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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2496/97

of 11 December 1997

imposing a definitive anti-dumping duty on imports of silicon metal originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Articles 9, 11 and 23 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Regulation (EEC) No 2200/90 [2] the Council imposed a definitive anti-dumping duty on imports of silicon metal originating in the People's Republic of China hereinafter referred to as 'China'. Following a complaint lodged by the Community industry and the Commission's subsequent investigation, the Council, by Regulation (EEC) No 1607/92 [3] concluded that the anti-dumping duty in force had been absorbed, and, by amending Regulation (EEC) No 2200/90, imposed an additional duty on imports of Chinese silicon metal of an amount equal to that of the original duty.

2. Request for a review

(2) Following the publication, in February 1995 of a notice of the impending expiry [4] of the measures in force, the Commission received a request for a review lodged by the Comité de Liaison des Industries de Ferro-Alliages (CLIFA) on behalf of four Community producers allegedly representing a major proportion of the total production of the product concerned in the Community. The request contained evidence of dumping of the product originating in China, and of material injury likely to result in the event of expiry of the existing measures. This evidence was considered sufficient to justify the opening of a review investigation.

(3) On 27 July 1995, the Commission announced by a notice [5] published in the *Official Journal of the European Communities* (hereinafter referred to as the 'Notice of Initiation') the initiation of an expiry review of Regulation (EEC) No 2200/90 concerning imports into the Community of silicon metal originating in China and commenced an investigation pursuant to Article 11 (2) of Regulation (EC) No 3283/94 [6], subsequently repealed and replaced by Regulation (EC) No 384/96, (hereinafter referred to as 'the Basic Regulation'). The Commission also decided to initiate, on its own initiative, an interim review pursuant to Article 11 (3) of the Basic Regulation.

3. Investigation

(4) The Commission officially advised the exporting producers and importers known to be concerned as well as their associations, the representatives of the exporting country and the complainant Community producers of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initiation. A number of importers and two organizations representing the user industry made their views known in writing. Hearings were granted to Community producers and to Chinese exporters which had requested them.

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).
[2] OJ L 198, 28. 7. 1990, p. 57.
[3] OJ L 170, 25. 6. 1992, p. 1.
[4] OJ C 35, 11. 2. 1995, p. 3.
[5] OJ C 193, 27. 7. 1995, p. 3.
[6] OJ L 349, 31. 12. 1994, p. 1.

(5) The Commission sent questionnaires for the purpose of a determination of dumping and injury to all parties known to be concerned and received replies from four complainant Community producers and two importers.

(6) No replies to the questionnaire were received from any Chinese producer of the like product. A number of Chinese exporters (trading companies) responded within the time limits laid down in the questionnaires.

(7) The Commission sought and verified all information deemed necessary for the purpose of a determination of dumping and injury, and carried out investigations at the premises of the following companies:

(a) *compainant Community producers*

— Vereinigte Aluminium Werke AG, Bonn, Germany,

— Ferroatlántica SL, Madrid, Spain,

— Pechiney Electrométaleurgie, Paris, France,

— Industria Elettrica Indel SpA, Belluno, Italy;

(b) *producers in the analogue country*

ELKEM A/S, Oslo/Kristiansand, Norway,

FESIL A/S, Trondheim, Norway.

(8) The investigation of dumping covered the period from 1 July 1994 to 30 June 1995 (hereinafter called 'the investigation period'). The examination of injury covered the period from 1992 up to the end of the investigation period.

(9) All interested parties received disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive measures. Those parties were also given time to submit their views on the disclosure and, where requested, were again heard by the Commission. The views expressed were taken into account, where appropriate.

(10) Due to the complexity of the proceeding and, in particular, the fact that precise facts about producers in the analogue country not subject to the investigation had to be established, the investigation could not be completed within the indicative deadline provided for under Article 11 (5) of the Basic Regulation.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(11) The product covered by this proceeding is silicon metal produced in an electric arc furnace by reducing quartz in the presence of various carbonaceous products. It is marketed in the form of lumps, granules or powder under internationally accepted technical specifications as regards its purity. On the basis of these specifications it is possible to classify silicon metal in different qualities, destined for different end-uses, namely the production of silicones ('chemical grade'), the production of the primary aluminium grade and secondary aluminium grade. Its silicon content is less than 99,99 % by weight. The customs classification code for silicon metal under the Combined Nomenclature during the investigation period was CN code 2804 69 00.

Silicon metal with a higher purity, that is containing by weight not less than 99,99 % of silicon, used mostly in the electronic semiconductor industry, falls under a different CN code and is not covered by this proceeding.

2. Like product

(12) The same international technical specifications apply both to the imported product referred to in the complaint and to silicon metal produced in the Community. Despite some difference in purity and dimensions between the Chinese and the Community product, their physical characteristics and applications are essentially the same, as is the case also for silicon metal produced and sold on the domestic market in the analogue country (Norway). The Community product and the imported product are therefore like products within the meaning of Article 1 (4) of the Basic Regulation.

C. DUMPING

1. Analogue country

(13) As China is a non-market economy country, the Commission, in accordance with Article 2 (7) of the Basic Regulation, determined the normal value on the basis of data collected from producers in a market economy third country (the 'analogue country'). In the original investigation normal value was established on the basis of the prices payable in the Community.

(14) In the Notice of Initiation of the review the Commission stated that Norway was envisaged as an appropriate market economy third country for the purpose of establishing normal value. This preliminary choice was based on information submitted in the review application, which stated that, in terms of both cost structure and production

technology, the Norwegian producers of the product concerned were amongst the most advanced in the world market, thus enabling a reasonable assessment to be made of normal value for the product concerned.

(15) All interested parties were given the opportunity to comment on the choice envisaged. The exporters objected to this choice. Their objections were, however, raised after expiry of the time limit laid down in the notice of initiation. They proposed Estonia as an alternative analogue country, erroneously claiming that this country had been the analogue country in the original investigation. No evidence in respect of the representativity of Estonian production was, however, received. Other parties, in the course of a hearing they were granted, even contested that there was any production in Estonia. Eurostat statistics, according to them, only reflected transhipped exports originating in other countries. Romania and Brazil were also suggested as analogue countries, but no evidence was provided as to why either of these countries would be a more suitable analogue country than Norway.

(16) In the course of the investigation, the Commission confirmed that Norway was one of the most important and efficient silicon metal producers in the world. Norway benefits from low energy costs, this fact being of importance since energy costs account for a large part of the manufacturing cost of silicon metal. Moreover, in particular because the factories are generally located in industrial harbours, the Norwegian producers benefit from a good access to raw materials and good exporting conditions. In addition, the production process in Norway is similar to the one now used in China, and the presence of two significant producers competing with imports ensures normal market conditions. Finally, silicon metal sales by the two cooperating Norwegian producers on their domestic market during the investigation period were made in significant quantities, since they amounted to more than 5 % of the exports from China to the Community.

(17) In the light of the above, it was considered appropriate and reasonable to use Norway as the analogue country for the establishment of normal value in respect of exports from China to the Community.

2. Normal value

(18) As far as the determination of normal value is concerned, the Commission established that the volume of the Norwegian producers' domestic sales to unrelated customers of the silicon metal grade similar to that exported from China constituted more than 5 % of the sales volume of the products under consideration exported to the Community and were, consequently, 'representative' within the meaning of Article 2 (2) of the Basic Regulation.

(19) Subsequently, in accordance with Article 2 (4) of the Basic Regulation, the Commission examined whether the domestic sales of the like product had been made in the ordinary course of trade, by assessing the proportion of sales which were profitable. The assessment showed that more than 20 % by volume of sales were made below the average cost. Normal value was thus established on the basis of the weighted average prices actually paid for the remaining profitable sales only, as the volume of the latter exceeded 10 % of those sales. Normal value was established at the fob Norwegian frontier level.

3. Export price

(20) Replies to the questionnaire sent by the Commission were received from five companies exporting the product concerned from China. All those companies were represented by the China Chamber of Commerce for Import and Export of Metals, Minerals & Chemicals (CCCMC). Owing to the persisting paucity and deficiencies of the replies, little information could be used. In particular, replies did not contain evidence that all sales of the product concerned to the Community had been reported, nor did they refer to the fact that some of the main Community importers might be related to the exporters, as part of State-controlled 'Minemetals' import and export network. Accordingly, in pursuance of Article 18 (1) of the Basic Regulation, the findings with regard to export prices had generally to be based on facts available. In this respect, it was considered whether or not, in the absence of any other source of information, the export price for the product concerned could be based on Eurostat import statistics. In examining the reliability of the information provided by those statistics, the Commission noted that data relating to CN code 2804 69 00 covered exclusively silicon metal. Moreover, according to the information available, the characteristics of the silicon metal grade exported from China did not vary to any significant extent during the investigation period, so that an average price was in this case considered to be sufficiently accurate.

(21) It was therefore concluded that the most reasonable basis for establishing the export price was to take the cif Eurostat import value for the CN code in question and corresponding statistics for Austria, Finland and Sweden before their accession to the Community.

4. Comparison

(22) In accordance with Article 2 (10) of the Basic Regulation, normal value and export price were, however, adjusted to take account of differences in factors which were claimed and demonstrated on satisfactory evidence to affect price comparability. Normal value was indeed adjusted to take into account a difference in the level of trade when compared to Chinese export sales, as Norwegian domestic sales are generally made directly to end-users. These adjustments were also made in respect of transport and insurance costs, the corresponding costs being established on the basis of data available in the Chinese exporter's responses to the questionnaire, and the export price thus expressed at fob Chinese frontier level.

5. Dumping margin

(23) In accordance with Article 2 (11) of the Basic Regulation, the weighted average normal value (fob Norwegian frontier) was compared with the weighted average export price (fob Chinese frontier).

(24) The comparison of the normal value with the export price as defined above showed the existence of dumping, the dumping margin being equal to the amount by which the normal value exceeded the price of export to the Community.

The dumping margin, expressed as a percentage of the cif export price, free-at-Community frontier, amounted to 68,1 %.

D. COMMUNITY INDUSTRY

(25) The Commission considered whether the Community producers which supported the request for a review and cooperated with the investigation represented a major proportion of total Community production, as provided for in Article 4 (1) of the Basic Regulation. In this respect it was found that the four producers which cooperated with the review manufactured almost the whole of the Community's output. It was therefore concluded that the four cooperating producers constituted the Community industry within the meaning of Article 4 (1) of the Basic Regulation.

E. INJURY

1. Consumption in the Community market

(26) Apparent consumption (EU 15) of silicon metal in the Community market (based on questionnaire replies, Eurostat data and market information available to the Commission) increased from approximately 195 000 tonnes to around 256 000 tonnes, i.e. an increase of about 32 % between 1992 and the end of the investigation period.

2. Volume and market share of the dumped imports

(27) It should be recalled that Chinese exporters had absorbed in 1992 the anti-dumping duty in force (see recital (1)). It has been established in the current investigation that the volume of dumped imports of silicon metal originating in China into the Community measured in metric tonnes showed a large decrease after the imposition of this additional anti-dumping (anti-absorption) duty in 1992. However, these imports subsequently recovered with a rise by 171 % between 1993 and 1994, and by 13,5 % from 1994 to the end of the investigation period. Thus, between 1992 and the end of the investigation period, imports originating in China, and sold in the Community, increased by 37 % in volume. These findings contradict claims that the imposition of additional anti-dumping measures would have resulted in the exclusion from the Community market of Chinese silicon metal.

(28) The estimated market share of these imports into the Community market, based on apparent consumption, increased from 3,7 % in 1992 to 3,8 % during the investigation period, i.e. by 3 %.

3. Prices of dumped imports

(29) As was explained in recitals (20) and (21), the paucity and deficiencies of the replies to the questionnaires received from the Chinese exporters, obliged the Commission to establish the export price on the basis of statistical figures (Eurostat and Austrian, Finnish and Swedish national statistics). The investigation has shown that after the review of the measures in 1992, Chinese duty unpaid prices had increased by 12,5 % in 1993. However, from 1994 up to the end of the investigation period, they decreased again to close to the level of 1992. From 1992, the year of the introduction of additional anti-dumping measures, up to the end of the investigation period these prices increased by only 4 %.

(30) The Commission also compared the prices of Chinese imports with the prices of the Community producers in order to determine whether the former undercut the latter. For this purpose, it was first established which (standard grade used in the aluminium industry) of the Community produced silicon metal was equivalent, in terms of specifications and uses, to the imported Chinese product. Since Chinese imports are all of standard quality the price comparison was made only with standard quality products of the Community industry. The weighted average ex-works producers' sale prices in the Community were then compared to the weighted average import prices of the Chinese product, adjusted to duty-paid net ex-warehouse levels in the Community at the same level of trade. For this analysis four markets were examined representing the most important markets (Germany, United Kingdom, France, Italy).

(31) On the above basis, it was found that Chinese import prices did not undercut the Community producers prices during the investigation period. However, when analysing actual resale prices to the first independent buyer of Chinese silicon metal, charged by a major unrelated importer representing 11 % of the total Chinese imports and who co-operated with the investigation, it was found that its prices were about 7 % lower than the corresponding Community industry prices. In addition, it is important to note that on the Community market, a fixed anti-dumping duty of ECU 396 per tonne, representing 51 % of the cif price, was in force. Consequently, if these measures were to lapse, undercutting would occur by a percentage of not less than 30 %.

4. Situation of the Community industry

(a) *General*

(32) A number of interested parties have pointed out that the Community industry does not suffer injury anymore, as the demand for silicon metal has changed since the end of the investigation period, leading to a supply shortage and a considerable increase in prices.

It should be noted that, pursuant to Article 6 (1) of the Basic Regulation, it is the practice of the Community institutions to base their analysis on dumping and injury on the situation prevailing during the investigation period. Such an approach is justified by the fact that the exact effect of developments such as those mentioned above can only be established within the framework of a properly conducted investigation in which all interested parties can put forward their views and in which the information submitted can be verified and analysed.

(33) In this case, the volatility of the silicon metal market justifies the Community's approach, as no conclusions can be drawn from these alleged price fluctuations without investigation.

(34) The Commission took account of the following economic indicators in order to determine the state of the Community industry.

(b) *Production*

(35) Community production increased from approximately 98 000 tonnes to approximately 122 000 tonnes between 1992 and the end of the investigation period, an increase of 24,1 %. The output figures for this period reveal a slowdown in 1993 (− 1,2 %), followed by a general increase as a result of a favourable outlook on the world market. Two of the Community producers who participated in the first investigation ceased their activities in 1992, while another restructured a production plant in Spain in 1993. The other Community producers have maintained a stable rate or have slightly increased their production.

(c) *Capacity, capacity utilization*

(36) Production capacity of Community industry increased by 5 % between 1992 and the end of the investigation period. This is mainly due to the restructuring in Spain. In addition, between 1992 and the end of the investigation period capacity utilization increased by 18 % for the reason given above.

(d) *Stocks*

(37) The volatility of the market and the expectations of the Community industry concerning the likely development of the Community market are shown by the trend in stocks. In this regard, stocks held by the Community industry grew by some 47 % during the period 1992 to the end of the investigation period, increasing from approximately 11 600 tonnes to approximately 17 000 tonnes.

(e) *Sales*

(38) Sales by the Community industry on the Community market increased from approximately 80 800 tonnes in 1992 to approximately 111 200 tonnes to the end of the investigation period, an increase of 37,6 % over the period of investigation.

(f) *Market share*

(39) The increase in sales volume resulted in a slight increase in market share from 39,8 % in 1992 to 41,1 % of the market during the investigation period.

(g) *Average sales price and price trends*

(40) As regards the development of Community industry, prices increased by 3 % after the imposition of additional anti-dumping duties on imports originating in China. However, between 1993 and 1994, they decreased by 3 %. Over the period considered, the Community industry sales price increased by 2 %.

(h) *Profitability*

(41) Between 1992 and 1993 the Community industry registered an overall weighted average loss of 21,7 % and 22 % respectively, for sales of silicon metal in the Community market. The restructuring of a plant in Spain and a slight upward trend in market prices did not bring the Community industry out of a loss-making situation in 1993 and 1994. During and up to the end of the investigation period the Community industry registered a weighted average loss of 13,4 %.

(42) The weighted average losses between 1992 and the end of the investigation period decreased by 38 %. Nevertheless, the Community silicon metal industry has not made any profit over the last ten years.

(i) *Employment*

(43) The employment situation deteriorated steadily between 1992 and 1994, since the total workforce of the entire Community industry was reduced by 7 %.

5. Conclusion

(44) After the imposition of measures the Community industry improved its position as to production, capacity utilisation, and sales. Nevertheless, it should be noted that capacity and market share have stagnated. The Community industry was unable to increase its prices to a satisfactory level even after the imposition of these measures, owing to the fact that the Chinese continued to lower their prices. In addition, following the substantial increase in the volume of stocks, the loss in employment and the accumulation of new financial losses, it is concluded that the Community industry continues to suffer material injury within the meaning of Article 3 (1) of the Basic Regulation.

F. CAUSATION

(45) The Commission examined whether the injury suffered by the Community industry was caused by dumped Chinese imports or whether other factors had caused or contributed to that injury.

1. Effect of dumped imports

(46) The silicon metal produced by the Community and the silicon metal imported from China are in direct competition with each other, essentially on a price basis. This is explained by the fact that there are no significant differences in quality between the imported product and the Community produced one. The imported product targeted the same customers, namely aluminium smelters.

(47) Since silicon metal is a commodity, its market is highly price sensitive and, consequently, low prices charged by certain vendors have a generally depressive effect on the market. The investigation has shown that after the review of the measures in 1992, Chinese duty unpaid prices had increased by 12,5 % in 1993. However, from 1994 up to the end of the investigation period, they decreased almost to the level of 1992.

Between 1992 (see recital (29)), the year of the introduction of additional anti-dumping measures, and the end of the investigation period the prices only increased by 4 %. Consequently, their level had a clearly depressive effect on the price of silicon metal in the Community market.

(48) Moreover, if one analyses the period between 1993 and the end of the investigation period, Chinese prices fell by 7 %, while the Community market prices increased by 3 %. This fact shows the capacity of Chinese exporters to partly absorb the effect of the anti-dumping duties in force.

(49) The Community industry tried to increase their prices in 1993, but had to follow the Chinese pricing policy. So, in 1994 the Community industry had attempted to reduce its financial losses by decreasing prices and trying to improve its sales.

(50) Furthermore, owing to the price depression exerted by Chinese imports and despite the increased consumption of silicon metal in the Community market, the Community industry continued to suffer from losses or barely managed to cover their production costs.

(51) Chinese exporters argued that there is no injury or likelihood of recurrence of injury suffered by the Community industry due to imports from China, because the Community industry has increased its production of silicon metal and particularly since 1992.

(52) However, as mentioned before (see recital (35)), the Community industry increased their own production between 1992 and the end of the investigation period by 24,1 %, in a market which grew by 32 % (see recital (26)). At the same time, the stocks of the Community industry increased by 46,6 % (see recital (37)). The Community industry expected, on account of a favourable market situation, to increase their sales accordingly. On the contrary, they were forced to increase their stocks, instead of following the depressed prices dictated by the Chinese imports, which continued to enter the Community market at low prices before anti-dumping duty.

(53) In conclusion, the Chinese dumped imports have clearly had a depressive effect on the market price in the Community and have had an impact on the poor financial situation of the Community industry.

2. Effect from other factors

(54) Imports of silicon metal from countries producing silicon metal other than China have entered the Community in the period from 1992 up to the end of the investigation period. The market share of Norwegian imports (calculated on the basis of the apparent consumption figures in recital (26) above) increased from 22,1 % in 1992 to 27,7 % up to the end of the investigation period. Imports originating in Brazil fell during the same period from 10,4 % to 7,3 %. The same situation prevailed for the other two important exporters of silicon metal into the Community, South Africa and Australia. Their imports fell from 14,8 % to 9,2 % and from 4,1 % to 3 % respectively.

(55) Chinese exporters argued that silicon metal from Russia and the Ukraine may also have caused injury to the Community industry. However, the Commission considers that the quality of silicon metal from Russia and the Ukraine is not comparable to European or Chinese silicon metal. The standard quality exported by China contains 0,5 % of iron, compared with between 0,8 % to 1 % for the Russian and Ukrainian product. The above-mentioned imported products need special treatment before they can be compared to the European and Chinese product.

Indeed, it was established that anti-dumping measures are not applied in the United States of America to silicon metal originating in Russia, owing to the fact that these products have to be treated and purified before being used by the aluminium smelting industry.

(56) In addition, the Commission examined the Eurostat import statistics and established that imports originating in Russia and the Ukraine are not carried out on a regular basis. In 1992 there were no imports from Russia or the Ukraine. According to market information, actual production capacity in the two countries seems to be limited to 100 000 tonnes per year. Thus, it seems unlikely that significant quantities would be shipped from Russia and Ukraine.

(57) Lastly it was established that the market share of South Africa had decreased due to production problems, and that Norway increased its market share but with the highest cif price shown in Eurostat.

(58) No other factors were found which would have negative influence on the Community industry.

3. Conclusion

(59) Given the simple production process involved and the maturity and simplicity of the product offered through similar sales channels in the Community, and the transparency of the market, the Commission considers that the Chinese low-priced imports policy had a substantial negative impact on the situation of the Community industry.

Even if certain imports originating in other countries may have contributed to the negative situation of the Community industry, it must be concluded that the price suppression, due to the Chinese imports has, taken in isolation, clearly caused material injury to the Community industry.

G. CONTINUATION OF DUMPING/INJURY

1. General

(60) Exporters argued that in order to determine whether there is a likelihood of continuation of dumping and injury the market trends have to be analysed throughout the period between 1988 and the end of the investigation period.

(61) In this respect the Commission examined the level of imports into the Community of 15 over a four-year period and especially after the imposition of

the additional anti-dumping measures due to the absorption. This period can be considered to be sufficiently long for the purposes of establishing injury indicator trends in anti-dumping investigations.

2. Chinese position in the world market

(62) Past experience, combined with the present situation, show that the Chinese industry has continued to export silicon metal into the Community at dumped prices. An anti-dumping investigation carried out by the United States administration established, in 1991, that Chinese exports had been dumped and anti-dumping duties at a rate of 134 % were imposed. Chinese exports to the United States decreased dramatically after the imposition of these measures.

(63) China is by far the biggest supplier of silicon metal in the world. In 1994, Chinese exports were approximately 116 000 tonnes. The lion's share of these exports goes to Japan which purchased 83 763 tonnes, or 72 % of total Chinese exports in 1994. Until 1993, Chinese sales to the other Asian countries had increased sharply while sales into the US market remained depressed due to anti-dumping duties in force since 1991. Sales to the Community recovered in 1994 despite the continued existence of anti-dumping duties.

(64) Chinese exports of silicon metal into Japan stagnated in 1993 and 1994, totalling 86 400 tonnes and 82 600 tonnes respectively. The same situation occurred in Australia. In South Korea, Chinese exports decreased over the same period. All the above corroborates the fact that the Japanese and other Asian markets are saturated, a finding which is confirmed by the fact that patterns of export volumes to China's main clients, namely Japan, South Korea and Australia, showed a substantial increase up to 1993 and stability thereafter.

3. Chinese production capacity

(65) The exporters argued that numerous Chinese factories have been closed down and that production capacity in China has been reduced. Moreover, increasing domestic consumption of silicon metal in China would result in smaller quantities being available for export. The same exporters argued that an increase in demand in the Community is expected by the end of the decade and that, consequently, the Community industry will not have the capacity to supply sufficient quantities.

(66) According to market information the Chinese production of silicon metal decreased from 450 000 tonnes in 1989 to 250 000 tonnes in 1994. It is likely that as soon as the measures in the Community and the United States lapse, the Chinese may convert production from other alloys to silicon metal and regain the high levels of production, previously held which could be exported to the Community.

4. Likelihood of continuation of dumping

(67) As regards dumping, it should be recalled that, during the investigation period, the imports concerned originating in China have continued to be dumped, at a level similar to that established during the investigation into absorption of the original duty rate carried out in 1992. Moreover, the prices of Chinese imports into Austria, Sweden and Finland shortly before their accession to the Community were also low and likely to have been dumped. It is therefore considered highly likely that if the measures were to expire this would lead to a continuation of dumping, within the meaning of Article 11 (2) of the Basic Regulation.

5. Likelihood of continuation of injury

(68) Chinese imports continued to be low-priced and to suppress the Community prices of silicon metal even after the imposition of additional anti-dumping duties. Chinese import prices were the lowest in the Community market over the period from 1992 to the end of the investigation period. Even with a small percentage of the Community consumption, they have had an important effect on the downward trend of the prices. Finally, if the measures of a fixed amount of ECU 396 per tonne were to lapse, an undercutting of 30 % would occur.

(69) Furthermore, given the present huge capacity of Chinese production and the existence of high anti-dumping duties in the United States, it is very likely that the Chinese will try to increase their sales into the Community market at very low prices if the measures lapse, leading to an aggravation of price depression on the Community market and consequently growing injury to the Community industry.

The trend of imports into Sweden and Finland before and after their accession into the Community confirms the likelihood of such a development. Between July and December 1994 Sweden imported 493 tonnes, in contrast to the period from January to June 1995 when no imports from China were declared. The same situation prevailed in Finland, where in the last semester of 1994 2 097 tonnes were imported from China, whereas

no imports were declared for the first semester of 1995. It is obvious that the volume of Chinese imports is strongly influenced by the existence or absence of anti-dumping measures. It is therefore concluded that at least a continuation of the injury suffered by the Community industry will occur should the anti-dumping duties in force be allowed to expire.

6. Conclusion

(70) On the basis of the above it is therefore considered that, if the anti-dumping measures currently in force were to lapse the Chinese exporters would continue to export to the Community market at very low prices. This would have as a consequence the continuation of price depression on the Community market causing further injury to the Community industry.

H. COMMUNITY INTEREST

1. General

(71) Pursuant to Article 21 (1) of the Basic Regulation, the Commission examined, on the basis of all evidence submitted, whether it could clearly be concluded that it was not in the Community interest to continue to apply measures.

For this purpose, the Commission considered the impact of existing measures and other possible measures, and the consequences for all parties involved in the proceeding, of not taking measures.

2. Consequences for the Community industry

(72) The purpose of anti-dumping measures is to remedy an unfair trading practice that has an injurious effect on a Community industry. Such a remedy should result in the re-establishment of a situation of effective competition which, as such, is in the interest of all the operators in the Community.

(73) In the course of this investigation it has been established that the Community industry continues to suffer injury, and that it is highly probable that, without the continuation of anti-dumping measures to correct the effects of dumped imports, the precarious financial situation of the Community industry will further deteriorate. Thus, the existence of the Community industry as a whole may ultimately be at risk. Two companies which took part in the previous investigations do not exist any more. It is also the Commission's opinion that if fewer producers are present in the Community market, competition may be reduced commensurately.

(74) On the basis of the facts established, it is reasonable to conclude that if the measures are allowed to lapse, there will be further factory closures and job losses in addition to those which have already occurred.

(75) When examining the Community interest in relation to the Community industry, the Commission had to take future developments into consideration. On the basis of studies for the future of the silicon metal industry world-wide it can reasonably be assumed that the use of this product could increase by possibly around 5 % per year.

(76) Furthermore, the ongoing restructuring efforts made by the Community industry show that it is not ready to abandon this segment of production, and therefore action against the adverse effects of clumped imports is necessary.

3. Impact on the users

(77) No individual user submitted any substantiated information during the current investigation. One Community user association and two national user associations submitted information requesting the termination of the measures.

(78) A United Kingdom aluminium producers association claimed that the quality of the silicon metal imported from China justified a price lower than that for the same product originating in other countries. This allegation was not substantiated by any evidence. In addition, neither in the original investigation nor in the current investigation, was it established that there was a significant difference in quality, justifying different pricing between Chinese silicon metal and that originating from other sources. This claim has to be rejected.

(79) The same association also argued, that the international competitive position of the aluminium products, produced in the Community, is damaged by the imposition of the anti-dumping measures. It was however established that the silicon metal used for the production in the Community of aluminium for export can enter the Community without any duty under the inward processing arrangements. This argument has therefore been dismissed.

(80) A user claimed that it is against the Community interest to continue imposing anti-dumping duties on Chinese imports of silicon metal owing to the fact that the Community industry would not be able to supply the Community market with sufficient quantities. It was found that, owing to the presence of other extra Community suppliers, the risk of a general supply shortage is very low.

(81) As far as the competitive environment of the Community market is concerned, user industries and other economic operators have always enjoyed the presence of a wide range of competitors in the market, since the Community industry, even exploiting its entire production capacity, could only satisfy roughly 50 % of the demand on the Community market.

Imports from third countries will therefore always be necessary. After the imposition of anti-dumping measures, producers located in China would be able to promote their exports to the Community at fair prices. The only anti-dumping measures in force against imports into the Community of silicon metal are those applied to imports originating in China and Brazil.

(82) The impact of the measures in force on the structure of the cost of production at the aluminium smelters in particular was examined. This analysis showed that for the production of aluminium 226 and 231, representing 50 % of total aluminium production, a weight of between 5,5 % to 6 % of silicon metal is required. The value of silicon metal used in this production represents 5,2 % of the overall cost of the aluminium. The impact of the existing measures on the price of an aluminium alloy which only includes silicon metal originating in China accounts for 1,7 %. This is a relatively small percentage of the total production costs, which points to the conclusion that any effect on users of the existing anti-dumping measures remains very limited.

4. Impact on importers

(83) Only a limited number of importers made their views on Community interest known to the Commission. One of them cooperated in the determination of dumping and injury.

(84) One company located in the United Kingdom and no longer importing the product concerned explained, that the prices charged by the Chinese exporters fob are such as to give only a slightly lower price.

It further claimed that since the imposition of the measures a price increase of over £ 300 per metric tonne has occurred. Moreover, it maintained that the imposition of measures conferred little benefit on the Community industry, as the main suppliers of the Community market are Norway and South Africa. They would allegedly have used the imposition of anti-dumping measures on the Chinese imports in order to dominate the British market.

It has to be pointed out, that after the imposition of the additional anti-dumping measures and up to the investigation period a weighted average increase of only 9,8 % was recorded on all imports of silicon metal into the Community market. Furthermore, the Community industry increased its prices by 2 % during the same period (recital (40)). It has already been established (recital (57)) that the market share of South Africa decreased owing to production problems, and that Norway increased its market share with, however, the highest cif Eurostat price.

These arguments have to be rejected.

5. Impact on the competitive environment

(85) With respect to the competitive situation on the Community market, the Commission considered whether the existing measures and their continuation might affect effective competition. First, it should be recalled that after five years of anti-dumping measures silicon metal of Chinese origin was still available on the Community market. Other exporters had increased their presence in that market. Consequently, the Commission came to the conclusion that it does not appear to be realistic to foresee acute supply shortages in the silicon metal market, nor any negative effect on effective competition.

6. Conclusion on Community interest

(86) On the basis of the above facts and considerations, in particular, and having examined the arguments submitted by the Community industry, Community downstream industry and importers of the product concerned, it is considered that, on balance, it is in the overall Community interest that the anti-dumping measures on silicon metal originating in China should not be allowed to expire.

I. ANTI-DUMPING MEASURES

1. Injury elimination level

(87) During the investigation period, it was established that the return on sales of the product concerned was negative because the selling prices charged by the Community industry were below the verified cost of production.

(88) In order to obtain a non-injurious reference level for export prices, the Commission established first the Community industry actual cost of production. With respect to a reasonable level of profit, one Community producer claimed that a minimum pre-tax profit of 7,5 % on sales was required for it to remain competitive. The Commission used a rate of 6,5 % on turnover, a rate which is considered to be sufficient given the mature nature of the product, requiring only modest investment in research and development or in production equipment.

(89) The price, determined by adding 6,5 % profit to the average cost of production of the Community industry was duly adjusted to take account of differences in the level of trade between the imports and the sales of the Community industry.

(90) On this basis, the injury margin was determined by taking into account the cif Chinese prices (Eurostat data) and amounted to 49 % of the cif price of the imports in question. According to this injury margin, which is lower than the actual dumping margin, the actual measures would have to be ECU 376,5/tonne, instead of ECU 396/tonne, which is the level of the measures in force.

2. **Definitive duties**

(91) Considering the conclusions on dumping, injury, causality, likelihood of continuation of dumping and injury and Community interest outlined above, the Commission considers it necessary to continue to impose anti-dumping measures which should restore effective and fair competitive conditions on the Community silicon metal market.

(92) Referring to Article 8 of the Basic Regulation the Chinese traders proposed an undertaking or the imposition of a variable duty. The lack of cooperation, as demonstrated by inadequacy of the Chinese replies to the questionnaires, indicates that efficient monitoring of undertakings would be jeopardised. Furthermore, the previous behaviour of the Chinese traders does not make the imposition of a variable duty appropriate.

(93) On the basis of the above, and taking into account the fact that those measures have been in force since 1992 at their current level, it is considered more appropriate that the anti-dumping measures on imports of silicon metal originating in China should take the form of an *ad valorem* anti-dumping duty, the rate of which should be set at 49 %.

(94) The Council confirms the above conclusions,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of silicon metal originating in China, falling within CN code 2804 69 00.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be 49 %.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

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

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

Done at Brussels, 11 December 1997.

For the Council

The President

M. DELVAUX-STEHRES