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COUNCIL REGULATION (EC) No 2229/2003

of 22 December 2003

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of silicon originating Russia

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**COUNCIL REGULATION (EC) No 2229/2003
of 22 December 2003**

**imposing a definitive anti-dumping duty and collecting definitively
the provisional duty imposed on imports of silicon originating
Russia**

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 9 thereof,

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

Whereas:

1. Procedure

1.1. Provisional measures

- (1) The Commission, by Regulation (EC) No 1235/2003 ⁽²⁾ ('provisional Regulation'), imposed provisional anti-dumping measures on imports of silicon originating in Russia. The measures were expressed as an *ad valorem* duty, ranging between 24,0 % and 25,2 %.
- (2) It is recalled that the investigation of dumping and injury covered the period from 1 October 2001 to 30 September 2002 ('investigation period' or 'IP'). The examination of the trends in the context of the investigation of injury analysis covered the period from 1 January 1998 to the end of the IP ('period under consideration').

1.2. Other measures in force

- (3) Anti-dumping duties at an *ad valorem* rate of 49 % are currently in force on imports of silicon originating in the People's Republic of China ('China') ⁽³⁾. A review ⁽⁴⁾ of these measures pursuant to Article 11(2) of the basic Regulation is ongoing.

1.3. Subsequent procedure

- (4) Following the imposition of provisional anti-dumping duties, parties received a disclosure of the facts and considerations on which the provisional Regulation was based. Some parties submitted comments in writing. All interested parties who so requested were granted an opportunity to be heard by the Commission.
- (5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Council Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

⁽²⁾ OJ L 173, 11.7.2003, p. 14.

⁽³⁾ Council Regulation (EC) No 2496/97 of 11 December 1997 imposing a definitive anti-dumping duty on imports of metal originating in the People's Republic of China (OJ L 345, 16.12.1997, p. 1).

⁽⁴⁾ OJ C 246, 12.10.2002, p. 9.

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- (6) The oral and written comments submitted by the interested parties were considered and, where appropriate, the definitive findings have been changed accordingly.
- (7) The Commission continued to seek all information it deemed necessary for the purpose of its definitive findings.
- (8) In addition to the verification visits undertaken at the premises of the companies mentioned in recital 7 of the provisional Regulation, it should be noted that after the imposition of provisional measures, an on-spot visit was carried out at the premises of the following Community users:
 - GE Bayer Silicones, Leverkusen, Germany,
 - Raffinera Metalli Capra SpA, Brescia, Italy,
 - Vedani Carlo Metalli SpA, Milan, Italy.

2. Product concerned and like product**2.1. Product concerned****2.1.1. Comments from exporting producers**

- (9) In recital 9 of the provisional Regulation, the product concerned was defined as silicon currently classifiable within CN code 2804 69 00. Some exporters queried whether silica fumes, which is a by-product of silica, obtained by a filtering process during the production of Silicon, is covered by the present proceeding.
- (10) It should be noted that silica fumes does not correspond to the definition of the product concerned provided in recitals 9 and 10 of the provisional Regulation since it is merely a by-product from the production of silicon taking the form of a powder which is used as an additive to concrete. It is therefore confirmed that this product, covered under CN code ex 2811 22 00, is outside the scope of this proceeding.
- (11) The definition of the product concerned was questioned by one Russian exporting producer, which claimed that there are in fact two distinct types of silicon, within this CN code, one type destined to metallurgical users and one type to chemical users. In support of this assertion, the Russian producer claimed that the two grades have significantly different chemical compositions based on their trace element content, with different end uses; that there are two distinct sets of users which do not compete with each other; and that there is no significant interchangeability between the two grades.
- (12) The investigation showed that silicon is produced in different grades and that silicon sold on the EU market during the IP, whether produced by the Community industry or imported from Russia, contained more than 95 % silicon by weight. The grade of the silicon is determined in the first place by the percentage of silicon, and in the second place by the other elements, in particular the content of iron and calcium. For specialist users, particularly chemical users, the proportions of other trace elements determine whether the silicon is suitable for the intended use. Commonly, for a specialist user, silicon is manufactured to specific requirements and is only purchased following a lengthy verification process by the individual user. However, whilst the levels of trace elements are important to chemical users, this is not sufficient to conclude that it is a separate product from silicon consumed by metallurgical users.
- (13) Evidence was also provided to show that the high-grade material was not sold exclusively to chemical users, and that chemical users also purchased certain quantities of the lower grade so-called metallurgical silicon. It is also generally accepted that users with lower quality requirements, in particular secondary metallurgical users, are able to use higher-grade silicon. For

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them the determinant factor is the price, as they are not willing to pay a premium for silicon of a higher grade than they require.

2.1.2. Comments of users

- (14) A number of users also questioned the provisional determination of the product concerned. The submissions made were very similar to those received by exporting producers, particularly from the metallurgical users. All metallurgical users argued that there are three distinct product types i.e. chemical, and a split between standard, and low grade silicon for metallurgical users. However, all accepted that they are able to use any of these grades in their production process, although they prefer low grade silicon on cost grounds. These comments were repeated by a metallurgical users' organisation.
- (15) One chemical user commented on the issue of product concerned. They confirmed that the silicon they purchase is tailor-made to their specifications and that the trace elements within the silicon are the most important factor for them.

2.1.3. Comments of the Community industry

- (16) The Community industry agreed with the provisional determination that all grades of silicon falling under the definition used in recitals 9 and 10 of the provisional regulation should be considered as the product concerned. They also pointed out that many of the arguments are not raised within the context of the product concerned but within the context of the like product determination, and that the exporting producers are confusing these two issues.

2.1.4. Conclusion on product concerned

- (17) Silicon is a product which is manufactured in several grades, depending firstly on the iron content, then on the calcium content, and thirdly on other trace elements. The production process employed in the EU and in Russia, i.e. electric arc furnaces, is largely the same.
- (18) On the EU market, there are essentially two different user groups: chemical users mainly manufacturing silicones, and metallurgical users manufacturing aluminium. The metallurgical users can also be subdivided between primary aluminium producers and secondary (recycled) aluminium producers. However, all of the silicon used contains at least 95 % silicon by weight, and is typically 98 or 99 % silicon.
- (19) Three grades of silicon have been identified, high grade, standard grade, and low grade, based upon the percentages of iron and calcium in the silicon. Between these grades, it was found that there is some overlap in the use made by different user groups. It is generally accepted that there are no physical, chemical, or technical characteristics which would prevent secondary aluminium producers from using any of the grades of silicon, or primary aluminium producers from using standard or high grade silicon. There is not the same degree of interchangeability in the opposite direction, although evidence has been submitted of chemical users being prepared to use standard and low grade silicon. The cost of the different grades usually determines which grade is used by which user group.
- (20) The investigation has shown, as mentioned above, that all types of silicon, despite any differences in terms of the content of other chemical elements, have the same basic physical, chemical, and technical characteristics. Whilst the silicon can be used for different end uses, it was found that there was substitutability to a greater or lesser degree between the different grades and different uses.
- (21) Therefore, the findings at recitals 9 and 10 of the provisional Regulation are definitively confirmed.

▼B**2.2. Like product**

- (22) After analysis, it was found that the claim concerning the product control number (PCN) addressed in recital 14 of the provisional Regulation concerned the price comparison of silicon originating in Russia with Community produced silicon and the correspondent injury elimination level. Differences in prices, quality and in uses do not necessarily lead to the conclusion that the products are not alike. Indeed, what matters in this context is whether the product types in question share the same basic physical and chemical characteristics and basic uses. The aforementioned differences will be taken into account in the comparison between export price and normal value and in determining e.g. price undercutting and the injury elimination level).
- (23) One Russian exporting producer referred to the anti-dumping measures currently imposed on imports of silicon from China (see recital 3). In particular, they refer to recital 55 of Council Regulation (EC) No 2496/97 which states that 'the quality of silicon metal from Russia and Ukraine is not comparable to European or Chinese silicon metal'.
- (24) In response to this point, it should first be pointed out that this statement was made in an investigation dating back more than five years, was based on information submitted in that investigation, and that this is not confirmed in the current investigation. In addition recital 55 of the above Regulation deals with the issue of causality only. It is clear from the wording that the product concerned, and indeed the like product from all sources, be it China, Russia, the EU, or the analogue country, i.e. Norway is silicon. This silicon forms one like product within the definition of Article 1(4) of the basic Regulation. Moreover, to the extent that quality differences can be found between different silicon producers in different countries, such differences can be adequately taken into consideration by means of adjustments. It is also noted that there were quality differences between the various types exported from Russia to the Community.
- (25) Based on the above and based on the findings of the investigation, it is confirmed that the silicon produced in Russia and sold domestically as well as that exported to the Community, the silicon sold on the domestic market of the analogue country, and that manufactured and sold in the Community by the Community industry have the same basic physical and chemical characteristics. It is therefore concluded that all types of silicon forms one product family and are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. Dumping**3.1. Normal value**

- (26) In the absence of any comments, the recitals 15 to 18 concerning market economy treatment of the provisional Regulation are confirmed.
- (27) All exporting producers made submissions arguing that the cost of electricity used at provisional stage should be amended. They emphasised that their main electricity supplier is a majority private-owned company and that its low price can be explained by the presence of the world's largest complex of hydro-electric power stations, based on a natural comparative advantage. This matter was further investigated, but since it was found that electricity prices in Russia are regulated and that the price charged by this electricity supplier was very low, even when compared to other suppliers of electricity generated by hydro-electric power stations in the analogue country Norway and also in Canada, it was decided to reject this claim and to confirm the provisional decision to use the electricity price charged by another electricity supplier in Russia. This price was found to be

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in line with the lowest price of representative electricity producers found in the Community.

- (28) In the absence of any other comments, the recitals 19 to 26 concerning the determination of normal value of the provisional Regulation are confirmed.

3.2. Export price

- (29) All exporting producers have argued that the companies involved in selling the product concerned to the EC which are located outside Russia are related parties and that these companies should be treated as a single economic entity together with the companies located in Russia. They claimed that the export price used should therefore be the price charged by these related companies to the first independent customer in the EC.
- (30) In the case of the importer located in the Community (United Kingdom), no new evidence was presented which demonstrated that it was related to the exporting producer. The claim was therefore rejected and the provisional approach of establishing the export price on the basis of the sales price to this importer was maintained.
- (31) In the case of the importer in Switzerland, an on-spot verification visit was carried out following the imposition of the provisional measure and it was found that this company was indeed related to the exporting producer. For the sales made through this importer, the export price was therefore based on the price of this importer to the first unrelated customer in the Community.
- (32) As regards the importer located in the British Virgin Islands, it should first be noted that according to Article 2(8) of the basic Regulation the export price to be used is the 'price actually paid or payable when sold for export from the exporting country to the Community.' In other words, in cases where the export transaction to the Community involves intermediaries, it is not the price ultimately charged to the Community customer which matters (and which is often not known to the exporting producer), but the price at which the product 'leaves' the exporting country. This price may have to be substituted by subsequent resale prices in particular if the parties are related. Rusal has submitted new information which, in their view, proved such a relationship. However, it is considered that this relationship was not demonstrated in a conclusive and unambiguous way. In fact, there is no direct shareholding between the Rusal and the company in the British Virgin Islands and structures are complex and non-transparent. According to the company, the link is a result of indirect shareholding but no verifiable documentation to this effect was submitted. Moreover, according to the Rusal the company in the British Virgin Islands does not perform any economic activity in the sale or distribution of the exported products but is merely a letter box company. In other words, this is not really a sale via a third party. Rather the British Virgin Islands company is an addressee for unclear accounting purposes. There was no way to verify the true role of this company located in the British Virgin Islands or follow with sufficient certainty the payment flows. It was consequently decided to maintain the provisional approach and to establish the export price on the basis of the sales price to the company in the British Virgin Islands.

3.3. Comparison

- (33) One exporting producer again claimed an adjustment for physical characteristics based on the fact that the average grade of silicon sold on the Russian market is of higher quality and therefore involves higher production costs. However, the company failed to present new evidence demonstrating that there was a consistent difference in quality between the product types sold on the domestic market and those exported to the Community.

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Therefore, the provisional approach was maintained and no adjustment for physical differences was made.

- (34) Two companies repeated their claims concerning an adjustment for quantities and for level of trade. The request for an adjustment for quantities could not be taken into account since the company was not able to demonstrate that discounts or rebates had been specifically given for the purchase of different quantities and since these differences in quantity had already been taken into account by the level of trade adjustment for different types of customers granted at the provisional stage. With respect to the request for an additional adjustment for level of trade, the company was not able to demonstrate that the adjustment made at the provisional stage had been insufficient and therefore no additional adjustment could be granted.

3.4. Dumping margins

- (35) In the absence of any comments, the determination of the dumping margin, as described in recitals 29 and 30 of the provisional Regulation are confirmed.
- (36) The definitive dumping margins, expressed as a percentage of the CIF import price at the Community border, are as follows:

Company	Dumping margin
OJSC 'Bratsk Aluminium Plant' (RUSAL Group)	23,6 %
SKU LLC, Sual Kremny-Ural and ZAO Kremny (SUAL Group)	24,8 %
Russia	24,8 %

4. Injury

4.1. Community industry

- (37) Since no comments were received regarding the definition of the Community industry, the contents and provisional conclusions of recitals 33 and 34 of the provisional Regulation are hereby confirmed.

4.2. Consumption of silicon in the Community

- (38) In the absence of any new information on consumption, the provisional findings as described in recitals 35 and 36 of the provisional Regulation are confirmed.

4.3. Imports of silicon into the Community

4.3.1. Volume and market share of imports

- (39) In the absence of any new information either on the imports of silicon into the Community or on their market share, the provisional findings as described in recitals 37 to 43 of the provisional Regulation are confirmed.

4.3.2. Price undercutting and price depression

- (40) Undercutting calculations were revised to reflect adjustments for level of trade and quality. These adjustments were established on the basis of verified information and correspond to a reasonable estimate of the market value of the differences.
- (41) Definitive undercutting margins showed that undercutting was 10,2 %.
- (42) The existence and the level of undercutting should be seen in the light of the fact that prices were depressed. Prices decreased

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significantly over the period under consideration (– 16 %), to the extent that they were not covering the Community industry's full costs of production during the IP.

4.4. Economic situation of the Community industry

- (43) The two Russian exporting producers claimed that the Community industry did not suffer material injury as most of the injury indicators showed positive developments. In particular, the exporting producers pointed to improvements for production, capacity, capacity utilisation, sales volume in the Community, market share, stocks, employment, and productivity over the period under consideration.
- (44) However for the injury indicators, and as outlined in recitals 71 and 72 of the provisional Regulation, a closer examination showed that the main positive developments for the Community industry took place between 1998 and 2000. Between 2000 and the IP, nearly all indicators either rose only slightly, remained stagnant, or indeed fell. It is during this period that the material injury suffered by the Community industry is most apparent.
- (45) It should be noted that as indicated in recital 72 of the provisional Regulation the relatively good performances of the Community industry up to 2000 was directly attributed to decisions taken by the Community industry to invest in additional community production facilities. Indeed, during that period the Community industry production, production capacity, sales volume, market share, employment and productivity increased. Profitability was set at 5 % of the net sales value.
- (46) Subsequently, and mirroring the increased presence of low-priced dumped imports from Russia, the situation of the Community industry deteriorated. Market share, cash flow, investments, and return on investments saw important decreases.
- (47) Moreover, the trend of other injury indicators, and in particular the decrease in profitability and sales prices suffered by the Community industry over the period under consideration led to the conclusion that the Community industry suffered material injury.

4.5. Conclusion on injury

- (48) For these reasons, and in the absence of any new information that would necessitate a revision of the finding that the Community industry suffered material injury during the IP, in particular for prices and profitability, the arguments raised by the Russian exporting producers are rejected. The findings and the conclusion set out in recitals 71 to 73 of the provisional Regulation are confirmed.

5. Causation

- (49) One Russian exporting producer argued that even if the finding of material injury is confirmed, this injury was not caused by the Russian imports of silicon. A number of other factors were alleged to be the true cause of the injury, if any, suffered by the Community industry. Other third countries with a much larger share of imports compared with Russia, Community industry's self-inflicted injury, the export performance of the Community industry, imports of silicon by the community industry itself, and the differences in the markets for chemical and metallurgical silicon were all cited as explanations for any injury suffered by the Community industry. One Russian producer also alleged that there was a 16 % difference between prices of the Community industry and Russian prices during the IP, and that such a large difference showed that there is no price competition between the silicon from the two sources on the Community market.

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5.1. Imports from other third countries

- (50) As outlined in recital 98 of the provisional Regulation, imports from a number of other third countries were made at much higher volumes than those from Russia. However, with the exception of China, imports from each of these countries actually fell in volume between 2000 and the IP i.e. when the Community industry saw a downturn in its economic situation. Furthermore, the prices of these other imports were in all cases higher than those of the Russian imports, and where they did undercut the Community industry's prices, the price differential was very limited.
- (51) One Russian exporting producer claimed that the information from Eurostat could not be relied upon as no account is taken of differences in product mix. They pointed out that there are important price differences between the predominantly lower quality silicon exported from Russia, and the higher quality silicon from other third countries. Rather, they claimed that the prices actually paid by users for silicon from different sources should be used when comparing prices.
- (52) This producer did not adduce any evidence in support of its claim. Moreover, due to the lack of substantial data from users as to the price they paid for silicon from other third countries, this price comparison could not be made. The information available from Eurostat represents in these circumstances the best source for establishing prices of silicon from third countries. In relation to the information available for the parallel expiry review against China, it emerged that the average undercutting margin found when prices were compared on a grade-by-grade basis was in line with the margin found when Eurostat average import price was compared to Community industry average price.
- (53) Furthermore, it should also be noted that for a fair comparison of import prices, Eurostat data was used in all cases. For Russia, where verified information was available for the IP, the true price of the imports was actually slightly lower than that recorded on Eurostat.

5.2. Self-inflicted injury

- (54) It was claimed that the injury suffered by the Community industry was primarily due to increasing costs incurred for new production capacities in an effort to increase market share. To this end it was claimed that the Community industry has the highest average costs of production (COP) in the world. This claim was based upon a comparison of the verified cost of production for the Community industry and Russian producers in this proceeding against published costs for other third countries. However, the cost elements included in the published figures were not clearly identified and therefore there was no evidence to indicate that these COP could be compared with the COP verified during the investigation. Typically it appeared that these published figures are based on manufacturing cost only, and do not include essential cost elements such as SG & A. In addition, it is interesting to note that the Russian producer did not provide any corresponding published data for Community producers. On this basis it is considered that this claim could not be addressed and the arguments raised by the Russian exporter were rejected. In support of this approach, it was found that the verified COP in the analogue country, Norway, was indeed higher than that provided by the Russian producer. When adjusted to full costs, the verified COP in Norway was found to be consistent to that of the Community industry.
- (55) Nevertheless, even if the costs of the Community industry were comparatively higher, this fact would not break in itself the link between the low-priced dumped imports and the injury suffered by the Community industry. As outlined at recital 83 of the provisional Regulation, had prices not fallen between the year

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2000 and the IP, then the Community industry would have made a profit of 1,7 %, as opposed to an actual loss of 2,1 %.

5.3. Exports by the Community industry

- (56) It was claimed that the reduction in export sales by the Community industry would have impacted on the profitability of their EU sales. However, no evidence to support this claim was submitted.
- (57) The total fall in export sales between 1998 and the IP represented only 2,3 % of all Community industry sales during the IP. Their impact, if any, on the prices and profitability of the Community industry on the EU market can, therefore have been of only a minor nature. It can also reasonably be assumed that the reduction in export is partly due to the demand for Community produced silicon during the IP.

5.4. Imports of silicon by the Community industry

- (58) One Russian producer queried the conclusion at recital 85 of the provisional Regulation that companies related to the Community industry, and which purchase silicon, have taken such decision on their own behalf and without influence from the Community industry. In support of this point, it was claimed that these related companies were not allowed to express their opinion on the proceeding. This was said to prove that these companies are indeed controlled by the Community industry.
- (59) The fact that the companies related to the Community industry do not make comments opposing anti-dumping measures in this proceeding does not mean that they are not free to source their own raw materials based on financial considerations. As these companies were seen to buy silicon from the Community industry, from Russia, and indeed from any other source as they wished, the conclusion at recital 85 of the provisional Regulation are therefore confirmed.

5.5. Differences between the markets for chemical and metallurgical silicon

- (60) It was alleged that the problems faced by the Community industry from 2000 onwards were due to a downturn in the demand for chemical grade silicon caused by a downturn in demand for the products of this user industry. It was claimed that the Community industry sells a higher proportion of its silicon to these chemical users than it does to metallurgical users, whilst the opposite is true for Russian exporting producers. Therefore, as Russian silicon does not compete with Community produced silicon in the chemical market, any problems faced by the Community industry cannot be attributed to Russian imports.
- (61) The table below outlines the trends in prices and volumes for Community industry sales of silicon to their chemical customers.

Community industry sales to chemical customers

	1998	1999	2000	2001	IP
Tonnes	48 907	59 924	74 880	74 435	69 652
Index	100	123	153	152	142
EUR per tonne	1 488	1 313	1 287	1 316	1 301
Index	100	88	86	88	87

Source: Community industry.

- (62) From this table, it can be seen that over the period under consideration, the sales of silicon sold to chemical users increased by

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42 % in volume but fell by 13 % in terms of average price. This compares with a 57 % increase in volume and a 16 % fall in prices for all sales of silicon over the period under consideration (see Tables 8 and 9 of the provisional Regulation).

- (63) During the period between 2000 and the IP, when the injury trend showed a particular downturn in respect of prices and profitability, sales to chemical users fell by around five thousand tonnes (– 7,0 %), but average prices increased by EUR 14 per tonne (+ 1,1 %). For all sales the comparable figures show an increase of around three thousand tonnes (+ 2,1 %) whilst average prices fell by EUR 46 per tonne (– 3,7 %).
- (64) Therefore, there are no reasons to believe that the injury suffered by the Community industry was caused by a downturn in sales to chemical customers. In fact, given the nature of the injury suffered, the reverse is true.
- (65) Accordingly, the argument that it is the trend for the sales of the Community industry to chemical customers that was the real cause of the injury suffered during the IP is rejected.

5.6. Price competition

- (66) Concerning the price difference between the silicon produced in the Community and the silicon imported from Russia, it is confirmed that this difference is not 16 %, as claimed by a Russian exporter, but 11 % on average during the IP (see recital 46 of the provisional Regulation). This difference existed despite Community industry price falls of 7 % between 2001 and the IP. This is seen as a clear indication of the effect that Russian prices had on those of the Community industry. To claim that the price undercutting is so large that it cannot have been the cause of the injury to the Community industry would be counter intuitive.
- (67) Indeed, the investigation showed that large quantities of silicon are sold by both the Community industry and the Russian exporting producers to the same customers or customers operating in the same sector. It is also clear that the low level of the Russian price was used as a lever by these users when negotiating prices with the Community industry.

5.7. Conclusion on causation

- (68) In light of the above, the arguments raised by the Russian exporting producers are rejected and the findings and conclusions set out in recitals 101 and 102 of the provisional Regulation are confirmed.

6. Community interest

- (69) Following the provisional determination, that the imposition of measures was not against the Community interest, interested parties were invited to come forward and to cooperate in the proceeding. Comments were received from four users and a users' association which had cooperated during the provisional stage of the proceeding. In addition five users and one users' association which did not cooperate during the provisional stage of the proceeding made comments on the provisional findings. No importers of silicon made any comments. Three Community suppliers of raw materials to the Russian producers had already submitted comments at the provisional stage.
- (70) Those comments which were made following the publication of the provisional Regulation concerned only the need to differentiate between chemical and metallurgical silicon i.e. on issues concerning the product concerned and the like product. The users submitted no comments regarding the impact of any measures either on their costs or on their profitability, nor provided the necessary information to allow such an assessment to be made.

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- (71) However, following on-spot visits to users, it was found that whilst these users are opposed to measures as this will increase their costs, they were generally in agreement with the methods we employed in our analysis. It is likely that the measure will have an impact on users. The information available indicates that duties will increase the costs for metallurgical users in the order of EUR 11 per tonne of finished product, i.e. by 0,8 %.
- (72) For the Community suppliers of raw materials, even it were accepted that the imposition of measures may have some negative consequences on their turnover and profitability, no evidence was submitted that would lead to the conclusion that this impact would be such as to outweigh the expected benefits to the Community industry.
- (73) Therefore, there was no new information provided at all that could lead to a finding that the imposition of definitive measures would be against the Community interest. Accordingly, the conclusion reached in recital 118 of the provisional Regulation is definitively confirmed.

7. Definitive measures

- (74) In view of the conclusions reached regarding dumping, injury, causation and Community interest, it is considered that definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Community industry by dumped imports from Russia.

7.1. Injury elimination level

- (75) A number of claims were made regarding the methodology used for calculating the injury elimination level at the provisional stage.

7.1.1. PCN Table

- (76) As stated in recital 14 of the provisional Regulation, it was claimed that the product control number (PCN) table which identifies all types of silicon did not include sufficient details of the chemical composition of the different types of silicon and that it was therefore not possible to make a proper comparison of the different grades of silicon. It was thus proposed to amend the PCN table to clearly identify the types imported from Russia as compared to those sold by the Community industry.
- (77) One company claimed that an extra grade should be included to cover silicon with an iron content of above 0,8 %. Whilst it may be that silicon with high levels of iron command lower prices on the market, no evidence was submitted to show that there was a clear market difference between silicon containing more than 0,5 % iron and that containing more than 0,8 %. As any price differences resulting from these different iron contents can, in any case be addressed by way of a price adjustment, which was indeed given, this claim is rejected.
- (78) The other Russian exporting producers requested two changes to the PCN Table. They firstly requested that a new grade be defined where the trace elements are the main determining factor. It was claimed that without this adjustment, silicon sold to metallurgical users could be unfairly compared with silicon sold to chemical users. They also requested that the silicon containing exactly 0,5 % iron be classified as low quality instead of standard quality as in the current PCN table.
- (79) The acceptance of the first request would not have led to a more accurate PCN Table, but would instead have resulted in poorly defined criteria, with a risk that the interested parties would have a degree of freedom in allocating sales to particular PCNs. Such a freedom would undermine the reliability of the information provided by PCN and thus on the reliability that could be placed on the injury elimination level. There is also no

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evidence indicating that maintaining the current PCN structure would lead to erroneous or less accurate findings. For example an underselling calculation based on standard and low quality silicon only would result in margins which changed by at most 0,2 %. For these reasons, the claim is rejected.

- (80) As to the second claim, again no evidence to support this change has been provided. Indeed there are indications that silicon containing 0,5 % iron is seen as the standard grade by users. Accordingly, no change to the PCN Table was considered necessary.

7.1.2. Profit margin

- (81) It was provisionally found that a profit margin of 6,5 % on total turnover could be regarded as an appropriate minimum which the Community industry could reasonably expect to obtain in the absence of injurious dumping. It was claimed that this margin was too high and that a margin of around 3 % would be more appropriate.
- (82) The request to use a 3 % margin is not borne out by the facts. Indeed, a profit of 6,5 % is in line with the profits achieved by the Community industry when fair market conditions prevailed on the Community market, i.e. between 1998 and 2000. Moreover, given the level of the dumping margins found and the volume of imports from Russia, it is also likely that the Community industry would have achieved profits of at least this level during the IP.

7.1.3. Quality adjustment

- (83) One Russian producer claimed that the silicon produced at one of its plants was of a lower quality than that produced at the other plant due to differences in the production process. Accordingly it was claimed that the lower quality silicon should be adjusted to allow a fair comparison with the prices of the Community industry. The adjustment claimed was the difference in the average cost of production between the two plants.
- (84) It is indeed accepted that there is a quality difference between the two plants. However, for any adjustment to be merited, it should be demonstrated that these differences impact on the prices that can be achieved in the market, in this case the EU. A comparison was, therefore made on a grade-by-grade basis to see if there was a consistent difference in the sales prices achieved between the two plants. For the high quality silicon, no sales were made of silicon from the lower quality plant, and no adjustment was necessary. For the standard grade, a clear price difference was observed, and an adjustment of 4 % was made for sales of this quality from the relevant plant. For the low quality silicon, no price difference was found and thus no adjustment was warranted.
- (85) The second Russian producer claimed that all of its silicon was of such low quality, that it could not be directly compared even with the prices of low-quality silicon produced by the Community industry.
- (86) It is again accepted that the iron level in particular is higher in the silicon produced by this producer compared to that produced by both the Community industry and by the other Russian producer. In order to calculate the quality effect, if any, on the prices achieved by this producer on the EU market, a comparison was made with the average prices achieved by the other Russian producer, again on a grade-by-grade basis.
- (87) The results of this comparison showed that an adjustment to the prices of low-quality silicon from this Russian producer should be granted so that it could be compared with the prices of the low-quality silicon produced by the Community industry.

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7.1.4. Level of trade adjustment

- (88) The Russian producers claimed a price adjustment to allow for different levels of trade for their EU sales. It was found that one Russian producer sold all of its silicon via a trader in the British Virgin Islands. The second producer sold via a related trader in Switzerland, via an unrelated trader in the EU, and directly to end users. The Community industry sold almost all of its silicon directly to end-users.
- (89) In order to determine if a level of trade adjustment was warranted, all sales of the same grade from the same producer via the different sales channels were analysed to see if there was a consistent price differential. As a result of this analysis, a level of trade adjustment was granted for all sales via an unrelated trader.

7.2. Form and level of the definitive duty

- (90) In accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed at the level of the dumping or injury margins found, whichever are the lower. These measures, as with the provisional measures, should take the form of an *ad valorem* duty.

7.3. Definitive collection of the provisional duty

- (91) In view of the magnitude of the dumping margins found for the exporting producers in Russia and in light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation, i.e. Commission Regulation (EC) No 1235/2003, should be definitively collected to the extent of the amount of definitive duties imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected.
- (92) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic sales and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duties.

7.4. Undertakings

- (93) Subsequent to the imposition of provisional measures, and after disclosure of the definitive findings, one exporting producer in Russia offered a price undertaking in accordance with Article 8 (1) of the basic Regulation.
- (94) The exporting producer concerned is a producer of different types of products which can be sold together. This raises a potential risk of cross-compensation i.e. that any undertaking prices would be formally respected but that prices for products other than the one concerned would be lowered when sold together with the product concerned. All this would render the commitment to respect a minimum price for silicon easy to circumvent and very difficult to monitor effectively.
- (95) For the reasons set out above, it was therefore concluded that the undertakings offered subsequent to the disclosure of the definitive findings could not be accepted as such in their current form. The interested parties were informed accordingly and the deficiencies of the undertaking offered were disclosed in detail to the exporters concerned,

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HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of silicon with a silicon content less than 99,99 % by weight, falling within CN code 2804 69 00, originating in Russia.

2. The rate of the definitive anti-dumping duty applicable for the product produced by the companies named below and originating in Russia shall be as follows:

Companies	Rate of duty (%)	TARIC additional code
OJSC Bratsk Aluminium Plant, Bratsk, Irkutsk Region, Russia	23,6%	A464
SKU LLC, Sual-Kremny-Ural, Kamensk, Ural Region, Russia, and ZAO KREMNY, Irkutsk, Irkutsk Region, Russia	22,7%	A465
All other companies	23,6%	A999

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

▼M1*Article 2*

1. Imports declared for release into free circulation by companies which offered undertakings accepted by and named in Commission Decision 2004/445/EC ⁽¹⁾ shall be exempt from the anti-dumping duties imposed by Article 1; provided that they are produced, shipped and invoiced directly by the said companies to the first independent customer in the Community; and provided that such imports are accompanied by a commercial invoice containing at least the elements listed in the Annex and by a certificate declaring the chemical analysis of each grade of the product concerned specified on the commercial invoice.

2. Exemption from the duty shall further be conditional on the goods declared and presented to customs corresponding precisely to the description on the commercial invoice and to the chemical analysis certificate.

▼B*Article ►M1 3 ◀*

The amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EC) No 1235/2003 on imports of silicon with a silicon content less than 99,99 % by weight, falling within CN code 2804 69 00, originating in Russia shall be definitively collected in accordance with the rules set out below.

The amounts secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article ►M1 4 ◀

This 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.

⁽¹⁾ OJ L 127, 29.4.2004, p. 114.

▼ M1*ANNEX*

The following elements shall be indicated in the commercial invoice accompanying sales of silicon to the Community, which are subject to the Undertaking:

1. the heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING';
2. the name of the company mentioned in Article 2(1) issuing the commercial invoice;
3. the commercial invoice number;
4. the date of issue of the commercial invoice;
5. the TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier;
6. the exact description of the goods, including:
 - the product code number (PCN),
 - the description of the goods corresponding to the PCN,
 - the company product code number (CPC),
 - the CN code,
 - the quantity (in tonnes);
7. the description of the terms of sale, including:
 - the price per tonne,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates;

▼ C1

8. the name of the company acting as an importer to which the invoice is issued directly by the company;
9. the name of the official of the company that has issued the commercial invoice and the following signed declaration:

'I, the undersigned, certify that the sale for direct export by [company name] to the European Union of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by [company name], and accepted by the European Commission through [Decision]. I declare that the information provided in this invoice is complete and correct.'