

**COUNCIL REGULATION (EC) No 398/2004  
of 2 March 2004**

**imposing a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China**

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<sup>(1)</sup> (basic Regulation), and in particular Article 11(2) thereof,

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

Whereas:

**PROCEDURE**

**Measures in force**

- (1) By Regulation (EC) No 2496/97<sup>(2)</sup>, the Council imposed a definitive *ad valorem* anti-dumping duty on imports of silicon originating in the People's Republic of China (PRC or China). The rate of the definitive duty applicable to the net free-at-Community frontier price, before duty, was 49 %. It should be noted that the original measures were imposed by Regulation (EC) No 2200/90<sup>(3)</sup>, and that Regulation (EC) No 2496/97 concluded an expiry review.

**Request for a review**

- (2) Following the publication, in March 2002, of a notice<sup>(4)</sup> of the impending expiry of the anti-dumping measures in force on imports of silicon originating in the People's Republic of China, the Commission received a request for a review pursuant to Article 11(2) of the basic Regulation. The request was lodged on 9 September 2002 by Euroalliages (Liaison Committee of the Ferro-Alloy Industry) (the applicant) on behalf of producers representing 100 % of the Community production of silicon metal. The request alleged that the expiry of measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

- (3) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission announced the initiation of an expiry review<sup>(5)</sup>, pursuant to Article 11(2) of the Basic Regulation and commenced an investigation.

**Investigation**

*Procedure*

- (4) The Commission officially advised the complainant Community producers, exporting producers in the PRC, importers/traders, user industries, and associations of users known to be concerned, as well as the representatives of the Chinese Government of the initiation of the 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.
- (5) Questionnaires were sent to all the parties that were officially advised on the initiation of the review and to those who requested a questionnaire within the time limit set out in the notice of initiation.
- (6) Replies to the questionnaire were received from the three applicant Community producers, one exporting producer, one importer and two producers in the analogue country.

*Interested parties and verification visits*

- (7) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and of the Community interest. Verification visits were carried out at the premises of the following companies:
- (a) Exporting producer  
Dalian DC Silicon Co., Ltd — Dalian, PRC
  - (b) Related Importer  
Dow Corning Ltd, Barry, Wales, United Kingdom
  - (c) Producers in the analogue country  
Fesil ASA, Trondheim, Norway  
Elkem ASA, Oslo, Norway
  - (d) Community producers  
Invensil, Pechiney Group, Paris, France  
Ferroatlantica, Madrid, Spain  
R W Silicium, Pocking, Germany

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

<sup>(2)</sup> OJ L 345, 16.12.1997, p. 1.

<sup>(3)</sup> OJ L 198, 28.7.1990, p. 57. Regulation amended by Regulation (EC) No 1607/92 (OJ L 170, 25.6.1992, p. 1).

<sup>(4)</sup> OJ C 67, 16.3.2002, p. 34.

<sup>(5)</sup> OJ C 246, 12.10.2002, p. 9.

*Investigation period*

- (8) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 October 2001 to 30 September 2002 (IP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 1998 up to the end of the IP (period under consideration).

*Proceeding concerning other countries*

- (9) In October 2002 an anti-dumping proceeding with regard to imports into the Community of silicon originating in Russia was initiated. On 10 July 2003, by Council Regulation (EC) No 2229/2003<sup>(1)</sup>, a provisional anti-dumping duty of between 22,7 % and 23,6 % was imposed.

*Product under consideration and like product*

- (10) The product under consideration is the same as in the original investigation, i.e. silicon metal originating in the PRC, classifiable within CN code 2804 69 00 (silicon content less than 99,99 % by weight). Purely by reason of the current classification set out in the Customs nomenclature, it should read 'silicon'. Silicon with a higher purity, that is containing by weight not less than 99,99 % of silicon, used mostly in the electronic semiconductor industry, falls under a different CN code and is not covered by this proceeding.
- (11) Silicon is produced in electric submerged arc furnaces with carbothermic reduction of quartz (silica) in the presence of various types of carbon reductants. It is marketed in the form of lumps, grains, granules or powder according to internationally accepted technical specifications as regards its purity. Silicon is used primarily by two industries, the chemical industry for the production of methylchlorosilanes or trichlorosilanes and tetrachlorosilicon, and the aluminium industry for the production of aluminium alloys, primary and secondary smelters, intended for the production of casting alloys for different industries, in particular the automotive industry.
- (12) As in the previous expiry review, the investigation has shown that the silicon, produced in the PRC and sold domestically, as well as that exported to the Community, the silicon produced and sold on the domestic market of the analogue country (Norway) and that manufactured and sold in the Community by the applicant Community producers have the same basic physical and chemical characteristics, and the same basic uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

- (13) Comments regarding the different grades of the product under consideration and the like product were made, one by the Government of China and the other by the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters. However, these submissions were not accompanied by any supporting evidence. Furthermore, they were only made at a very late stage of the proceeding. For these reasons the comments received regarding the product under consideration were rejected.

**LIKELIHOOD OF A CONTINUATION OF DUMPING**

- (14) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the measures would be likely to lead to a continuation of dumping.

**Preliminary remarks**

- (15) Of the six Chinese exporting producers named in the complaint, only one cooperated. Based on Eurostat data, its volume of exports represented more than 80 % of total Chinese exports to the EU. No information was submitted by any other Chinese exporting producer and therefore the findings relating to their situation had to be established on the basis of the facts available, in accordance with Article 18 of the basic Regulation.
- (16) During the IP of the previous expiry review, the volume of silicon imports from the PRC to the Community was 10 199 tonnes. After the imposition of the anti-dumping measures the imports concerned decreased to 4 168 tonnes in 1998, but they had increased again to 14 454 tonnes by the end of the IP.
- (17) In the original investigation, Chinese imports had a market share of 9,3 % in the IP. The market share of the imports concerned accounted for 3,8 % of total Community consumption during the IP of the previous expiry review. In the period following the imposition of the anti-dumping measures, this market share decreased to 1,4 % in 1998, but during the IP it increased again and accounted for 3,9 % of total Community consumption of the product under consideration.

**Dumping during the IP**

- (18) In accordance with Article 11(9) of the basic Regulation the Commission used the same methodology as in the original investigation.

<sup>(1)</sup> OJ L 339, 24.12.2003, p. 3.

*Analogue country*

- (19) Since the PRC is an economy in transition, normal value had to be based on information obtained in an appropriate market economy third-country in accordance with Article 2(7) of the basic Regulation.
- (20) As in the previous expiry review, in the notice of initiation of this expiry review, Norway was proposed as analogue country for the purposes of establishing normal value.
- (21) The Chinese exporting producer opposed this proposal and argued that Brazil or South Africa would be more appropriate choices, mainly because competition and market conditions in these countries were more comparable with the situation in the PRC. The Community industry objected to Brazil and South Africa on the grounds of the strong devaluation of the local currency in Brazil and the lack of competition in South Africa, since there was only one company producing the product under consideration. Moreover, none of the known producers in these two countries agreed to cooperate in the proceeding, although they had been invited by the Commission to do so. Consequently, Brazil and South Africa could not be retained as analogue countries.
- (22) With respect to Norway, it was found that it was one of the largest producers of silicon in the world, with two competing local producers. It was also established that Norway was an open market without import duties for silicon and that there were sizeable imports from Brazil and the PRC. It should also be noted that Norway has a natural advantage in terms of access to cheap energy, whereas no submission was made to suggest that the PRC enjoyed a similar advantage.
- (23) It is therefore concluded that Norway constituted an appropriate analogue country. The Commission contacted the two known producers of silicon in Norway and both agreed to cooperate.

*Normal value*

- (24) As far as the determination of the normal value is concerned, it was first established that the volume of the Norwegian producers' domestic sales compared with the exported volume from the PRC was representative. Normal value was established either on the basis of the weighted average price paid in the ordinary course of trade by independent customers or on the basis of constructed normal value where these domestic sales were not profitable. In this respect, it should be noted that constructed normal value had to be used only for a minor proportion of the exports. In cases where normal

value was constructed, this was done by adding a reasonable amount for selling, general and administrative expenses ('SG&A') and a reasonable margin of profit to the cost of production in Norway. In all cases SG&A and profit were established pursuant to the first method set out in Article 2(6) of the Basic Regulation.

*Export price*

- (25) As regards the exports to the Community, most sales by the cooperating exporting producer in the PRC were sales to a related company in the Community which further processed the imported silicon into silicones. These export prices would not normally be used for the establishment of the export price because they might be influenced by the relationship. However, since it was found that the prices charged were in line with market prices as reported in specialised magazines, as well as with the prices charged by another Chinese exporting producer that did not cooperate but exported to the same company in the EU during the IP, it was decided to use these prices for the calculation of the export price. The export price was thus established on the basis of the data from the cooperating exporting producer, the non-cooperating exporting producer and the remaining Eurostat data. It should be noted that the volume of the exports by the cooperating exporter constituted 80 % of the imports registered by Eurostat and was higher than the total volume of the product under consideration imported from the PRC during the IP of the previous expiry review.

*Comparison*

- (26) For the purposes of ensuring a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences that were claimed and demonstrated to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments were made in respect of transport, insurance, handling and credit costs.

*Dumping margin*

- (27) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export prices, as determined above. This comparison showed the existence of dumping. The dumping margin, expressed as a percentage of the cif Community frontier price duty unpaid, was significant, i.e. 12,5 %, although well below the level found in the previous investigations.

*Conclusion*

- (28) The investigation has revealed that the import volume of the product under consideration from China was higher than in the IP of the previous expiry review and that it had clearly remained at dumped levels. The investigation did not reveal any reason why the level of dumping would disappear or decrease if the measures were to be repealed. It was therefore concluded that there was a likelihood of continuation of dumping.

**Development of imports should measures be repealed**

- (29) It was also considered appropriate to examine whether there would be an increase in Chinese import volumes should the existing measures be repealed. For this purpose the following factors were assessed: the evolution of export and/or production capacity and export behaviour of Chinese exporting producers on third country markets.

*Export sales and spare capacity of cooperating exporter*

- (30) The investigation showed that the cooperating company exported 100 % of its production of the product under consideration, mainly to the EU. It also became apparent that this company had considerable excess production capacity which had recently been doubled. It should also be noted that the vast majority of exports to the EU were made under inward processing relief to a related company which used the product under consideration for further processing. In other words, these exports never entered into free circulation on the Community market but they competed with silicon sold by other operators on the Community market. The repeal of the measures would thus be an additional incentive for this exporter to ship further quantities of the product under consideration to the Community market either for free circulation or for inward processing.

*Chinese production and capacity utilisation*

- (31) According to the application for the expiry review, which in this respect was based on information in the Metal Bulletin of August 2001, the total Chinese production capacity for the product under consideration is around 1 203 000 tonnes per year. The application for the expiry review also referred to information from a

leading independent research group, which estimated the production capacity at around 600 000 tonnes in 2002. The Chinese production volume was estimated at around 400 000 tonnes in that year. On this basis, the Chinese capacity utilisation rate is between 33 % and 66 % and on the best case scenario their spare capacity is at least half of the total Community consumption. It also appeared that Chinese production capacity could be rapidly increased further if warranted by market conditions.

- (32) Consequently, the large production capacity available in the PRC demonstrates that producers are able to quickly increase production and direct it to any export market, including, if the measures are repealed, the Community market.

- (33) Since no information was provided by Chinese sources and given that little public information is available about the Chinese silicon industry, it should be noted that according to the Basic Regulation, and in particular Article 18 thereof, the above conclusions rely mainly on the best information available, namely the information contained in the complaint.

*Exports to third countries*

- (34) On the basis of Chinese export trade data it was established that total worldwide exports of Chinese silicon increased by 43 %, from 271 626 tonnes in 1998 to 387 444 tonnes in 2002 <sup>(1)</sup>. Export prices to the world market are 30 % below the export prices to the Community, so that exporters would have an incentive to increase exports to the Community rather than to third countries should the measures be repealed.

- (35) Moreover, a fall of almost 4 % in the Chinese export prices of the product under consideration was observed, i.e. from USD 829 per tonne in 1998 to USD 799 per tonne in 2002 <sup>(1)</sup>.

- (36) This clearly shows that, if the measures were repealed, the Chinese exporters would have an incentive to target the Community market in the light of the anti-dumping measures just imposed on the US market and the recent increase from 5 to 20 % in the customs duty imposed by Russia on Chinese imports of the product under consideration.

<sup>(1)</sup> In the absence of the monthly breakdown for the IP, annual data has been used.

*Export prices to the Community*

- (37) It should also be noted that the generally prevailing price level for the product under consideration in the Community makes the Community market a very attractive one. This is a further incentive for increasing exports to the Community either by increasing production or by diverting to the Community those sales which are currently exported to third countries. Moreover, export prices to third countries were found to be lower than those to the Community. However, the attractive, relatively high prices on the Community market are not likely to be maintained in the long term since, if measures were lifted, the numerous Chinese exporters would compete with each other in order to increase their shares on the Community market. Consequently it is very likely that all operators present on the Community market would have to reduce their prices accordingly.

*Trade defence measures applied by third countries*

- (38) The export behaviour of Chinese producers on other significant markets for the product under consideration was also investigated. In this respect the United States of America initiated a review of the anti-dumping duty on silicon from the PRC in 1999. The investigation established very high margins of dumping (up to 139 %). Therefore, in February 2003, anti-dumping measures were renewed against imports of the product under consideration with the conclusion that the removal of the measures would lead to continuation of injurious dumping <sup>(1)</sup>.
- (39) Furthermore, in 2002 the Russian administration completed an anti-dumping investigation with regard to imports of silicon from the PRC with a recommendation that an anti-dumping duty of 25 % be imposed. However, following consultations with the Chinese authorities, the import duty of 5 % has been increased to 20 %. This is a clear indication that the Chinese exporters would have to find other markets to sell the product under consideration.
- (40) In the light of the above, it may be concluded that there is pressure on Chinese exporting producers to find alternative export markets.

**Conclusion**

- (41) The investigation has shown that the PRC has continued its dumping practices during the IP. Given the fact that the PRC has considerable spare production capacity, and that Chinese exports to third countries are made at even

lower prices than those to the Community, there is a strong likelihood that Chinese exporting producers would substantially increase their dumped exports of the product under consideration to the Community if existing measures were repealed. In addition, the exports of the product under consideration by Chinese exporters are limited by the new anti-dumping measures in force in both the United States of America and Russia. In summary, it is highly probable that imports to the Community from China will resume in significant quantities and at dumped prices, should the measures be repealed.

**DEFINITION OF THE COMMUNITY INDUSTRY**

- (42) The three complainant Community producers replied to the questionnaires and fully cooperated in the investigation. During the IP, they represented 100 % of the Community production. During the IP, one of the three Community producers imported the product under consideration from other third countries, principally from South Africa. However, it was found that these imports were essentially made to supplement products that it supplied to its Community customers. These imports decreased over the period under consideration, particularly between 1998 and 1999 when they dropped by half, following the installation of new Community production facilities by the producer under consideration, and its strategic commitment to produce and sell more silicon in the Community market. During the IP the volume of the product under consideration imported by the producer in question represented only 2,1 % of the Community industry's sales of silicon within the Community (3,5 % of the sales of the producer in question) and 1,9 % of the Community industry's production of the product under consideration (3,2 % of the production of the producer in question). In view of the above, it is concluded that the imports made this producer did not affect its status of Community producer.
- (43) On this basis, the three complainant Community producers constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

**SITUATION OF THE COMMUNITY MARKET****Community consumption**

- (44) Community consumption was based on the combined volume of supplies made by the Community industry in the Community, and imports from China and other third countries (based on Eurostat).

<sup>(1)</sup> US Federal Register/Volume 68, No 25, 11 February 2003.

**Table 1****Community consumption (based on sales volumes)**

	1998	1999	2000	2001	IP
Tonnes	290 684	325 234	388 938	373 950	371 540
<i>Index</i>	100	112	134	129	128
<i>Y/Y trend</i>		+ 12 %	+ 20 %	- 4 %	- 1 %

Source: Verified questionnaire replies and Eurostat.

- (45) EU consumption of silicon peaked in the year 2000 at almost 390 000 tonnes before falling back again in both 2001 and the IP to end at 371 540 tonnes. In total there was a 28 % increase over the whole period under consideration, but a 4 % decline between 2000 and the IP.

**Imports from China**

*Volume, market share and prices*

- (46) Based on information from Eurostat, volumes imported from China during the period under consideration increased from 4 168 tonnes to 14 454 tonnes. The market share of the Chinese imports, which was around 4 % in the previous expiry review increased over the period under consideration from 1,4 % to 3,9 % during the IP. Prices first decreased by 8 percent from 1998 to 2000, and then increased again to finish at a higher level than in 1998 at the end of the IP.

**Table 2****Imports from China (based on Eurostat)**

Imports from China	1998	1999	2000	2001	IP
Volume, tonnes	4 168	3 560	5 969	9 709	14 454
<i>Indexed</i>	100	85	143	232	347
Market Share	1,4 %	1,1 %	1,5 %	2,6 %	3,9 %
Price, EUR/tonne	1 044	953	964	1 142	1 158
<i>Indexed</i>	100	91	92	109	110

Price evolution of the imports.

- (47) Following the imposition of an anti-dumping duty in 1997, prices of silicon originating in China remained lower than the Community industry's prices. The difference with Community industry's prices was 2 % during the IP. This differential was established on the basis of average sales prices (ex-works) of the Community industry with Chinese import prices derived from Eurostat, adjusted for post importation cost, customs, and anti-dumping duties. It should be noted that the sales prices indicated above were calculated on the basis of both the sales made to Community users on the Community market and the sales of Chinese silicon destined for inward processing. No anti-dumping duty was applied to the latter sales. Nevertheless, it should be noted that the average price of Chinese silicon released for free circulation on the Community market was found to be extremely low at around EUR 870 per tonne.

### Economic situation of the Community industry

#### Production, production capacity and capacity utilisation

**Table 3**

#### Production

	1998	1999	2000	2001	IP
Tonnes	107 303	129 285	143 268	147 811	143 818
Index	100	120	134	138	134
Y/Y trend		+ 20 %	+ 14 %	+ 3 %	- 3 %

Source: Verified questionnaire replies of Community industry.

- (48) Over the period under consideration, Community industry production increased by 34 %, but did fall by 3 % between 2001 and the IP. During the IP Community industry production of silicon represented 38,7 % of Community consumption.

**Table 4**

#### Production capacity

	1998	1999	2000	2001	IP
Tonnes	125 000	142 300	158 000	165 600	162 000
Index	100	114	126	132	130
Y/Y trend		+ 14 %	+ 12 %	+ 5 %	- 2 %

Source: Verified questionnaire replies of the Community industry.

- (49) Production capacity increased each year, except for the IP when there was a small fall. In all, capacity increased by a total of 30 % over the period under consideration as a result of investment decisions made in 1998.

**Table 5**

#### Capacity utilisation

	1998	1999	2000	2001	IP
Percentage utilised	85,8 %	90,9 %	90,7 %	89,3 %	88,8 %
Index	100	106	106	104	103

Source: Verified questionnaire replies of the Community industry.

- (50) The above table shows that during the period under consideration capacity utilisation increased by three percentage points. The main increase occurred between 1998 and 1999. Between 2000 and the IP capacity utilisation decreased by around two percentage points.

*Sales volume and sales prices***Table 6****Sales volume**

	1998	1999	2000	2001	IP
Tonnes	86 718	114 587	133 568	128 219	136 421
Index	100	132	154	148	157
Y/Y trend		+ 32 %	+ 17 %	- 7 %	+ 6 %

Source: Verified questionnaire replies of the Community industry.

- (51) The Community industry's sales to unrelated customers in the Community increased by 57 % between 1998 and the IP.
- (52) Sales to related companies remained stable and represented less than 6 % of all sales of silicon during the period under consideration.

**Table 7****Community industry sales prices of silicon**

	1998	1999	2000	2001	IP
EUR/tonne	1 415	1 184	1 231	1 271	1 185
Index	100	84	87	90	84
Y/Y trend		- 16 %	+ 4 %	+ 3 %	- 7 %

Source: Verified questionnaire replies of the Community industry.

- (53) In the period 1998 to the IP, the average sales prices of silicon charged by the Community industry on the Community market saw a significant fall of 16 %. Average prices fell sharply in 1999 to reach a low of EUR 1 184 per tonne, before recovering to EUR 1 271 per tonne by 2001. Prices then fell by 7 % during the IP, to finish at an equivalent level to that seen in 1999. The sharp decrease in sales prices and the increase in the cost of production played a significant role in the deterioration of the financial situation of the Community industry.

*Market share***Table 8****Market share**

	1998	1999	2000	2001	IP
Percentage of market	29,8 %	35,2 %	34,3 %	34,3 %	36,7 %
Index	100	118	115	115	123

Source: Verified questionnaire replies of the Community industry.

- (54) The market share held by the Community industry increased from 29,8 % in 1998 to 36,7 % in the IP in line with its increased production and sales volumes due to a new facility opened in the Community. A large increase took place between 1998 and 1999 (+5,4 % of the market) with the introduction of new EU manufacturing facilities. A smaller rise (+2,4 percentage points) took place between 2001 and the IP.

*Stocks*

**Table 9**

**Stocks**

	1998	1999	2000	2001	IP
Tonnes	32 768	33 140	27 803	33 186	23 118
Index	100	101	85	101	71
Y/Y trend		+ 1 %	- 16 %	+ 19 %	- 30 %

Source: Verified questionnaire replies of the Community industry.

- (55) The above table shows that during the period under consideration stocks were reduced by 29 %. Apart from the year 2000, stocks were at around 33 000 tonnes, until the IP when they fell to just over 23 000 tonnes.
- (56) Stocks, which had represented around 38 % of the Community industry's EU sales volume in 1998, fell to below 17 % of EU sales during the IP. This fall is mainly explained by the fact that stocks usually build up at the end of each calendar year to allow for reduced production volumes during the winter months when energy costs peak. The IP ended in September, i.e. before the full effect of stock build-up is felt.

*Profitability and cash flow*

- (57) During the period under consideration profitability expressed as a percentage of net sales value developed as follows:

**Table 10**

**Profitability**

	1998	1999	2000	2001	IP
Percentage profit	12,6 %	1,8 %	5,0 %	1,7 %	- 2,1 %
Y/Y trend		- 10,8 %	+ 3,2 %	- 3,3 %	- 3,8 %

Source: Verified questionnaire replies of the Community industry.

- (58) Save for the year 2000, profitability deteriorated continuously over the whole period from a profit of 12,6 % in 1998 to a loss of 2,1 % in the IP. In 2000, the 4 % sales price increase compared to 1999, plus lower production costs due to increased investments allowed for an improved return on sales. In 2001, profits fell due to rising production costs, particularly in energy and consumable prices, not being reflected by a comparable increase in sales prices. In fact, average costs rose by EUR 80 per tonne that year, whilst EUR 40 per tonne could be passed on to the customers. During the IP prices fell, sending the Community industry into a loss-making situation despite a decrease in average cost of production.

*Cash flow*

**Table 11**

**Cash flow**

	1998	1999	2000	2001	IP
EUR (in '000)	17 005	8 962	15 028	5 876	6 070
Index	100	53	88	35	36
Y/Y trend		- 47 %	+ 68 %	- 61 %	+ 3 %

Source: Verified questionnaire replies of the Community industry.

- (59) Cash flow deteriorated by 64 % during the period under consideration, and followed a similar trend as that for profitability.

*Investments, return on investments and ability to raise capital*

**Table 12**

**Investments**

	1998	1999	2000	2001	IP
EUR (in '000)	32 750	15 539	15 625	8 559	7 072
Index	100	47	48	26	22
Y/Y trend		- 53 %	+ 1 %	- 45 %	- 17 %

Source: Verified questionnaire replies of the Community industry.

- (60) The significant investments during the period 1998 to 2000 were primarily aimed at increasing EU production capacity on the back of the favourable conditions in 1998 and on a positive development of the Community silicon market which the Community industry had expected at that time. This increased capacity was also used to reduce the reliance of the Community industry on imported silicon. Indeed, these expected improvements can be seen in the trend for Community consumption which increased by 34 % in this period (1998 to 2000).
- (61) The investigation showed that the operating return on investments, including cumulated depreciation, during the period under consideration deteriorated in line with the development of profitability.

**Table 13****Return on investments and ability to raise capital**

	1998	1999	2000	2001	IP
Percentage return	39,1 %	14,7 %	20,4 %	9,1 %	- 5,7 %
Y/Y trend (percentage points)		- 24 %	+ 6 %	- 11 %	- 15 %

Source: Verified questionnaire replies of the Community industry.

- (62) The companies which make up the Community industry are all part of larger groups. As such, their ability to raise capital is determined by the financial situation of these groups as a whole. These larger groups reported no problems with raising capital during the period under consideration. However, problems were reported with receiving funding for new projects in the silicon sector in particular. This seems to be supported by the negative development of the financial situation of the Community industry and by data verified during the investigation. These data are summarised in Table 12 and show that investments in the IP were only 22 % of their level in 1998.

*Employment, productivity and wages***Table 14****Employment**

	1998	1999	2000	2001	IP
Employees	588	634	673	682	685
Index	100	108	114	116	116
Y/Y trend		+ 8 %	+ 6 %	+ 2 %	+ 0 %

Source: Verified questionnaire replies of the Community industry.

- (63) The above table shows that employment increased by 16 % during the period under consideration. The main increase occurred in the period from 1998 to 2000 due to the increased production capabilities, but it did not grow further significantly during the IP.
- (64) Given that production increased at a greater rate than employment, productivity increased by 15 % over the same period, as shown in the table below:

**Table 15****Productivity**

	1998	1999	2000	2001	IP
Tonnes	182	204	213	217	210
Index	100	112	117	119	115
Y/Y trend		+ 12 %	+ 5 %	+ 2 %	- 4 %

Source: Verified questionnaire replies of the Community industry.

- (65) During the period under consideration the average wages of the employees of the Community industry increased by less than 1 % per annum, i.e. by less than the rate of inflation.

**Table 16****Wages**

	1998	1999	2000	2001	IP
EUR/employee	32 537	30 610	33 162	35 048	33 740
Index	100	94	102	108	104
Y/Y trend		- 6 %	+ 8 %	+ 6 %	- 4 %

Source: Verified questionnaire replies of the Community industry.

**Magnitude of dumping margins**

- (66) As concerns the impact on the situation of the Community industry of the magnitude of the actual margin of dumping found during the IP, it should be noted that the margin found for China is significant. Therefore, should measures be repealed, the impact of the dumping margin found in the current investigation would be significant as the duty is 49 % on the cif price of imports from China.

**Export activity of the Community industry**

- (67) The investigation showed that the export activity of the Community industry developed as follows:

**Table 17****Community industry exports**

	1998	1999	2000	2001	IP
Tonnes	6 446	6 776	5 803	6 285	3 209
Index	100	105	90	98	50
Y/Y trend		+ 5 %	- 14 %	+ 8 %	- 49 %

Source: Verified questionnaire replies of the Community industry.

- (68) Community industry exports of silicon fell by half over the period under consideration, mainly in the IP. Whilst in comparative terms, this fall might appear dramatic, in absolute terms it represents a fall from a small number of sales, namely less than 4,8 % of all sales in 2001 to even fewer sales of less than 2,4 % during the IP. Whilst the reduced exports may have had some impact on the economic situation of the Community industry, any such influence will be limited. Sales prices and profitability on the Community market were much more significant for the deterioration of the situation of the Community industry. A reduction in the export volumes, which were already marginal before the IP, will have had little or no influence on the situation of the Community industry.

### Import volumes and prices from other third countries

- (69) Import volumes of silicon into the Community from countries other than China, together with their average prices, developed as follows:

**Table 18**

#### Imports into the Community from other third countries (volume)

Tonnes	1998	1999	2000	2001	IP
Brazil	43 536	56 709	67 663	50 849	52 089
Russia	10 798	6 272	14 172	16 907	18 006
Norway	92 200	115 385	124 790	122 677	114 254
South Africa	12 234	6 225	5 539	6 203	2 674
Other third countries	41 029	22 495	37 236	39 385	33 643
Total	199 797	207 086	249 400	236 021	220 666

Source: Eurostat.

**Table 19**

#### Imports into the Community from other third countries (average price)

EUR/tonne	1998	1999	2000	2001	IP
Brazil	1 173	1 040	1 158	1 231	1 098
Russia	1 048	963	1 131	999	929
Norway	1 341	1 207	1 197	1 201	1 199
South Africa	1 198	1 161	1 241	1 149	1 149
Other third countries	1 273	1 205	1 165	1 210	1 156
Total	1 266	1 152	1 179	1 193	1 146

Source: Eurostat.

- (70) Whilst the total import volumes of silicon from third countries other than China increased during the analysis period from about 200 000 tonnes in 1998 to 221 000 tonnes in the IP, the market share of these imports fell from around 69 % to 59 % over this period. The major exporters to the Community have been Norway, Brazil, South Africa, and Russia. Only imports from Russia had average import prices significantly lower than those of the Community industry during the IP. As indicated in recital 47, the price of Chinese silicon released for free circulation on the Community market was significantly lower than the import prices from other third countries, referred to in Table 19.

### Conclusion

- (71) As explained and shown above, from 1998 to 2000 the Community industry was able to benefit from a 34 % market growth and significant increase in its sales volume and market share. Thereafter however, sales volume and market share stagnated and the financial situation of the Community industry (prices, profitability, and cash flow) deteriorated.

- (72) On closer examination it can be seen that the main positive developments for the Community industry took place between 1998 and 2000. From 2000 onwards, no real improvements were noticeable
- (73) The improvements seen between 1998 and 2000 can be directly attributed to decisions taken by the Community industry in 1998 to invest in additional Community production facilities. Between 1998 and 2000 EU production capacity increased by 26 % from (125 000 tonnes to 158 000 tonnes). These decisions were taken in response to the anti-dumping measures on imports of silicon from China which, as outlined in recital 1, had been extended in 1997. The Community industry was also making good profits on its EU sales of silicon in 1998 (see recital 58). Therefore, it can be seen that the Community industry was able to benefit from the anti-dumping measures on imports silicon from China. From 2000 to the IP, the situation of the Community industry deteriorated, in particular with prices which fell EUR 46 per tonne, profitability which fell 7,1 percentage points, cash flow which fell by 59 %, and investments which declined by 55 %. By the IP the Community industry found itself in a loss-making situation. For these reasons, it is considered that during the IP, the Community industry found itself in a very fragile and vulnerable position.

#### LIKELIHOOD OF RECURRENCE OF INJURY

- (74) The volume of dumped imports from China considerably increased during the period under consideration and it is likely that without anti-dumping measures in place considerable increased volumes of the product concerned would be shipped to the Community market at very low prices, undercutting the Community industry prices. In view of the level of the anti-dumping duty in force, the price differential between the imported product and the one produced by the Community industry could be more than 35 % if the measure were allowed to expire.
- (75) As outlined in recital 31, it is estimated that latent capacity in China is sufficient to supply 50 % of Community demand for silicon. Were the current measures to lapse, there is a threat that a significant proportion of unused production capability would be used to flood the Community market with silicon from the PRC. The information from Eurostat suggests that, where imports are made with suspension of duties, Chinese silicon was entered into the Community at an average price of EUR 870 per tonne. There is no reason to believe that future prices would be higher than this if the measure lapsed. When examining the impact of such additional low-priced imports on the situation of the Community industry, the following should be borne in mind: This industry is already in a fragile position due to the presence of dumped imports from both Russia and China. The arrival of such a quantity of dumped imports from China would immediately cause a further severe price depression on the EU market as the Community industry would first try to maintain its market share rather than reduce its production. This would in turn further erode the Community industry's profitability, which would experience even greater losses than the 2,1 % loss seen during the IP. Even in the short term the Community industry could be forced out of the market in view of its untenable financial situation reflected in, amongst others, the decrease in profitability (- 14,7 percentage points) during the period under consideration.
- (76) It is recalled that at recital 28 it was concluded that Chinese silicon continued to be dumped on the EU market, at recital 41 that these imports would be likely to increase substantially were the measures to lapse, and at recital 73 that the Community industry found itself in a fragile position. Whilst the current measures are sufficient to remove any injury to the Community industry from Chinese imports, it is concluded that, a repeal of measures would lead to a recurrence of injury resulting from the dumped imports from the PRC.

**COMMUNITY INTEREST****Preliminary remark**

- (77) In accordance with Article 21 of the Basic Regulation it was examined whether a prolongation of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders as well as the users and suppliers of the product under consideration.
- (78) It should be recalled that, in the previous review, the adoption of measures was considered not to be against the interest of the Community. Furthermore, as the present investigation is an expiry review, it allows analysis of a situation in which anti-dumping measures have already been in place and to assess any undue negative impact on the parties concerned by the current anti-dumping measures.
- (79) On this basis it was examined whether, despite the conclusion on the likelihood of a recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

**Interests of the Community industry**

- (80) The Community industry has proven to be a structurally viable industry, able to adapt to the changing conditions on the market. This was confirmed in particular by the positive development of its situation at a time when effective competition had been restored after the imposition of anti-dumping measures on imports originating in China and by the industry's investment in additional production capacity in 1998. However, it can be concluded that, without the continuation of anti-dumping measures, its situation will in all likelihood deteriorate severely.

**Interests of unrelated importers/traders**

- (81) The Commission services sent out questionnaires to nine unrelated importers/traders, and associations. No answers were received to these questionnaires, nor did any other importers/traders make themselves known.
- (82) In these circumstances, it was concluded that the measures in force did not manifestly affect importers or traders and therefore the continuation of measures would not affect these parties.

**Interests of users**

- (83) The Commission services sent out questionnaires to 15 users and users' associations. Only two incomplete answers were received from users, and one general submission from a users' associations. From these replies, it emerged that silicon accounted for about 10 % of the users' cost of production. They also showed that both user companies were profitable even with the current anti-dumping duties on silicon from China. These submissions did not contain comments on the possible impact of removing the measures. Moreover, the submission did not contain any information on what impact the existence of measures had on these two users. Furthermore, no information was received as to whether any duty could have been passed on to the users' customers.

- (84) The reply from the users association stated that it would be in the Community interest to have as many different sources of silicon as possible. They also stated that they assumed that the expiry of measures would not lead to a recurrence of injurious dumping of silicon from China. However, no evidence to support this assumption was provided.
- (85) In light of (i) the low response rate to the questionnaires sent, (ii) the incomplete nature of those submissions received, (iii) the lack of verifiable data in support of an expiry of the measures in force, it is concluded that the continuation of the duties would not have a significant effect on users.

#### Conclusion

- (86) Given the above, it is concluded that there are no compelling reasons, on the grounds of Community interest, against the maintenance of the anti-dumping measures.

#### ANTI-DUMPING MEASURES

- (87) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of silicon originating in China, imposed by Regulation (EC) No 2496/97, should be maintained,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of silicon falling within CN code 2804 69 00 originating in the People's Republic of China.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be 49 %.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### Article 2

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, 2 March 2004.

*For the Council*  
*The President*  
M. CULLEN