

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 311/2013

of 3 April 2013

extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 467/2010 on imports of silicon originating in the People's Republic of China to imports of silicon consigned from Taiwan, whether declared as originating in Taiwan or not

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁽¹⁾ ('the basic Regulation'), and in particular Article 13 thereof,

Having regard to the proposal from the European Commission after having consulted the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) By Implementing Regulation (EU) No 467/2010⁽²⁾ ('the original Regulation') the Council imposed a definitive anti-dumping duty of 19 % on imports of silicon originating in the People's Republic of China ('the PRC') for all companies other than the one mentioned in Article 1(2) of that Regulation, following the expiry review and a partial interim review of the measures imposed by Council Regulation (EC) No 398/2004⁽³⁾. The original Regulation also maintained the duty which was extended by virtue of Council Regulation (EC) No 42/2007⁽⁴⁾ to imports of silicon consigned from the Republic of Korea whether declared as originating in the Republic of Korea or not. The measures imposed by the original Regulation are hereinafter referred to as 'the measures in force' or 'original measures' and the

investigation that led to the measures imposed by the original Regulation is hereinafter referred to as 'the original investigation'.

1.2. Request

- (2) On 15 May 2012, the European Commission ('the Commission') received a request pursuant to Articles 13(3) and 14(3) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of silicon originating in the PRC and to make imports of silicon consigned from Taiwan, whether declared as originating in Taiwan or not, subject to registration.
- (3) The request was lodged by Euroalliages (Liaison Committee of the Ferro-Alloy Industry) ('the applicant') on behalf of producers representing 100 % of the Union production of silicon.
- (4) The applicant argued that there is no genuine production of silicon in Taiwan and the request contained sufficient prima facie evidence that following the imposition of the measures in force, a significant change in the pattern of trade involving exports from the PRC and Taiwan to the Union occurred, for which there was no sufficient due cause or justification other than the imposition of the measures in force. That change allegedly stemmed from the transshipment of silicon originating in the PRC via Taiwan to the Union.
- (5) Furthermore, the applicant argued that the evidence pointed to the fact that the remedial effects of the measures in force were being undermined both in terms of quantity and price. The evidence showed that the increased imports from Taiwan were made at prices below the non-injurious price established in the original investigation. Finally, there was evidence that the prices of silicon consigned from Taiwan were dumped in relation to the normal value previously established for the product concerned during the original investigation.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 131, 29.5.2010, p. 1.

⁽³⁾ OJ L 66, 4.3.2004, p. 15.

⁽⁴⁾ OJ L 13, 19.1.2007, p. 1.

1.3. Initiation

- (6) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission initiated an investigation by Regulation (EU) No 596/2012 ⁽¹⁾ ('the initiating Regulation') of the possible circumvention of the anti-dumping measures imposed on imports of silicon originating in the PRC and also directed the custom authorities to register imports of silicon consigned from Taiwan, whether declared as originating in Taiwan, or not.

1.4. Investigation

- (7) The Commission officially advised the authorities of the PRC and Taiwan, the exporting producers in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation.
- (8) Exemption forms were sent to the producers/exporters in Taiwan known to the Commission and through the Authorities of Taiwan to the European Union. Questionnaires were sent to the producers/exporters in the PRC known to the Commission and through the Authorities of the PRC to the European Union. Questionnaires were also sent to the known importers in the Union.
- (9) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.
- (10) Three Taiwanese producers/exporters, belonging to one group, and three unrelated importers in the Union made themselves known and submitted replies to the exemption forms and to the questionnaires, respectively.
- (11) The Commission carried out verification visits at the premises of the three following related companies, part of the Group referred to in recital 10:
- Asia Metallurgical Co. Ltd (Taiwan),
 - Latitude Co. Ltd (Taiwan),
 - YLB Co. Ltd (Taiwan).

1.5. Reporting period and investigation period

- (12) The investigation period covered the period from 1 January 2008 to 30 June 2012 ('the IP'). Data were collected for the IP to investigate, inter alia, the alleged change in the pattern of trade. More detailed data were collected for the reporting period from 1 July 2011 to

30 June 2012 ('the RP') in order to examine the possible undermining of the remedial effect of the measures in force and existence of dumping.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

- (13) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was made by analysing successively whether there was a change in the pattern of trade between the PRC, Taiwan and the Union; if that change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty; if there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the product under investigation; and whether there was evidence of dumping in relation to the normal values previously established for the product concerned in the original investigation, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2.2. Product concerned and product under investigation

- (14) The product concerned by the possible circumvention is silicon metal, originating in the PRC, currently falling within CN code 2804 69 00 (silicon content less than 99,99 % by weight) ('the product concerned'). Purely by reason of the current classification set out in the Combined Nomenclature, it should be read 'silicon'. Silicon with a higher purity, that is containing by weight not less than 99,99 % of silicon, used mostly in the electronic semi-conductor industry, falls under a different CN code and is not covered by this proceeding.
- (15) The product under investigation is the same as that defined above, but consigned from Taiwan, whether declared as originating in Taiwan or not, currently falling within the same CN code as the product concerned ('the product under investigation').
- (16) The investigation showed that silicon, as defined above, exported from the PRC to the Union and silicon consigned from Taiwan to the Union has the same basic physical and technical characteristics and has the same use, and is therefore to be considered as a like product within the meaning of Article 1(4) of the basic Regulation.

2.3. Findings

2.3.1. Level of cooperation

- (17) As stated in recital 10, only three Taiwanese companies belonging to the same group of companies submitted exemption form replies. A comparison of their exports into the Union to the Eurostat import data, showed that the cooperating companies were representing 65 % of the Taiwanese exports of the product under investigation to the Union in the RP.

⁽¹⁾ OJ L 176, 6.7.2012, p. 50.

- (18) There was no cooperation from the exporting producers of silicon in the PRC. Therefore, findings in respect of imports of silicon from the PRC into the Union and exports from the PRC into Taiwan had to be made on the basis of data from Eurostat import data, Taiwanese import statistics and data gathered from the cooperating Taiwanese companies.

2.3.2. Change in the pattern of trade

Imports of silicon into the Union

- (19) Table 1 shows imports of silicon from the PRC and Taiwan into the Union between 2004 and the end of the RP.

Table 1

(in MT)

	2004	2005	2006	2007	2008	2009	2010	2011	RP
PRC	1 268	27 635	1 435	9 671	5 353	6 669	11 448	13 312	5 488
Taiwan	0	2,7	0,2	340	3 381	5 199	11 042	5 367	2 707

Source: Eurostat.

- (20) The data from Eurostat clearly show that there were no imports from Taiwan into the Union at all in 2004. They went up with more than 300 % in 2008 and remained very high. The imports doubled again in 2010, following the imposition of new measures against the PRC.
- (21) In 2011, the imports into the Union from Taiwan decreased. This development may be attributable to an anti-fraud investigation which was launched by OLAF around that time. The Commission was informed that the Taiwanese issuing authority, the Bureau of Foreign Trade of Taiwan (BOFT) withdrew the certificates of origin of silicon from all Taiwanese producers in 2011. That decision to withdraw the certificates was appealed by the three Taiwanese exporters referred to in recitals 10 and 11 above ('Group of exporters'). The board of appeal quashed the decision of the BOFT, and the certificates in question were re-issued to those three Taiwanese producers/exporters, but not to the other Taiwanese producers.
- (22) In this context, the Commission also observes that the presentation of a non-preferential certificate of origin is not required for the customs formalities at importation into the Union and that in the event of serious doubt, such a certificate cannot serve as proof of the non-preferential origin of the declared product (Article 26 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾).
- (23) The imports of silicon from the PRC into the Union have been increasing since 2008. In particular, it is observed that these imports are still increasing after the imposition of the measures in 2010. This development can be explained by the fact that the anti-dumping duty went down significantly in 2010, namely from 49 % to 19 %.

Exports of silicon from the PRC to Taiwan

Table 2

(in MT)

2003	2004	2005	2006	2007	2008	2009	2010	2011	RP
16 530	16 600	7 101	10 514	3 675	15 893	16 007	17 912	9 177	10 507

Source: Chinese export statistics.

- (24) Table 2 shows imports from the PRC into Taiwan. The data from the Chinese exports database show that imports were at their highest in 2010 following the imposition of the original measures. The decrease in 2011 can be explained by the anti-fraud investigation as explained in recital 21.

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

Conclusion on the change in the pattern of trade

- (25) It is considered that there is a change in the pattern of trade since there were no imports of silicon from Taiwan into the Union at all in 2004. They really started as from 2007 and became very important in 2008. They remain at a very high level up to the RP, with a reduction in 2011 because of the possible reason which is explained in recital 21.

2.3.3. Nature of the circumvention practice and insufficient due cause or economic justification

- (26) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes, inter alia, the consignment of the product subject to measures via third countries. The Commission takes the view that in the present case, the change in the pattern of trade stems from the consignment of the product subject to measures via a third country.
- (27) The Commission first of all notes that there is no production of silicon in Taiwan. None of the producers/exporters have denied the fact that they import the silicon they export from the PRC.
- (28) Secondly, with the exception of the Group of exporters, the producers/exporters have not provided any economic justification other than the imposition of the duty for their activity.
- (29) The Group of exporters alleged that they import silicon lumps of very low quality in bags from the PRC. They claim that the silicon lumps are then tumbled, crushed, sieved and packed in bags again before being exported to the Union market. After that operation, they alleged that the product is of a higher quality.
- (30) They claim that this operation constitutes a unique purification method, developed in cooperation with the University of Taipei, which allegedly eliminates 80 % of the impurities in the silicon metal lumps imported from the PRC. During the onsite verification, it was however observed that their process was a simple tumbling, sieving and crushing operation which removes some surface impurities such as oxidation and dust, but which did not remove in particular the main impurities inside the silicon lumps. The processed product thus kept the same physical and technical basic characteristics as the product concerned.
- (31) The evidence collected and verified during the investigation, in particular the purchase invoices, the sales invoices and the accompanying documents such as the bill of lading, and other customs documents, showed that the products purchased and sold for export by the Group of exporters were in most cases of the same specifications. The records relating to the stocks in the warehouses of the Group, located close to harbours, also

showed that there was not always time to process all batches of silicon purchased in the PRC with the method that they claimed to apply. Furthermore, the information available, in particular from producers in the Union, shows that in order to remove the inner impurities of the silicon lump, either a crushing followed by a chemical treatment or a melting process is necessary. Neither of those processes has been used by the Group of exporters.

- (32) It is also noteworthy that in 2010, acting upon a reference for a preliminary ruling under Article 234 of the Treaty establishing the European Community (now Article 267 of the Treaty on the Functioning of the European Union) from Finanzgericht Düsseldorf (Hoesch Metals and Alloys GmbH v Hauptzollamt Aachen), in a matter relating to the antidumping measures against silicon from the PRC, the Court of Justice ruled: 'The separation, crushing and purification of silicon metal blocks and the subsequent sieving, sorting and packaging of the silicon grains resulting from the crushing, as carried out in the main proceedings, do not constitute origin-conferring processing or working for the purposes of Article 24 of the Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code.'⁽¹⁾ The purification process as carried out by the Group of exporters is considered to be similar to the one as described in that ruling.
- (33) The investigation also revealed that the purification process amounts to less than 5 % of the total cost of the Group of exporters. It was furthermore confirmed that the price of the silicon sold into the Union by the Group and the price of the silicon purchased in the PRC by the Group during the IP, never showed a difference of more than 11 %.
- (34) In the light of those considerations, it is concluded that also for the Group of exporters the import from the PRC and the subsequent export to the Union of the Silicon is to be considered as a transshipment and thus circumvention in the sense of Article 13 of the Basic Regulation.
- (35) It is therefore concluded that the investigation did not bring to light any other due cause or economic justification for the transshipment than the avoidance of the measures in force on the product concerned, namely the 19 % anti-dumping duty on the PRC. No elements were found, other than the duty, which could be considered as a compensation for the costs of transshipment, in particular regarding transport and reloading, of silicon originating in the PRC via Taiwan.
- 2.3.4. Evidence of dumping*
- (36) In accordance with Article 13(1) of the basic Regulation it was examined whether there was evidence of dumping in relation to the normal value established in the original investigation.

⁽¹⁾ See Case C-373/08, 2010 ECR-I 951, at paragraphs 55 and 80.

- (37) In the original Regulation, the normal value was established on the basis of prices in Brazil, which in that investigation was found to be an appropriate market economy analogue country for the PRC. In line with Article 13(1) of the basic Regulation it was considered appropriate to use the normal value as previously established in the original investigation. Two PCNs from the previous investigation matched with the two PCNs of the exporting companies. Export prices were established in accordance with Article 2(8) of the basic Regulation, namely the prices actually paid or payable for export of the product under investigation into the Union.
- (38) For the purpose of a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences which affect prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made to the export price for transport and insurance in order to bring prices at the same level of trade. In accordance with Article 2(11) and 2(12) of the basic Regulation, dumping was calculated by comparing the adjusted weighted average normal value as established in the original Regulation and the corresponding weighted average export prices of the Taiwanese import during this investigation's RP, expressed as a percentage of the CIF price at the Union frontier duty unpaid.
- (39) The comparison of the weighted average normal value and the weighted average export price as established in the investigation showed the existence of dumping.

2.3.5. *Undermining the remedial effects of the anti-dumping duty in terms of prices and quantities*

- (40) The comparison of the injury elimination level as established in the original Regulation and the weighted average export price showed the existence of undercutting and underselling. It was therefore concluded that the remedial effects of the measures in force are being undermined in terms of prices and quantities.

3. MEASURES

- (41) Given the above, it was concluded that the original measure, namely the definitive anti-dumping duty imposed on imports of silicon originating in the PRC, was circumvented by transshipment via Taiwan within the meaning of Article 13(1) of the basic Regulation.
- (42) In accordance with the first sentence of Article 13(1) of the basic Regulation, the measures in force on imports of the product concerned are to be extended to imports of the product under investigation, i.e. the same product as the product concerned but consigned from Taiwan, whether declared as originating in Taiwan or not.

- (43) The measures established in Article 1(2) of Implementing Regulation (EU) No 467/2010 for 'all other companies' from the PRC, should therefore be extended to imports from Taiwan. The level of duty should be set at 19 % applicable to the net, free-at-Union-frontier price, before duty.
- (44) In accordance with Articles 13(3) and 14(5) of the basic Regulation, which provide that any extended measure should apply to imports which entered the Union under registration imposed by the initiating Regulation, duties should be collected on those registered imports of silicon consigned from Taiwan.

4. REQUESTS FOR EXEMPTION

- (45) As explained in recital 10, three companies located in Taiwan, belonging to one group, submitted exemption form responses requesting an exemption from the possible extended measures in accordance with Article 13(4) of the basic Regulation.
- (46) In view of the findings with regard to the change in the pattern of trade, the lack of real production in Taiwan and the export under the same customs code as set out in recitals 19 to 29, the exemptions as requested by those three companies could not be granted, in accordance with Article 13(4) of the basic Regulation.
- (47) Without prejudice to Article 11(3) of the basic Regulation, the potential exporters/producers in Taiwan which did not come forward in this proceeding and did not export the product under investigation during the IP, which intend to lodge a request for an exemption from the extended anti-dumping duty pursuant to Articles 11(4) and 13(4) of the basic Regulation will be required to complete an exemption form in order to enable the Commission to assess such a request. Such exemption may be granted after the assessment of the market situation, production capacity and capacity utilisation, procurement and sales and the likelihood of continuation of practices for which there is insufficient due cause or economic justification and the evidence of dumping. The Commission would normally also carry out an on-spot verification visit. Provided that the conditions set in Articles 11(4) and 13(4) of the basic Regulation are met, an exemption may be warranted.

- (48) Where an exemption is warranted, the Commission may, after consulting the Advisory Committee, authorise by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Implementing Regulation (EU) No 467/2010, from the duty extended by this Regulation.

- (49) The request should be addressed to the Commission, with all relevant information, in particular any modification in the company's activities linked to the production and sales.

5. DISCLOSURE

- (50) All interested parties were informed of the essential facts and considerations leading to the above conclusions and were invited to comment. They were also granted a period to submit comments subsequent to that disclosure.

6. COMMENTS

- (51) Following disclosure, comments were received from the Group of exporters and from two importers.
- (52) The main argument concerned the claim that the purification carried out by the Group of exporters was origin-conferring in the sense of Article 24 of Regulation (EEC) No 2913/92. The importers presented a report concerning sample tests performed by the University of Taipei and an analysis report by an independent expert. The report concerning sample tests shows a percentage of slag reduction of 90,8 % after the purification process. The analysis by the independent expert claims that after purification only, the silicon can be used for certain melting purposes.
- (53) It is noted that those two studies are contradicted by the findings of the Commission during the onsite verification, as described in recital 31. In particular, it is recalled that according to the invoices, the products purchased and sold for export by the Group of exporters were in most cases of the same specifications.
- (54) If the claims made by the importers were true, this should also result in a much higher difference between the price at which the silicon is imported from PRC and the price at which the silicon is exported to the Union.
- (55) Based on the onsite inspection of the tools used for the alleged purification of the silicon, the Commission also concludes that the tools are not such as to allow for any of the two methods of purification described in recital 31.
- (56) Finally, the analysis report by the independent expert also ignores the fact known to the Commission that the users process their silicon before use.
- (57) For those reasons, the comments submitted by the parties have not been such as to alter the conclusions provisionally reached by the Commission before disclosure,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty applicable to 'all other companies' imposed by Article 1(2) of Implementing Regulation (EU) No 467/2010 on imports of silicon currently falling within CN code 2804 69 00 and originating in the People's Republic of China, is hereby extended to imports of silicon consigned from Taiwan, whether declared as originating in Taiwan or not, currently falling within CN code ex 2804 69 00 (TARIC code 2804 69 00 20).

2. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Taiwan, whether declared as originating in Taiwan or not, registered in accordance with Article 2 of Regulation (EU) No 596/2012 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009.

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

Article 2

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate H
Office: N-105 08/20
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Fax +32 22956505

2. In accordance with Article 13(4) of Regulation (EC) No 1225/2009, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Implementing Regulation (EU) No 467/2010, from the duty extended by Article 1.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EU) No 596/2012.

Article 4

This Regulation shall enter into force on the day following that of 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, 3 April 2013.

For the Council

The President

E. GILMORE
