COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.11.2009
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Proposal for a

COUNCIL REGULATION

Repealing the anti-dumping duty imposed by Regulation (EC) No 172/2008 on imports of ferro-silicon originating in the former Yugoslav Republic of Macedonia.

EXPLANATORY MEMORANDUM

1. Context of the proposal

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation') in the proceeding concerning imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 172/2008, imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2. Consultation of interested parties and impact assessment

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. Legal elements of the proposal

- **Summary of the proposed action**

On 22 April 2009 the Commission initiated a partial interim review of the anti-dumping measures applicable to imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia. The investigation was limited in scope to the examination of dumping as far as the applicant, Silmak Dooel Export Import, is concerned. This exporting producer is currently subject to the anti-dumping duty of 5,4%, which is also the level of the residual duty for imports of ferro-silicon from the former Yugoslav Republic of Macedonia.

The investigation showed that no dumping took place during the investigation period. It was also concluded that the circumstances found during the current investigation period were of a lasting nature.

It is therefore suggested that the Council adopts the attached proposal for a Regulation, which should be published no later than 21 July 2010, in order to repeal the anti-dumping duty applicable to imports of ferro-silicon from the former Yugoslav Republic of Macedonia.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision. Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable

- **Choice of instruments**

Proposed instrument: Regulation.

Other means would not be adequate because the basic Regulation does not provide for

alternative options.

4. Budgetary implication

The proposal has no implication for the Community budget.

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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] (the basic Regulation), and in particular Article 11 paragraphs 3 and 6 thereof,

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

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) The Council, by Regulation (EC) No 172/2008[2] ('the original Regulation'), imposed a definitive anti-dumping duty on imports of ferro-sillicon ('FeSi') originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia. The measures consist of *ad valorem* duties in the range of 5,4% to 33,9% depending on the country of origin, with the exception of four companies expressly mentioned in the original Regulation which are subject to individual duty rates.

1.2. Request for a review

(2) Subsequent to the imposition of definitive measures, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation ('the interim review'). The request, limited in scope to the examination of dumping, was lodged by an exporting producer from the former Yugoslav Republic of Macedonia, Silmak Dooel Export Import ('the applicant' or 'Silmak'). The applicant cooperated in the investigation which led to the findings and conclusions laid down in

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 55, 28.2.2008, p. 6.

the original Regulation ('the original investigation'). The anti-dumping duty applicable to the applicant, which is the only known exporting producer of the product concerned originating in the former Yugoslav Republic of Macedonia, is 5,4%.

(3) In its request for the interim review the applicant argued that a comparison of its constructed normal value and its export prices to the Community indicated that the dumping margin was substantially lower than the current level of measure. Therefore, it claimed that the continued application of the measure at its current level was no longer necessary to offset dumping.

1.3. Initiation of a partial interim review

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission decided to initiate a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping as far as Silmak is concerned. The Commission published a notice of initiation on 22 April 2009 in the *Official Journal of the European Union*[3] and commenced an investigation.

1.4. Product concerned and like product

(5) The product concerned by the interim review is the same as that in the original investigation, i.e. a ferro-alloy containing by weight more than 8% and less than 96% silicon and at least 4% iron. Production of FeSi takes place in electric arc furnaces by means of reducing quartz using carbon-bearing products. The product is essentially used as a deoxidiser and as an alloying component in the iron and steel industry. FeSi is sold in the form of lumps, grains or powder and exists in various qualities depending on the silicon and the impurity content (e.g. aluminium). FeSi with a silicon content of 70% and higher was considered as high purity, with a silicon content of more than 55% and less than 70% as medium purity, and with a silicon content of less than 55% as low purity FeSi. The product concerned is currently falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90.

(6) The product produced and sold in the former Yugoslav Republic of Macedonia and that exported to the Community, have the same basic physical, technical and chemical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

1.5. Parties concerned

(7) The Commission officially advised the Community industry, the applicant and the authorities of the exporting country of the initiation of the interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

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[3] OJ C 93, 22.4.2009, p.22.

(8) The Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping, and a verification visit was carried out at the premises of the applicant:

– Silmak Dooel Export-Import, Jegunovice, the former Yugoslav Republic of Macedonia.

1.6. Investigation period

(9) The investigation of dumping covered the period from 1 January 2008 to 31 December 2008 ('the investigation period' or 'IP').

2. RESULTS OF THE INVESTIGATION

2.1. Normal value

(10) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the applicant's domestic sales of the like product to independent customers were representative, i.e. whether the total volume of such sales was equal to at least 5% of the total volume of the corresponding export sales to the Community.

(11) As the investigation established that there were no representative domestic sales of the like product in the former Yugoslav Republic of Macedonia, normal value had to be constructed. In accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types a reasonable amount for selling, general and administrative expenses ('SG&A') and a reasonable profit margin.

(12) In order to establish whether the applicant's own SG&A and profit margin realised on the domestic sales of the like product could be used, the Commission subsequently examined whether there were any domestic sales of FeSi in the IP which could be regarded as having been made in the ordinary course of trade, pursuant to Article 2(4) of the basic Regulation. It was found that the company had few profitable domestic sales transactions during the IP, corresponding to very small quantities. The company claimed that these transactions concerned trial product types which could not therefore be considered to be in the ordinary course of trade. The claim was examined and accepted.

(13) Based on the above analysis, it was concluded that the applicant did not have any domestic sales of the like product in the ordinary course of trade during the IP. Thus, pursuant to Article 2(6)(c) it was considered reasonable when constructing the normal value to follow the same method as that applied in the original investigation. As a consequence, the weighted average SG&A incurred by the Egyptian producers in the original investigation, because of their comparable production and sales structures, and a profit margin of 5% which was considered a reasonable profit for this type of commodity market, were added to the cost of manufacturing of the applicant.

2.2. Export price

(14) Since all export sales of the applicant to the Community were made directly to independent customers, the export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

2.3. Comparison

(15) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis and at the same level of trade. In order to ensure a fair comparison between normal value and export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were demonstrated to affect prices and price comparability. For this purpose, due allowance in the form of adjustments was made for costs of freight and insurance, handling, packing and ancillary expenses, financial costs, bank charges and anti-dumping duties paid by the applicant where applicable and justified.

2.4. Dumping margin

(16) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. This comparison did not show the existence of dumping.

3. LASTING NATURE OF CHANGED CIRCUMSTANCES

(17) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.

(18) In this regard the investigation showed that Silmak had made substantial efforts to change the structure of its production towards higher grade product types (with a silicon content of 75% or higher) resulting in an increase in its export prices, which was on average higher than the increase in the costs.

(19) The applicant provided full cooperation in this interim review and the data collected and verified allowed to establish a dumping margin based on its own data, including individual export prices to the Community. The result of this calculation indicates that the continued application of the measure at its current level would no longer be justified.

(20) Evidence obtained and verified during the investigation also showed that the changes in the applicant's production structure are to be considered lasting. No element emerged in the course of the investigation that would suggest otherwise. It was therefore considered that the circumstances that led to the initiation of this interim review are unlikely to change in the foreseeable future in a manner that would affect

the findings of the interim review. Therefore it was concluded that the changed circumstances are of a lasting nature.

4. ANTI-DUMPING MEASURES

(21) It is noted that the comparison of the applicant's export data with Eurostat showed that the company's export quantity of the product concerned in the IP corresponded to the total quantity of the product concerned imported into the Community from the former Yugoslav Republic of Macedonia during the same period.

(22) In the light of the results of this review investigation, it is considered appropriate to repeal the anti-dumping duty applicable to imports of the product concerned originating in the former Yugoslav Republic of Macedonia.

(23) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the repeal of the measure imposed by Council Regulation (EC) No 172/2008 on imports of the product concerned originating in the former Yugoslav Republic of Macedonia and were given an opportunity to comment. No comments were received from the interested parties.

HAS ADOPTED THIS REGULATION:

Sole Article

The partial interim review of the antidumping measures applicable to imports of ferro-silicon, currently falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90, originating in the former Yugoslav Republic of Macedonia, initiated pursuant to Article 11(3) of Regulation (EC) No 384/96, is hereby terminated and the measure in force on imports originating in the former Yugoslav Republic of Macedonia is repealed.

The Regulation shall enter into force on the day following its publication in the Official Journal of the European Union

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

Done at Brussels, […]

For the Council
The President
[…]