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(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON
COMMERCIAL POLICY

COMMISSION

**Notice of initiation of an expiry review and a partial interim review of the anti-dumping measures
applicable to imports of silicon originating in the People's Republic of China**

(2009/C 51/07)

Following the publication of a notice of impending expiry ⁽¹⁾ of the anti-dumping measures in force on imports of silicon originating in the People's Republic of China ('country concerned'), the Commission has received a request for review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community ⁽²⁾ ('the basic Regulation'). In addition, the Commission has received a request for review pursuant to Article 11(3) of the basic Regulation.

1. Requests for review

The expiry review request was lodged on 1 December 2008 by Euroalliages (Liaison Committee of the Ferro-Alloy Industry) on behalf of producers representing 100 % of the Community production of silicon.

The interim review request was lodged by EUSMET (European Users of Silicon Metal), and is limited in scope to the examination of dumping.

2. Product

The product under review is silicon originating in the People's Republic of China ('the product concerned'), currently classifiable within CN code 2804 69 00. This CN code is given only for information.

3. Existing measures

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 398/2004 ⁽³⁾. By

Council Regulation (EC) No 42/2007 ⁽⁴⁾ the definitive anti-dumping duty was extended to imports of silicon consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not.

4. Grounds for the reviews

4.1. Grounds for the expiry review

The request is based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

In view of the provisions of Article 2(7) of the basic Regulation, Euroalliages established normal value for the People's Republic of China on the basis of the price in an appropriate market economy country, which is mentioned in point 5(1)(d) of this notice. The allegation of continuation of dumping is based on a comparison of normal value, as set out in the preceding sentence, with the export prices of the product concerned when sold for export to the Community.

On this basis, the dumping margin calculated is significant.

Furthermore, Euroalliages points out that during the period of imposition of measures, the exporters/producers of the product concerned from the People's Republic of China tried to undermine the existing measures by circumvention practices, which were counteracted by Council Regulation (EC) No 42/2007 ⁽⁴⁾.

Euroalliages further alleges the likelihood of further injurious dumping. In this respect it presents evidence to the effect that, should measures be allowed to lapse, the current import level of the product concerned is likely to increase due to the existence of unused capacity and stocks in the country concerned. In addition, it is also alleged that the exports to other third countries, i.e. Japan, Canada and Norway, are made at dumped prices.

⁽¹⁾ OJ C 254, 7.10.2008, p. 9.

⁽²⁾ OJ L 56, 6.3.1996, p. 1.

⁽³⁾ OJ L 66, 4.3.2004, p. 15.

⁽⁴⁾ OJ L 13, 19.1.2007, p. 1.

It is also alleged that the flow of imports of the product concerned is likely to rise due to the measures in force on imports of similar products originating in the country concerned in traditional markets other than the EU (i.e. the United States of America). All this can lead to a redirection of exports from other third countries to the Community.

In addition, Euroalliages alleges that the removal of injury is mainly due to the existence of measures and that any recurrence of substantial imports at dumped prices from the country concerned would likely lead to a recurrence of injury of the Community industry should measures be allowed to lapse.

4.2. Grounds for the interim review

The request pursuant to Article 11(3) is based on *prima facie* evidence, provided by EUSMET that the circumstances on the basis of which measures were established have changed and that the new circumstances are of a lasting nature.

EUSMET alleges that the circumstances have changed significantly since the imposition of the measures, *inter alia*, due to a substantial increase in consumption. It further alleges that the level of dumping has significantly decreased. Therefore the continued imposition of measures at the existing levels is no longer necessary to offset dumping.

5. Procedure

Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of an expiry review and a partial interim review limited to the examination of dumping, the Commission hereby initiates reviews in accordance with Article 11(2) and 11(3) of the basic Regulation.

5.1. Procedure for the determination of dumping, likelihood of dumping and injury

The investigation will determine whether the expiry of the measures would be likely, or unlikely, to lead to a continuation or recurrence of dumping and injury. The partial interim review will determine whether the current level of the measures is appropriate to counteract the injurious dumping.

(a) Sampling

In view of the apparent large number of parties involved in this proceeding, the Commission may decide to apply sampling, in accordance with Article 17 of the basic Regulation.

(i) Sampling for exporters/producers in the country concerned

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all exporters/producers, or representatives acting on their behalf, are hereby requested to make themselves known by contacting the Commission and providing the

following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers and contact person,
- the turnover in local currency and the volume in tonnes of the product concerned sold for export to the Community during the period 1 January-31 December 2008,
- the turnover in local currency and the sales volume in tonnes of the product concerned sold on the domestic market during the period 1 January-31 December 2008,
- the turnover in local currency and the sales volume in tonnes for the product concerned sold to other third countries during the period 1 January-31 December 2008,
- the precise activities of the company with regard to the production of the product concerned and the production volume in tonnes of the product concerned, the production capacity and the investments in production capacity during the period 1 January-31 December 2008,
- the names and the precise activities of all related companies⁽¹⁾ involved in the production and/or selling (export and/or domestic) of the product concerned,
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have co-operated in the investigation. The consequences of non-cooperation are set out in point 8 below. In order to obtain the information it deems necessary for the selection of the sample of exporters/producers, the Commission will, in addition, contact the authorities of the exporting country and any known associations of exporters/producers.

Since a company cannot be certain that it will be selected in the sample, exporters/producers that wish to claim an individual margin pursuant to Article 17(3) of the basic Regulation are advised to request a questionnaire within the deadline foreseen in point 6(a)(i) of this notice, and file it within the deadline foreseen in point 6(a)(ii) first paragraph of this notice. However, attention is drawn to the last sentence of point 5.1(b) of this notice.

⁽¹⁾ For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

(ii) Sampling for importers

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission and to provide the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers and contact person,
- the total turnover in euro of the company during the period 1 January-31 December 2008,
- the total number of employees,
- the precise activities of the company with regard to the product concerned,
- the volume in tonnes and value in euro of imports into and resales made in the Community market during the period 1 January-31 December 2008 of the imported product concerned originating in the People's Republic of China or consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not,
- the names and the precise activities of all related companies⁽¹⁾ involved in the production and/or selling of the product concerned,
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have co-operated in the investigation. The consequences of non-cooperation are set out in point 8 below. In order to obtain the information it deems necessary for the selection of the sample of importers, the Commission will, in addition, contact any known associations of importers.

(iii) Final selection of the samples

All interested parties wishing to submit any relevant information regarding the selection of the samples must do so within the time limit set in point 6(b)(ii).

The Commission intends to make the final selection of the samples after having consulted the parties concerned that have expressed their willingness to be included in the samples.

⁽¹⁾ For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

Companies included in the samples must reply to a questionnaire within the time limit set in point 6(b)(iii) and must co-operate within the framework of the investigation.

If sufficient co-operation is not forthcoming, the Commission may base its findings, in accordance with Articles 17(4) and 18 of the basic Regulation, on the facts available. A finding based on facts available may be less advantageous to the party concerned, as explained in point 8.

(b) Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the Community industry and to any association of producers in the Community, to the sampled exporters/producers in the People's Republic of China, to any association of exporters/producers in the People's Republic of China, to the sampled importers, to any known association of importers.

Exporters/producers in the People's Republic of China claiming an individual margin, with a view to the application of Articles 17(3) and 9(6) of the basic Regulation, must submit a completed questionnaire within the time limit set in point 6(a)(ii) of this notice. They therefore have to request a questionnaire within the time limit set in point 6(a)(i). However, such parties should be aware that if sampling is applied to exporters/producers, the Commission may nonetheless decide not to calculate an individual margin for them, if the number of exporters/producers is so large that individual examination would be unduly burdensome and would prevent the timely completion of the investigation.

(c) Collection of information and holding of hearings

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence must reach the Commission within the time limit set in point 6(a)(ii).

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in point 6(a)(iii).

(d) Selection of the market economy country

The Commission envisages using Brazil as an appropriate market economy third country for the purpose of establishing normal value with respect to the People's Republic of China. Interested parties are hereby invited to comment on the appropriateness of this country within the specific time limit set in point 6(c).

(e) Market economy treatment or Individual treatment claims

For those exporters/producers in the People's Republic of China who claim and provide sufficient evidence that they operate under market economy conditions, i.e. that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation, normal value will be determined in accordance with Article 2(7)(b) of the basic Regulation. Exporters/producers intending to submit duly substantiated claims must do so within the specific time limit set in point 6(d). The Commission will send claim forms to all exporters/producers in the People's Republic of China who have been included in the sample and to any association of exporters/producers named in the complaint, as well as to the authorities of the People's Republic of China. This claim form may also be used by the applicant to claim individual treatment, i.e. that it meets the criteria laid down in Article 9(5) of the basic Regulation.

5.2. Procedure for the assessment of Community interest

In accordance with Article 21 of the basic Regulation and in the event that the likelihood of a continuation or recurrence of dumping and injury is confirmed, a determination will be made as to whether maintaining the anti-dumping measures would not be against the Community interest. For this reason the Commission may send questionnaires to the known Community industry, importers, their representative associations, representative users and representative consumer organisations. Such parties, including those not known to the Commission, provided that they prove that there is an objective link between their activity and the product concerned, may, within the general time limits set in point 6(a)(ii), make themselves known and provide the Commission with information. The parties which have acted in conformity with the preceding sentence may request a hearing setting the particular reasons why they should be heard within the time limit set in point 6(a)(iii). It should be noted that any information submitted pursuant to Article 21 of the basic Regulation will only be taken into account if supported by factual evidence at the time of submission.

6. Time limits

(a) General time limits

- (i) For parties to request a questionnaire or other claim forms

All interested parties should request a questionnaire or other claim forms as soon as possible, but not later than 10 days after the publication of this notice in the *Official Journal of the European Union*.

- (ii) For parties to make themselves known, to submit questionnaire replies and any other information

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission,

present their views and submit questionnaire replies or any other information within 40 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the aforementioned period.

Companies selected in a sample must submit questionnaire replies within the time limits specified in point 6(b)(iii).

(iii) Hearings

All interested parties may also apply to be heard by the Commission within the same 40-day time limit.

(b) Specific time limit in respect of sampling

- (i) The information specified in points 5.1(a)(i) and 5.1(a)(ii) should reach the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, given that the Commission intends to consult parties concerned that have expressed their willingness to be included in the sample on its final selection within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.
- (ii) All other information relevant for the selection of the sample as referred to in 5.1(a)(iii) must reach the Commission within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.
- (iii) The questionnaire replies from sampled parties must reach the Commission within 37 days from the date of the notification of their inclusion in the sample.

(c) Specific time limit for the selection of the market economy country

Parties to the investigation may wish to comment on the appropriateness of Brazil which, as mentioned in point 5.1(d), is envisaged as a market economy country for the purpose of establishing normal value in respect of the People's Republic of China. These comments must reach the Commission within 10 days of the date of publication of this notice in the *Official Journal of the European Union*.

(d) Specific time limit for submission of claims for market economy treatment and/or for individual treatment

Duly substantiated claims for market economy status (as mentioned in point 5.1(e)) and/or for individual treatment pursuant to Article 9(5) of the basic Regulation, must reach the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*.

7. Written submissions, questionnaire replies and correspondence

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this notice, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ⁽¹⁾ and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

Commission address for correspondence:

European Commission
Directorate General for Trade
Directorate H
Office: N-105 04/092
B-1049 Brussels
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8. Non-co-operation

In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and use of facts

available is made, the result may be less favorable to that party than if it had cooperated.

9. Schedule of the investigation

The investigation will be concluded, according to Article 11(5) of the basic Regulation within 15 months of the date of the publication of this notice in the *Official Journal of the European Union*.

10. Processing of personal data

It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽²⁾.

11. Hearing Officer

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of DG Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details interested parties may consult the Hearing Officer's web pages of the website of DG Trade (<http://ec.europa.eu/trade>).

⁽¹⁾ This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

⁽²⁾ OJ L 8, 12.1.2001, p. 1.