

COMMISSION REGULATION (EEC) No 2581/93

of 20 September 1993

imposing provisional anti-dumping duties on imports of ferro-silicon
originating in South Africa and the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Community⁽¹⁾, and in particular Articles 10 and 11 thereof,

After consultations within the Advisory Committee as provided for by the Regulation,

Whereas :

A. PROCEDURE

- (1) In May 1992, the Commission received a complaint lodged by the Liaison Committee of Ferro-Alloys Industries in the European Economic Community (Clifa), acting on behalf of Community producers and representing about 98 % of the Community's ferro-silicon production. The complaint contained evidence that imports of the product concerned from South Africa and the People's Republic of China were being dumped and were causing injury, and this evidence was considered sufficient to justify initiation of a proceeding.
- (2) Consequently, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the Commission announced the initiation of an anti-dumping proceeding concerning imports of ferro-silicon originating in the People's Republic of China and South Africa and opened an investigation.
- (3) Commission Regulation (EEC) No 2409/87⁽³⁾, Council Regulations (EEC) No 341/90⁽⁴⁾ and (EEC) No 1115/91⁽⁵⁾ and Commission Decision 91/240/EEC⁽⁶⁾, concerning imports of ferro-silicon originating in the former USSR, Sweden, Norway, Iceland, Venezuela, Brazil and the former Yugoslavia, are subject to a review initiated by a notice published on 6 May 1992⁽⁷⁾.

- (4) In December 1992, Council Regulation (EEC) No 3642/92⁽⁸⁾ imposed definitive anti-dumping measures on imports of ferro-silicon originating in Poland and Egypt.
- (5) The Commission officially notified producers/exporters, importers and Community producers known to be concerned of the initiation of the proceeding and gave the parties the opportunity to make known their views in writing.
- (6) Some producers/exporters requested the opportunity to express their views orally and their request was granted.
- (7) The Commission sought and verified all the information it considered necessary for determining whether dumping had taken place and injury had been incurred.
Inspections were carried out at the premises of :

Community producers :

- Pechiney Electrometallurgie, France,
- Sociedad Española de Carburos Metálicos, Spain,
- SKW Trostberg AG, Germany.

Unrelated importers :

- Frank & Schulte GmbH, Germany,
- Considar Benelux NV, Belgium.

Related importer :

- Samancor International Ltd, United Kingdom.

South African producers :

- Rand Carbide, Division of Highveld Steel & Vanadium Corp. Ltd, Witbank,
- Samancor, Chrome Division, Ferrometals Ltd, Witbank,
- Samancor, Industrial Minerals and Chemicals Division, Meyerton.

- (8) The Commission conducted an investigation at the premises of Norwegian producers, since Norway had been selected as the country of reference for the establishment of normal value in the case of China (see recital 17).

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 173, 9. 7. 1992, p. 8.

⁽³⁾ OJ No L 219, 8. 8. 1987, p. 24.

⁽⁴⁾ OJ No L 38, 10. 2. 1990, p. 47.

⁽⁵⁾ OJ No L 111, 3. 5. 1991, p. 1.

⁽⁶⁾ OJ No L 111, 3. 5. 1991, p. 47.

⁽⁷⁾ OJ No C 115, 6. 5. 1992, p. 2.

⁽⁸⁾ OJ No L 369, 18. 12. 1992, p. 1.

- (9) The Commission received and used information from the the complainants, importers and the South African producers. The Chinese producers did not cooperate.
- (10) The investigation into dumping practices covered the period of 1 January 1991 to 30 April 1992.

B. PRODUCT

(11) Description of the product

The product under investigation is ferro-silicon containing between 20 and 96 % of silicon by weight and falling within CN codes 7202 21 10, 7202 21 90 and ex 7202 29 00 originating in South Africa and the People's Republic of China.

The investigation has shown that ferro-silicon ranging from 20 to 96 % of silicon content have the same basic physical and chemical characteristics and uses. They are interchangeable in their main applications as a deoxidizer in steel manufacture and/or as an alloying component for high temperature steel alloys and sheet metal.

(12) Like product

The Commission established that the ferro-silicon produced in the Community and the ferro-silicon produced in and exported from South Africa were like products as regards their essential basic physical and technical characteristics as well as their uses.

C. DUMPING

(1) Normal Value

(a) *South Africa*

- (13) Domestic sales of the South African producers exceeded 5 % of exports to the Community and therefore represented a volume sufficient to constitute a representative market and an adequate basis for calculating normal value.
- (14) Normal value has therefore been calculated, for all South African producers, on the basis of the weighted average domestic prices for ferro-silicon sold on the domestic market at prices made in the ordinary course of trade, in accordance with Article 2 (3) (a) of Regulation (EEC) No 2423/88.
- (15) The prices were net of all discounts and rebates directly linked to the sales under consideration.

(b) *China*

- (16) Since the People's Republic of China is considered to be a non-market economy country, within the meaning of Article 2 (5) of Regulation (EEC) No 2423/88, normal value was based on information obtained from a market economy reference country in which the product was manufactured.
- (17) As reference country, the Commission chose Norway. Indeed, the Norwegian ferro-silicon industry reported high production volumes and low cost of production and appeared to be, compared to all other known producing countries, an efficient producer given the ease of access to hydro-electrical power, the most costly input in the production of ferro-silicon. Furthermore, Norway is a high volume producer with a substantial share of its sales (more than 40 %) made on the Community market. Norway was therefore considered to be an appropriate and not unreasonable choice of reference market.

During the reference period, sales on the Norwegian market were not at prices which permitted recovery, in the ordinary course of trade, of all costs reasonably allocated. Normal value has been therefore calculated in accordance with Article 2 (5) (b) of Regulation (EEC) No 2423/88 and has been based on the constructed value determined by the weighted average cost of production of the Norwegian producers and a profit margin of 6 % considered reasonable, based on the information available to the Commission concerning the medium and long-term investment requirements of ferro-silicon industry.

(2) Export prices

(a) *South Africa*

- (18) Where sales were made directly to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold to export to the Community.
- (19) Where exports were made to related importers to the Community, export prices, in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88, were constructed on the basis of resale prices to the first independent purchaser, adjusted to take account of all costs incurred between importation and resale, together with a 3 % profit margin which was considered reasonable in view of the information available to the Commission from unrelated importers of the product concerned.

(b) China

- (20) The Chinese producers did not cooperate in the investigation. Accordingly, the Commission used the most reasonable information available as provided for in Article 7 (7) (b) of Regulation (EEC) No 2423/88.

The Commission considered that the statistics on imports in Eurostat should form the basis of the determination of Chinese export prices. This approach was supported by the information obtained from the sole cooperating importer in the Community of ferro-silicon of Chinese origin and which accounted for approximately 20 % of the total volume of imports of Chinese ferro-silicon during the investigation period.

(3) Comparison

- (21) In comparing the South African normal value, as well as the normal value established for the People's Republic of China, with export prices concerned, transaction by transaction, the Commission, in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, took account, where warranted, of the differences directly affecting price comparability, such as certain selling expenses, i.e. credit terms, commission, transport, packing, insurance, handling costs and ancillary costs.

All comparisons were made at the same level of trade.

(4) Dumping margins

- (22) Comparison of the facts thus obtained revealed dumping margins for both South Africa and the People's Republic of China.

The margin of dumping equalled the amount by which the normal value established exceeded the price for export to the Community.

(a) South Africa

- (23) The weighted average dumping margins for the South African producers concerned, expressed as a percentage of the cif-Community frontier prices, customs duty unpaid, are as follows:

Samancor	47,4 %
Highveld — Rand Carbide	34,7 %

- (24) In the case of firms which failed to cooperate in the investigation or did not reply satisfactorily to the Commission's questionnaire, the Commission considered that dumping should be determined on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88.

In this respect, the Commission considered that the most reasonable facts were those established in the investigation and since it had no reason to believe that the non-cooperating companies would dump at a level lower than the highest margin established and in order not to reward non-cooperation, it was considered that this margin would be the most appropriate for the non-cooperating companies.

(b) China

- (25) Expressed as a percentage of the cif value at the Community frontier, duty unpaid, the dumping margin amounts to 49,7 %.

D. INJURY**(1) Cumulation**

- (26) The effects of the imports from South Africa and the People's Republic of China were analysed cumulatively, since the exports originating in each of these countries, during the investigation period, comprised significant quantities of the like product, competed with the Community production and with each other and the exporter's market behaviour was similar.

(2) Volume, market share and prices of the dumped imports*(a) Volume of imports*

- (27) There has been a considerable increase in South Africa's and China's exports to the Community. They have risen from 9 000 tonnes in 1989 to 31 000 tonnes in 1991 and remained at the same level in 1992 (calculated on a yearly basis) representing an increase in market share from less than 2 % to almost 6 % over the same abovementioned period.

(b) Price of the dumped imports

- (28) A price comparison between the prices ex works of the Community industry and the exporters concerned was made on the basis of sales cif Community frontier, duty paid, of ferro-silicon taken at the same level of trade on the most important and representative markets of the Community during the investigation period.

The comparison showed price undercutting margins of an average 25,2 % for exports from South Africa and 24 % for exports from the People's Republic of China.

(3) Situation of the Community industry**(a) Production, capacity and utilization of capacity**

- (29) Community production of ferro-silicon has fallen from nearly 190 000 tonnes in 1989 to 132 000 in 1991 and 102 000 in 1992.

Though production capacity fell from nearly 255 000 tonnes in 1989 to approximately 200 000 tonnes up to April 1992, calculated on a yearly basis, the utilization rate nevertheless decreased from 75 % in 1989 to 48 % in the first quarter of 1992.

(b) Sales volume and market share

- (30) The quantity of ferro-silicon sold in the Community by the Community industry fell from 163 000 tonnes in 1989 to 135 000 tonnes in 1990, to 122 000 tonnes in 1991 and to approximately 100 000 tonnes in 1992.
- (31) Between 1989 and 1992, the Community producers' market share declined as follows; 30 % in 1989, 25 % in 1990, 23 % in 1991 and 13 % in the first four months of 1992, while the Community's annual consumption increased between 1988 and 1989 from 490 000 tonnes to 535 000 tonnes and has since remained at that level.

(c) Price evolution

- (32) The low level of import prices over the investigation period meant that Community producers had to sell the product in the Community at prices which, in most cases, did not cover their production costs. The low level of prices not only prevented Community producers from raising their prices in order to reflect the rise in production costs, but even forced them to lower their prices, although this did not stop them from losing market shares.

(d) Profits

- (33) Due to the price depression and decreasing capacity utilization which negatively affected the coverage of fixed costs in this highly capital-intensive industry, the Community industry overall has recorded poor financial results since 1987 (with the exception of 1989 where a small profit was realized). The situation has further deteriorated since 1990 and particularly during the investigation period with all Community producers suffering heavy losses. A weighted average of the Community industry's results shows a loss of some 34 % on turnover during this period.

(e) Employment and investment

- (34) It should be noted that the ferroc-silicon industry is not labour intensive. However, there has been a small, but steady curtailment in the workforce.

Investments have been cut and, in Italy, three companies stopped their ferro-silicon production.

(f) Conclusion

- (35) Given the financial losses and the reduction of its market shares, the Community industry's position has declined considerably. The Commission concludes accordingly that the industry has suffered material injury within the meaning of Article 4(1) of Regulation (EEC) No 2423/88.

(4) Causal link between dumped imports and injury

- (36) The Commission examined whether the material injury suffered by the Community industry was caused by the effects of the dumping, and found that the increased influx of South African and Chinese imports coincided with a significant loss of market share and reduced profitability on the part of the Community industry. The Community ferro-silicon market is a transparent and price-sensitive market in which the price undercutting practised by the South African and Chinese producers had an immediate depressive effect on the price of the Community industry. The Community producers had to adjust their prices to meet this downward trend in prices.

(5) Other factors

- (37) The Commission also considered whether factors other than the dumped imports of ferro-silicon could have caused injury to the Community industry.
- (38) The Council has already found that many of the difficulties encountered by the Community ferro-silicon industry have been caused by other third countries' dumped imports (see recitals 3 and 4). However, this does not detract from the conclusion that considerable quantities and the low prices of the dumped South African and Chinese imports also had substantial influence on the injurious situation of the Community industry.
- (39) The Commission did not find any other factors which could explain the precarious economic situation of the Community industry. Indeed, there were neither substantial imports, other than those mentioned, nor was there any contraction in demand between 1990 and 1992.

6. Conclusion

- (40) In these circumstances, and even taking into account that imports from Russia, Kazakhstan, Ukraine, Norway, Sweden, Iceland, Brazil, Venezuela, Poland and Egypt have also contributed to the poor situation of the Community industry, the Commission has come to the conclusion, for the purpose of a provisional determination, that the effects of dumped imports of ferro-silicon originating in South Africa and the People's Republic of China taken in isolation, have to be considered as causing material injury to the Community industry.

E. COMMUNITY INTEREST

- (41) In assessing the Community interest, the Commission took account of certain basic elements. The prevention of distortion of competition arising from unfair commercial practices, and thus re-establishment of open and fair competition on the Community market, is the very purpose of anti-dumping measures and is fundamentally in the general Community interest. Furthermore, in the particular circumstances of the present proceeding, failure to take provisional measures would aggravate the already precarious situation of the Community industry, especially noticeable from the losses, the shrinking of market shares and the resulting downgrading of investments. Should this industry be forced to cease production, the Community would be rendered almost entirely dependent on third countries. In this respect, given the level of losses incurred by them over an extended period, some Italian producers already with drew from this sector at the beginning of 1991. Any further deterioration would endanger jobs and investment in the sector concerned.
- (42) The Commission recognises that the imposition of anti-dumping duties could affect price levels of the exporters concerned in the Community and subsequently may have some influence on the relative competitiveness of their products. However, the competitive advantage that is being lost is due to unfair trade practices which anti-dumping measures are designed to remove.
- (43) It has also been argued that anti-dumping measures would reduce the number of competitors on the market. However, the Commission considers that the number of competitors on the Community market would not be reduced by the taking of

anti-dumping measures. On the contrary, the removal of the unfair advantages gained by the dumping practices is designed to arrest the decline of the Community industry and thus to help to maintain the availability of a wide choice of ferro-silicon producers.

- (44) In this context, it has to be borne in mind that the Community industry has been affected by imports from other non-Community countries, namely Norway, Sweden, Iceland, Kazakhstan, Russia, Ukraine, Brazil, Venezuela, Poland and Egypt, which are presently subject to anti-dumping measures. All these countries would be treated in a discriminatory manner and the effectiveness of these measures would be undermined, if no measures were taken against South Africa and the People's Republic of China.
- (45) Furthermore, there are indications, that the construction of a new product facility, considerably increasing production capacity, is under way in South Africa. This South African company, operating since May 1993, has made known its intention to sell 23 000 (one-third of its capacity) tonnes in the Community market, the other two-thirds being intended for the American and Japanese markets. This would increase the South African market share by an additional 4 %.
- (46) The Chinese producers together possess more than one million tonnes' production capacity. This accounts for a high proportion of world capacity. Appreciable quantities are available for export.
- (47) As to the interest of the processing industry, i.e. producers of speciality steel which are end-users of the product concerned in the Community, its short-term price advantages have to be viewed against the background of the longer-term effect of not restoring fair competition. Indeed, to refrain from taking action would seriously threaten the viability of the Community industry, the disappearance of which would, in fact, reduce supply and competition, to the detriment of consumers. Moreover, it has to be borne in mind that the price of ferro-silicon represents, on average, only 0,2 % of the cost of a tonne of steel. Any such cost increase of ferro-silicon would therefore have an insignificant impact on the final consumer.
- (48) The Commission considers that it is therefore in the Community's interest to call for the imposition of anti-dumping measures, in order to prevent further injury being caused by the dumped imports.

F. LEVEL OF THE DUTY

(49) In order to eliminate the injury suffered by the Community industry and prevent further injury, it is considered that anti-dumping measures should be established in such a way as to allow the Community industry to make a reasonable profit in the future and to stem the fall in its sales.

(50) In this respect, the Commission has calculated the weighted average cost of production of the Community producers including a profit of 6 %, based on past performances of the Community industry and considered reasonable for guaranteeing the industry productive investment on a long term basis. Since the difference between these costs and the average imports prices on a CIF Community frontier basis, duty unpaid, is higher than the dumping margins for all companies or countries concerned, the duties should be based on the dumping margins found.

(51) Accordingly, the following provisional anti-dumping duties should be imposed for each producer/exporter:

— South Africa	47,4 %,
— Highveld-Rand Carbide	34,7 %,
— China	49,7 %.

(52) In the case of South African firms which failed to cooperate in the investigation, the Commission considered that the duties should be established on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. In order not to reward non-cooperation, it was considered that the most reasonable facts were those established during the investigation and that there was no reason to believe that any duties lower than the highest duties considered necessary would be sufficient to remove the injury caused by these imports. Therefore, it is considered appropriate to impose the highest duty calculated for ferro-silicon originating in South Africa.

G. FINAL PROVISION

(53) In the interests of sound administration, a period should be fixed within which the parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regu-

lation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of ferro-silicon containing between 20 and 96 % of silicon by weight falling within CN codes 7202 21 10, 7202 21 90 and ex 7202 29 00 (Taric code 7202 29 00*11) and originating in South Africa and the People's Republic of China.

2. The duty, calculated on the basis of the free-at-Community-frontier price of the product, not cleared through customs, shall be:

— 49,7 % for ferro-silicon originating in the People's Republic of China,

— 47,4 % for ferro-silicon originating in South Africa (additional Taric code 8733) with the exception of that produced by the company below, to which the following rate shall apply:

34,7 % Rand Carbide, Division of Highveld Steel and Vanadium Corp. Ltd, Witbank (additional Taric code 8732).

3. The provisions in force concerning customs duties shall apply.

4. The release for free circulation of the products referred to in paragraph 1 shall be subject to the provisions of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within one month from the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 20 September 1993.

For the Commission

Leon BRITTAN

Vice-President
