

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 83/2008

of 21 January 2008

repealing the anti-dumping duty on imports of ferro molybdenum originating in the People's Republic of China and terminating the proceeding in respect of such imports, following review pursuant to Article 11(3) of Regulation (EC) No 384/96

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 Articles 11(2), 11(3) and 11(7) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In January 2002, the Council, by Regulation (EC) No 215/2002⁽²⁾, imposed a definitive anti-dumping duty on imports of ferro molybdenum (FeMo) originating in the People's Republic of China (PRC), falling under CN code 7202 70 00 (the product concerned). The investigation period that led to these measures was 1 October 1999 to 30 September 2000 and will be referred to as 'the original investigation'. The measures imposed by Regulation (EC) No 215/2002 consisted of an *ad valorem* duty of 22,5 %.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽²⁾ OJ L 35, 6.2.2002, p. 1. Regulation as last amended by Regulation (EC) No 856/2007 (OJ L 190, 21.7.2007, p. 1).

(2) In October 2006, the Commission, by Decision 2006/714/EC⁽³⁾, suspended for a period of nine months the definitive anti-dumping duty imposed by Regulation (EC) No 215/2002 on imports of the product concerned originating in the PRC. The decision to suspend the definitive anti-dumping duty imposed by Regulation (EC) No 215/2002 was taken in line with the provisions of Article 14(4) of the basic Regulation.

(3) The Commission concluded, in its Decision 2006/714/EC, that the injury linked to the imports of the product concerned originating in the PRC was unlikely to resume as a result of the suspension because of the temporary change in market conditions, in particular the high level of prices of the product concerned on the Community market, which was far above the injurious level found in the original investigation, together with the alleged demand-supply imbalance for the product concerned.

(4) In July 2007, the Council, by Regulation (EC) No 856/2007⁽⁴⁾, extended until 31 January 2008 the suspension of the definitive anti-dumping duty imposed by Regulation (EC) No 215/2002 on imports of the product concerned originating in the PRC.

(5) The Council concluded, in Regulation (EC) No 856/2007, that the situation in the Community market with respect to the product concerned has remained unchanged following the suspension of the anti-dumping duty in October 2006 and decided, pending the outcome of the review (see recitals (6) to (8)), to extent the suspension of the measures in force in accordance with the provisions of Article 14(4) of the basic Regulation.

⁽³⁾ OJ L 293, 24.10.2006, p. 15.

⁽⁴⁾ OJ L 190, 21.7.2007, p. 1.

2. Review of the measures

- (6) On 31 October 2006 an *ex officio* full interim review of the anti-dumping measures applicable to imports of FeMo originating in the PRC was initiated, in line with the provisions of Article 11(3) of the basic Regulation, by a notice published in the *Official Journal of the European Union* ⁽¹⁾ since the corpus of evidence at the Commission's disposal indicated *prima facie* that the circumstances on the basis of which the existing measures were established have changed to the extent that the existing measures might no longer be adequate and that certain of these changes appeared to be of a lasting nature.
- (7) It is recalled that in line with the provisions of Article 11(7) of the basic Regulation where an interim review of anti-dumping measures pursuant to Article 11(3) of the basic Regulation is in progress at the end of the period of application of anti-dumping measures as defined in Article 11(2) of the basic Regulation, the interim review shall also cover the circumstances set out for expiry reviews in Article 11(2) of the basic Regulation.
- (8) Account taken of the above, and given that the measures imposed by Regulation (EC) No 215/2002 were due to expire in January 2007, the *ex officio* full interim review referred under recital (6) covered the circumstances set out for expiry reviews. Therefore, the *ex officio* full interim review had to reach conclusions on whether the expiry of measures would be likely or unlikely to lead to the continuation or recurrence of dumping and injury.

3. Investigation

- (9) The Commission officially advised the producers in the PRC and their association, users and their associations in the Community known to be concerned, the representatives of the PRC and known Community producers and their association, of the initiation of the *ex officio* full 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.
- (10) In view of the large number of Chinese exporters/producers expected to be involved, it was considered appropriate, in conformity with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the abovementioned parties were requested to make themselves known within 15 days of the initiation of the review and to provide the Commission with the

information requested in the notice of initiation. However only one Chinese producer came forward and provided the requested information for sampling. Therefore, it was decided that sampling was not necessary.

- (11) In order to allow exporters/producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the exporters/producers known to be concerned, to the authorities of the PRC and to the China Chamber of Commerce of Metals Minerals and Chemicals Importers and Exporters (CCC MC).
- (12) The Commission sent questionnaires to the sole cooperating Chinese producer, to users and unrelated importers known to be concerned, to the Community producers known to be concerned and to known producers of FeMo in the United States of America (USA), which was chosen as analogue country in the original investigation.
- (13) Replies to the questionnaires were received from three Community producers (representing 100 % of production in the Community), one producer in the PRC, two users and one USA producer. The Commission also received comments and information from two users, the European Foundries Association, the Cast Metals Federation, the European Confederation of Iron and Steel Industries (EUROFER), the Association of European Ferro Alloys Producers (EUROALLIAGES), the CCCMC, one Chinese producer and one USA producer.
- (14) The Commission sought and verified all the information it deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

(a) *Community producers*

Climax Molybdenum UK Ltd, Stowmarket, United Kingdom

Sadaci, N.V., Gent, Belgium

Treibacher Industrie AG, Treibach-Althofen, Austria

(b) *Producer in the PRC*

Nanjing Metalink International Co. Ltd, Nanjing

⁽¹⁾ OJ C 262, 31.10.2006, p. 28.

(c) *Producer in the USA*

Bear Metallurgical Company, Butler, Pennsylvania

(d) *Community users*

Corus UK Limited, Scunthorpe, United Kingdom

Böhler-Uddeholm AG, Vienna, Austria

- (15) The investigation on the circumstances with regard to dumping and injury and on the continuation and/or recurrence of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (review investigation period or RIP). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2003 up to the end of the RIP (period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT**1. Product concerned**

- (16) The definition of the product concerned corresponds to that used in the original investigation mentioned under recital (1) above.
- (17) The product concerned is ferro molybdenum originating in the PRC, currently classifiable within CN code 7202 70 00.
- (18) FeMo is a ferro-alloy containing usually between 45 % and 80 % of molybdenum, the remaining part being iron and small quantities of impurities. The actual molybdenum (Mo) content of FeMo is variable and it is expressed as a percentage of the total weight of FeMo. The two main types of production process used in the production of FeMo are the thermic and the electrolytic processes. In both cases, technical grade molybdenum trioxide (MoO₃) is reduced in the presence of iron. However, because of practical reasons and higher costs the electrolytic method is practically not used. In the thermic production process aluminium and silicon metals are used for the reduction of a charge consisting of a mixture of MoO₃ and iron oxide.
- (19) FeMo is used in the melts during the production of alloyed steel and cast iron because of the ability of molybdenum to enhance the resistance to corrosion and to heat of the alloyed steel and cast iron.
- (20) The product is sold in different product grades according to the proportion of molybdenum content and the proportion of impurities. The investigation has shown that all product grades have the same basic physical and chemical characteristics and the same uses. Therefore, and for the purposes of the current review, all types of the product concerned are considered as one product.

2. Like product

- (21) The current review has shown that the product concerned and the FeMo produced and sold on the domestic markets of the PRC and the USA as well as the FeMo manufactured and sold in the Community by the Community producers have the same basic physical and chemical characteristics and the same uses. Therefore, these products are considered to be a like product within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING**1. Preliminary remarks**

- (22) In accordance with Articles 11(2), 11(3) and 11(7) of the basic Regulation, it was examined whether dumping was currently taking place and whether the expiry of the measures would be likely to lead to a continuation or a recurrence of dumping.
- (23) During the RIP, there were practically no imports to the Community of FeMo originating in the PRC (the country concerned). According to Eurostat, imports from the country concerned amounted to only 13,8 tonnes in EU 27 during the RIP (practically representing some 0,04 % of Community consumption), whilst they were more than 13 200 tonnes in EU 15 during the original investigation. It is noted that all FeMo data in the Regulation are adapted as to correspond to the Mo content.
- (24) The sole Chinese cooperating producer did not have export sales of FeMo either to the Community or to anywhere else during the RIP and, thus, no representative dumping calculations on the basis of its own data could be made in order to determine the likelihood of recurrence of dumped exports.
- (25) Consequently, the likelihood of recurrence of dumping analysis had to take account of information relating to the period after the RIP, i.e. when the anti-dumping duty was suspended.

2.1. Market economy treatment (MET)

- (26) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which have shown that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is demonstrated by such exporting producers that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in a summarised form below:
1. business decisions and costs are made in response to market conditions, and without significant State interference;
 2. accounting records are independently audited, in line with International Accounting Standards (IAS) and applied for all purposes;
 3. there are no significant distortions carried over from the former non-market economy system;
 4. legal certainty and stability is provided by bankruptcy and property laws;
 5. currency exchanges are carried out at the market rate.
- (27) The sole cooperating Chinese producer of FeMo requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines. Although this Chinese producer did not have any export sales of FeMo, it was considered appropriate to examine its MET claim in view of the very low level of Chinese cooperation.
- (28) For the sole cooperating producer the Commission sought all information deemed necessary and verified the information submitted in the MET claim at the premises of the company in question.
- (29) The sole Chinese producer, Nanjing Metalink International Co. Ltd, Nanjing, did not show that it fulfils all the criteria set out in Article 2(7)(c) of the basic Regulation. The company did not fulfil criteria 1, 2 and 3.
- (30) The cooperating Chinese exporting producer, the CCCMC and the Community industry were given an opportunity to comment on the above findings but no comments were made.
- (31) As far as criterion 1 is concerned it was established on spot that the company did not pay the applicable social contributions for the vast majority of its workers disregarding without any consequence the relevant Chinese legislation. Furthermore, the company was not able to provide any evidence on the transfer of shares between the previous and the new Chinese shareholder. It was also revealed on spot that new State-imposed export restrictions were introduced recently in the Chinese FeMo industrial sector. In particular, the Chinese authorities have introduced, following the RIP, an export licensing system for the exports of FeMo. Producers wishing to obtain an export license are requested to meet a clear and restrictive set of conditions referring, among other things, to past minimum production and export performance volumes. According to the relevant legislation the provincial commerce authorities and the CCCMC examine all applications and the Chinese Ministry of Commerce decides and publishes the list of enterprises that qualify for obtaining an export license. The aforesaid minimum production and export sales requirements could be unilaterally modified by the relevant authorities. It is obvious that any producer which does not meet the production and export sales performance volumes will not be entitled to export FeMo. The same applies for any new producer since the allocation of licenses is based on a past production and export record. Although the aforesaid development concerning export sales restrictions took place after the RIP it was regarded necessary to take it into consideration when assessing the company's MET claim since failure to take it into account would lead to manifestly inappropriate conclusions. Consequently, it was concluded that the company has not shown that it fulfils criterion 1.
- (32) As far as criterion 2 is concerned it was established on spot that fundamental International Accounting Standards principles were disregarded (i.e. accrual principle, offsetting, inconsistencies between the amounts reported in the accounts and the actual source accounting material, lack of faithful representations of transactions) both in the accounts and in their audit which put into question the reliability of the company's accounts. Consequently, it was concluded that the company has not shown that it fulfils criterion 2.
- (33) As far as criterion 3 is concerned the existence of significant distortions carried over from the non-market economy system was established on spot. The company enjoyed significant income tax exemptions. As far as land use rights are concerned it was revealed on spot that: (i) the allocation of land was linked to investment undertakings and (ii) the payments for land use rights were either missing from the accounting records or did not exist as an obligation in the land use rights contracts. Furthermore, assets were evaluated only by State-owned companies and the supporting material on conditions applied to short-term loans was not available. Consequently, it was concluded that the company has not shown that it fulfils criterion 3.

(34) On the basis of the above, it was concluded that the sole cooperating Chinese producer has not shown that it fulfils all the criteria set out in Article 2(7)(c) of the basic Regulation and, thus, could not be granted MET.

2.2. Individual treatment (IT)

(35) Pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation.

(36) The sole Chinese producer who requested MET also claimed IT in the event that it would not be granted MET.

(37) On the basis of the information available, it was established that the company did not export FeMo during the RIP either to the Community or to any other country. Thus, it was not possible to establish whether the requirements foreseen in Article 9(5) of the basic Regulation are fulfilled. It was therefore concluded that the company could not be granted IT.

2.3. Analogue country

(38) According to Article 2(7) of the basic Regulation, in case of imports from non-market-economy countries and to the extent that MET could not be granted, for countries specified in Article 2(7)(b) of the basic Regulation, normal value has to be established on the basis of the price or constructed value in an analogue country.

(39) In the notice of initiation the Commission indicated its intention to use the USA as an appropriate analogue country for the purpose of establishing normal value for the PRC and invited the interested parties to comment thereon. No comments were received on this matter. In view of the above, it is concluded that the USA constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation as it was also the case in the original investigation.

2.4. Dumping margin during the RIP

(40) As described under recital (23) above, there were practically no imports of the product concerned to the

Community during the RIP. These did not allow for a meaningful dumping calculation.

(41) Account taken of the above and for the sake of transparency of the investigation the country-wide dumping margin, based on a weighted average-to-average comparison and expressed as a percentage of the CIF Community frontier price duty unpaid, was calculated and found to be 18,5 %.

3. Development of dumped exports should the measures be repealed

PRC's industrial policy with regard to FeMo

(42) As to the situation in the PRC, the investigation established that the PRC is currently applying an industrial policy that aims at the restriction of FeMo exports. This is clearly pictured in the recent measures taken for FeMo by the Chinese authorities, namely:

(i) the abolition of export tax rebates on exports of FeMo which took effect before the RIP;

(ii) the introduction of an export tax on exports of FeMo which took effect on 1 November 2006;

(iii) the introduction on 1 January 2007 of an export licensing system for companies wishing to export FeMo; and

(iv) the introduction on 1 March 2007 of an export quota system applicable to companies that have been awarded with export licenses for FeMo (see recital (31) above).

The situation of the cooperating PRC producer

(43) It is recalled that only one Chinese producer cooperated with the investigation who did not export during the RIP, but only made some limited sales of FeMo in the domestic market. The situation of this small company does not allow for any extrapolations for Chinese producers.

(44) The company's capacity utilisation ratio was less than 1 %. However, account being taken of the new policy on the FeMo industrial sector as applied by the Chinese authorities (see recitals (31) and (42)), it is highly unlikely that the company will be able to use any significant part of this capacity. Indeed, the company produced limited and decreasing quantities of FeMo during the last three years before the RIP and had no export sales. In fact, the company could be regarded as an occasional producer of FeMo performing sporadic sales of the product concerned. It would be therefore difficult for the company to acquire an export license and be allocated an export quota since all these are based on past export performance and production activity figures. Thus, this Chinese producer would probably have no right to export FeMo to the Community in the future. Given these sporadic production activities over the last couple of years and in view of the new Chinese policies applied to the FeMo industry, i.e. that the Chinese authorities want to regulate the FeMo exports as described above, there is no likelihood of recurrence of any significant volumes of exports to the Community in the near future for this company. In any event, the findings with regard to this company are not considered as representative.

Spare capacity and stocks of other PRC producers

(45) No reliable information as to the production capacity and volumes, stocks and sales was available for the non-cooperating companies. In this respect, EUROALLIAGES has argued that there is significant idle and available capacity in the PRC as well as information on Chinese companies resuming mining operations in one of the most important mining areas in the PRC. EUROFER on the other hand has argued that the Chinese FeMo sector is under a consolidation and restructuring process and companies that do not comply with the new Chinese regulatory framework are threatened with closure thus undermining any possible increase in capacities and production volumes. In other words, the information on file as to current and future spare production capacity, stocks, etc. is not entirely conclusive.

(46) However, in order to have a meaningful indication as to the future exporting behaviour of Chinese producers, their export activities during the long period of suspension of anti-dumping measures were considered as the most suggestive evidence of the future trends. It is recalled that on the basis of the information available from Eurostat, Chinese exports of FeMo to the Community from other than the cooperating Chinese producer were negligible in the RIP. Despite the suspension of the anti-dumping duty of 22,5 %, Chinese imports in the Community after the RIP have remained low. This is a clear indication that the non-cooperating companies do not have any significant

interest in the Community market and this lack of interest would in all likelihood remain in the foreseeable future.

Price level on the Community market

(47) As explained under recitals (2) to (5), since October 2006 the anti-dumping duty applicable to imports of FeMo originating in the PRC is suspended. According to the relevant Eurostat data, this has led to a moderate increase in imports of Chinese FeMo. Indeed, during the period October 2006 to August 2007 there were some 846 tonnes of Chinese FeMo imported into the Community (EU 27) compared with imports of 13,8 tonnes during the RIP. On an extrapolated basis, these 846 tonnes represent a market share of less than 2,5 % of the EU 27 Community market. Furthermore, it appears that on a 12-month basis Chinese imports in EU 27 are less than 8 % of those in EU 15 during the original investigation. These imports are by far lower than those from the major FeMo exporting third countries to the Community (i.e. Chile, Armenia and Russia). In addition, the fact that despite the suspension of the significant anti-dumping duty of 22,5 %, the Chinese exports sales to the Community increased moderately indicates that the Chinese producers have found markets elsewhere. Moreover, they could always focus on their domestic market for the reasons described under recitals (31) and (42). It is noted that sales prices in the Community (i.e. import prices including those from the PRC and Community producers' prices) increased six times between the original investigation and the RIP. It was found that after the RIP when the measures were suspended, the Chinese average import price increased by some 15 % and reached the level of the average import price from other sources (e.g. Chile, Armenia, Iran and Russia). In other words, Chinese post RIP imports do not undercut prices of other players on the Community market but 'follow the flow'.

Relationship between export prices to third countries and the price level in China

(48) There is no reliable and verifiable information on the price level in China. Data from the sole cooperating Chinese producer showed that its domestic sales prices are relatively low. Nevertheless, as these domestic sales were only sporadic this information is clearly not sufficient to arrive to any concrete conclusion on the likelihood of recurrence of dumping on exports to the Community should measures be repealed. Furthermore, no MET was granted which would have allowed a proper comparison of Chinese domestic prices with export prices. However, it is noted that the dumping margin established for the practically non-existent exports in the RIP (18,5 %) is significantly lower than the dumping margin established in the original investigation (38,5 %). Given the apparent increase by some 15 % of the Chinese export prices following the RIP, it appears that currently any exports from the PRC to the Community would in all likelihood not be dumped.

Relationship between export prices to third countries and the price level in the Community

- (49) Statistical information allegedly based on the China Export Statistics submitted by the Community industry showed that during the RIP and afterwards the Chinese export prices to third countries were on average at the same level as Chinese export prices to the Community. This may indicate that the Chinese producers do not differentiate greatly their export price policies depending on the export market and, thus, there is neither incentive nor any likelihood to shift any significant exports to the Community market.

Chinese domestic demand

- (50) Available information suggests that the PRC has a very important domestic demand for its FeMo production. Furthermore, as it was explained under recital (42) the PRC has developed a comprehensive package of measures aimed at securing future supplies of FeMo. While it is true that such export restricting policies could change very quickly, the PRC has no incentive to do so in the foreseeable future.

4. Conclusion

- (51) For the examination as to whether it would be likely that dumping would recur should the anti-dumping measures be repealed, the Commission sought and verified all information that was made available.
- (52) This examination revealed that, whilst there may be some spare production capacity in the PRC, this would not lead to a resumption of significant exports to the Community if measures are allowed to expire because the Chinese FeMo industrial policy aims at restricting exports and in any event there is no obvious price incentive which could divert sales to the Community. There are therefore no reasons to believe that the volume of Chinese exports, at least in the foreseeable future, will be significant and, more importantly, any

such exports are not expected to be made at dumped prices as established in the original investigation.

- (53) Consequently, since there is no likelihood of recurrence of dumped exports from the country concerned which could cause injury, there is no need to analyse the likelihood of recurrence of injury and the Community interest. The measures on imports of FeMo originating in the PRC should therefore be repealed and the proceeding terminated.

D. DISCLOSURE

- (54) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to propose that the existing measures against the PRC be repealed and the proceeding terminated. All parties were given an opportunity to comment. No party objected to the findings set out above.
- (55) It is therefore concluded that since there is no likelihood of resumption of any significant quantities of dumped exports of FeMo to the Community from the PRC, the measures should be repealed and the proceeding terminated,

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping measures on imports of ferro molybdenum originating in the People's Republic of China, imposed by Regulation (EC) No 215/2002, are hereby repealed and the proceeding concerning these imports is terminated.

Article 2

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.

Done at Brussels, 21 January 2008.

For the Council
The President
I. JARC