention and to avoid offering a bonus for non-cooperation, the highest margin found for Brazil would be the most appropriate.

6. Kazakhstan, Ukraine and Russia

(57) The weighted average dumping margins for the countries concerned, expressed as a percentage of the cif-Community-frontier prices, customs duty unpaid, were as follows:

— Kazakhstan : 74 %

— Ukraine : 74 %

— Russia : 74 %.

7. The remaining Republics of the former USSR

(58) Since no ferro-silicon originating in the remaining Republics of the former USSR was imported into the Community during the investigation period, any review of the measures, as they concerned those Republics, was inappropriate. Accordingly, the anti-dumping measures in respect of those Republics should not be maintained.

8. Former Yugoslav Republic of Macedonia and the Republics of Bosnia-Herzegovina and Slovenia

(59) For the producers in the abovementioned countries, given that their contribution to injury was *de minimis,* no dumping calculations were made (see recital 62).

9. Conclusion

(60) The Council confirms the above conclusions.

F. INJURY

1. Cumulation

(61) The effects of the imports from the countries under review have, in general, to be analysed cumulatively, since the exports originating in each of those countries comprised significant quantities of the product under consideration and competed with the Community production and with each other, and because the exporters' market behaviour was similar.

(62) However, imports from the Republics of Bosnia-Herzegovina and Slovenia and the former Yugoslav Republic of Macedonia were minimal. While the mere fact that imports from those countries, after the imposition of duties, were negligible is not a circumstance justifying *ipso facto* in a review proceding the lifting of duties against those countries or precluding the cumulation with other imports, it was found that the plant located in the Republic of Bosnia-Herzegovina has been seriously damaged and will be out of operation for a significant period of time.

The current capacity in the former Yugoslav Republic of Macedonia and Slovenia is such that it is unlikely that their exports to the Community will go beyond a negligible volume in the near future. It can therefore be expected that the volumes imported from those three countries, after lifting of measures, will remain at an insignificant level. Any contribution to further injury or any threat of injury cannot therefore be attributed to these imports.

(63) The Council confirms these findings.

2. Volume, market share and prices of the dumped imports

Volume of imports

(64) The volumer of ferro-silicon imported from the countries under review, as a percentage of consumption, increased from 56 % in 1988 to 60 % in 1991 and 69 % at the beginning of 1992:

— the imports originating in Kazakhstan, Russia and Ukraine rose considerably from 30 000 tonnes in 1988 (6 % market share), 72 000 tonnes in 1991 (14 % market share) to 90 000 tonnes in 1992 (16 % market share);

— the volume of the imports from Norway (approximately 200 000 tonnes per year), from Iceland (approximately 20 000 tonnes per year), from Sweden (approximately 12 000 tonnes per year) remained relatively stable between 1988 and 1992 with market shares of some 40 % for Norway, 4 % for Iceland and over 2 % for Sweden in 1992;

— the imports originating in Brazil increased from 9 000 tonnes in 1988 (nearly 2 % market share), to 16 600 tonnes in 1991 (3,2 % market share) to approximately 28 000 tonnes in 1992 (5,5 % market share calculated on an annual basis); during the same period, Venezuelan imports went up from 1 000 tonnes in 1988, to 8 600 tonnes in 1991 to approximately 9 000 tonnes (nearly 2 % market share);

— the imports from the Republics of Bosnia-Herzegovina and Slovenia and the former Yugoslav Republic of Macedonia, the sole countries of the former Yugoslavia producing ferro-silicon, decreased drastically from 18 000 tonnes in 1988 (nearly 4 % market share) to 3 000 tonnes for Slovenia, 2 000 tonnes for the former Yugoslav Republic of Macedonia and less than 1 000 tonnes for Bosnia-Herzegovina in 1992 (less than 1,2 % market share for those three countries together).

Price of the dumped imports

(65) The prices cif, at Community frontier, duty paid, to the first independent buyer in the Community for the product imported from the countries under review were lower than the Community producers' average ex works prices, which were already depressed.

The comparison, carried out at the same level of trade, showed the following average price-undercutting margins;

— 9,9 % for Norway,

— 9,9 % for Iceland,

— 7,8 % for Sweden,

— 20,1 % for Brazil,

— 20 % for Venezuela,

— 58,2 % for Ukraine, Russia and Kazakhstan.

(66) The Council confirms these findings.

3. Situation of the Community industry

Production, capacity and utilization rate

(67) Community production of ferro-silicon fell from nearly 190 000 tonnes in 1989 to 132 000 tonnes in 1991 and 102 000 tonnes in 1992. Though production capacity fell from nearly 255 000 tonnes in 1989 to approximately 200 000 tonnes in 1992, the utilization rate nevertheless decreased from 75 % in 1989 to 48 % in 1992.

Sales volume and market share

(68) The quantity of ferro-silicon sold in the Community by the Community producers fell from 163 000 tonnes in 1989 to 135 000 tonnes in 1990, to 122 000 tonnes in 1991 and to approximately 100 000 tonnes in 1992.

Between 1989 and 1992 the Community industry's market share declined as follows: 30 % in 1989, 25 % in 1990, 23 % in 1991 and 13 % in 1992 (four months), while the Community's annual consumption increased between 1988 and 1989 from 490 000 tonnes to 535 000 tonnes and has since remained at that level.

Price evolution

(69) The low level of import prices over the investigation period meant that Community producers had to sell the product in the Community at prices which, in most cases, did not cover their production costs. The low level of prices not only prevented Community producers from raising their prices in order to reflect the rise in production costs, but even forced them to lower their prices, although this did not stop them from losing market shares.

Profits

(70) Due to the price depression and the declining capacity utilization which negatively affected the coverage of fixed costs in relation to this highly capital-intensive industry, the Community industry overall has recorded poor financial results since 1987 (with the exception of 1989, when a small profit was realized). The situation had further deteriorated since 1990 and particularly during the investigation period, with all Community producers suffering heavy losses. A weighted average of the Community industry's results shows a loss of some 34 % on turnover during that period.

Employment and investment

(71) It should be noted that the ferro-silicon industry is not labour intensive. However, there has been a small, but steady curtailment in employment levels.

Investments have been cut, and in Italy three companies stopped their ferro-silicon production.

Conclusion

(72) Given the financial losses and the reduction of its market shares, the Community industry's position has declined considerably. The Commission concludes accordingly that the industry has suffered material injury within the meaning of Article 4 (1) of the Basic Regulation.

(73) The Council confirms these findings and conclusions.

4. Causal link between dumped imports and injury

(74) The Commission examined whether the material injury suffered by the Community industry was caused by the effects of the dumping, and found that the increased influx of imports of the countries under review coincided with a significant loss of market share and a reduced profitability on the part of the Community industry. The Community ferro-silicon market is a transparent and price-sensitive market in which the price-undercutting practised by the producers of the countries under review had an immediate depressive effect on the prices of the Community industry. The Community producers had to adjust their prices to meet this downward trend in prices.

(75) The Council confirms these findings.

5. Other factors

(76) The Commission also considered whether factors other than the dumped import of ferro-silicon could have caused injury to industry.

(77) It has already been found that many of the difficulties encountered by the Community fero-silicon industry have been caused by the dumped imports of other third countries (such as South Africa and China). However, this does not detract from the conclusion that considerable quantities and the low prices of the dumped imports from the countries under review also had a substantial influence on the unfavourable situation of the Community industry;

(78) The Commission did not find any other factors which could explain the precarious economic situation of the Community industry. Indeed, there were neither substantial imports, other than those mentioned, nor was there any contraction in demand between 1990 and 1992.

6. Conclusion

(79) In those circumstances, and even allowing for the fact that imports from South Africa, China, Poland and Egypt have also contributed to the poor situation in the Community industry, the Commission has come to the conclusion that the effects of the dumped imports of ferro-silicon originating in Brazil, Venezuela, Norway, Iceland, Sweden, Ukraine, Kazakhstan and Russia, taken in isolation, have to be considered as still causing material injury to the Community industry. And lifting of the measures against these producers would therefore increase the existing injury. That being so, the present circumstances do not justify the repeal of the measures. On the contrary, the situation as found requires the adjustment of the existing measures to the new situation.

Indeed, should the measures in force remain unchanged, lapse or be repealed, the result would certainly be further price decreases in the imports, causing further price depression on the whole Community market, and further loss of market shares and profitability for the Community industry.

(80) The Council confirms these findings and conclusions.

G. COMMUNITY INTEREST

(81) In assessing the Community interest, the Commission took account of certain basic elements. The prevention of the distortion of competition arising from unfair commercial practices, and hence the re-establishment of open and fair competition on the Community market, is the very purpose of anti-dumping measures and is fundamentally in the general Community interest. Furthermore, failure to maintain measures in force would aggravate the already precarious situation of the Community industry, especially noticeable from the lack of profitability and the shrinking of market shares, making its viability questionable. Should the industry be force to cease production, the Community would be rendered entirely dependent for its supply on third countries.

Without anti-dumping measures, the disappearance of certain Community producers is quite probable in the near future, given the level of losses incurred by certain of them over an extended period. It should be noted in this respect that some Italian producers ceased operating at the beginning of 1991. Any further deterioration would endanger jobs and investment in the sector concerned.

(82) The Commission recognizes that the imposition of anti-dumping duties could affect price levels of the exporters concerned in the Community and subsequently may have some influence on the relative competitiveness of their products. However, the competitive advantage that is being lost is due to unfair trade practices which anti-dumping measures are designed to remove.

(83) It has also been argued that anti-dumping measures would reduce the number of competitors on the market. However, the Commission considers that the number of competitors on the Community market will not be reduced by the adoption of anti-dumping measures. On the contrary, the removal of the unfair advantages gained by the dumping practices is designed to arrest the decline of the Community industry and thus to help to maintain the availability of a wide choice of ferro-silicon producers.

(84) As to the interests of the processing industry, namely producers of speciality steel which are end-users of the product concerned in the Community, its short-term price advantages have to be viewed against the background of the longer-term effect of not retaining fair competition. Indeed, to refrain from maintaining measures in force would seriously threaten the viability of the Community industry, the disappearance of which would in fact reduce supply and competition to the detriment of consumers. Moreover, it has to be borne in mind that the price of ferro-silicon represents, on average, only 0,2 % of the cost of a tonne of steel. Any cost increase of ferro-silicon due to anti-dumping measures would therefore have an insignificant impact on the final consumers.

(85) The Commission considers that it is therefore in the Community's interest to call for the continued imposition of anti-dumping measures in order to prevent further injury being caused by the dumped imports.

(86) The Council confirms these conclusions.

H. UNDERTAKINGS

(87) Two companies proposed revised price undertakings.

(88) The prices cited in previous undertakings have all systematically been undercut and the Commission considers that the undertakings can no longer be considered an appropriate remedy.

(89) The Council confirms the approach.

I. LEVEL OF THE DUTY

(90) In order to adapt the measures to the changed circumstances and prevent the recurrence of further injury, it is considered that anti-dumping measures should be established in such a way as to allow the Community industry to make a reasonable profit in the future and to stem the fall in its sales.

(91) The Commission has calculated the weighted average production cost of the Community producers, a profit of 6 %, based on past performance and considered reasonable for guaranteeing the industry's productive investment on a long-term basis. Since the difference between those costs and the average import prices on a cif-Community-frontier basis, duty unpaid, is higher than the dumping margins for all companies or countries concerned, the duties should be based on the during margins recorded.

(92) Accordingly, the following anti-dumping duties should be imposed :

— Norway : 6,8 %

— Iceland : 6,8 %

— Sweden : 7,4 %

— Venezuela : 20,4 %

— Brazil : 25,0 %

  — Companhia Brasileira Carbureto di Cálcio : 9,2 %

  — Ferbasa : 22,8 %

  — Rima Electrometalurgia : 20,5 %

  — Companhia Paulista de Ferroligas : 20,5 %

  — Companhia Ferroligas Minas Gerais Minasligas : 20,5 %

— Russia : 74,0 %

— Ukraine : 74,0 %

— Kazakhstan : 74,0 %.

(93) In the case of firms which failed to cooperate in the investigation, the Commission considers that the duties should be established on the basis of the facts available in accordance with Article 7 (7) (b) of the Basic Regulation. In order not to reward non-cooperation, it was considered that the most reasonable facts were those established during the investigation and that there was no reason to believe that any duties lower than the highest duties considered necessary would be sufficient to remove the injury caused by the imports. Accordingly, it is considered appropriate to impose the highest duty calculated for ferro-silicon originating in each country under investigation.

(94) The Commission is, as always, prepared to carry out a newcomer review in the case of those companies which did not export during the investigation period, and are not related to companies which did export during that period and intend to commence the exports to the Community.

(95) The Council confirms the above.

J. REPEAL OF REGULATIONS AND DECISIONS

(96) Regulations (EEC) No 2409/87, (EEC) No 341/90, (EEC) No 1115/91 and Decision 91/240/EEC should accordingly be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ferro-silicon containing between 20 and 96 % of silicon by weight falling within CN codes 7202 21 00, 7202 21 90 and ex 7202 29 00 (Taric code 7202 29 00 11) and originating in Norway, Sweden, Iceland, Brazil, Venezuela, Kazakhstan, Russia and Ukraine.

2. The rate of duty, calculated on the basis of the free-at-Community-frontier price of the product, not cleared through customs, shall be:

— 6,8 % for ferro-silicon originating in Norway,

— 6,8 % for ferro-silicon originating in Iceland,

— 7,4 % for ferro-silicon originating in Sweden,

— 20,4 % for ferro-silicon originating in Venezuela,

— 25 % for ferro-silicon originating in Brazil (additional Taric code 8731), with the exception of that produced by the companies below, to which the following rates shall apply:

  — 9,2 % Cia Brasileira Carbureto de Cálcio, Rio de Janeiro (additional Taric code 8729);

  — 22,8 % Cia de Ferro Ligas da Bahia (Ferbasa), Pojuca, Bahia (additional Taric code 8730);

  — 20,5 % Cia Rima Electrometalurgia SA, Belo Horizonte (additional Taric code 8734);

  — 20,5 % Cia Paulista de Ferroligas, São Paulo (additional Taric code 8734);

  — 20,5 % Cia Ferroligas Minas Gerais, Minasligas, Contagem, MG (additional Taric code 8734);

— 74 % for ferro-silicon originating in Russia, Kazakhstan and Ukraine.

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

4. Regulations (EEC) No 2409/87, (EEC) No 341/90, (EEC) No 1115/91 and Decision 91/240/EEC are hereby repealed.

Article 2

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, 2 December 1993.

For the Council

The President

M. DE GALAN