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(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

II *Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory*

EN

[1] Text with EEA relevance

I

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

REGULATIONS

COUNCIL REGULATION (EC) No 171/2008

of 25 February 2008

maintaining Council Regulation (EC) No 71/97 on the extension of the anti-dumping duty imposed on imports of bicycles originating in the People's Republic of China to imports of certain bicycle parts from 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 [1] (the basic Regulation), and in particular Articles 9, 11(3) and 13(4) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) In September 1993, the Council, by Regulation (EEC) No 2474/93 [2], imposed a definitive anti-dumping duty of 30,6 % on imports of bicycles originating in the People's Republic of China (PRC). This duty was increased to 48,5 % by the latest review, by Council Regulation (EC) No 1095/2005 [3] (*the principal measure*).

(2) In January 1997, following an investigation into the alleged circumvention of the above anti-dumping duty in the form of assembly of bicycles in the Community by using Chinese bicycle parts, the Council, by Regulation (EC) No 71/97 [4] extended the anti-dumping duty on bicycles originating in the PRC to imports of essential bicycle parts originating in the PRC, pursuant to Article 13 of the basic Regulation (*the anti-circumvention measure*). The anti-circumvention measure also stipulated that an exemption scheme should be established, in order to enable assemblers not circumventing the measure on bicycles to import Chinese bicycle parts free of anti-dumping duty, by exempting them from the measure extended to bicycle parts.

(3) In June 1997, the Commission adopted Regulation (EC) No 88/97 [5] on the authorisation of the exemption of imports of certain bicycle parts originating in the PRC from the above extension, thereby laying down the legal framework for the operation of the exemption scheme (*the exemption scheme*).

(4) As a result of the above three measures, at present an anti-dumping duty of 48,5 % is in force on bicycles originating in the PRC, and this duty is extended to certain bicycle parts originating in the PRC, but Community assemblers not circumventing may be exempted from the latter i.e. from the duty on bicycle parts.

2. Grounds for the review

(5) Since the extension of the measures to imports of certain bicycle parts, the Commission has granted exemption from the anti-circumvention measure to a large number of companies based in the Community. The Commission has continued to receive exemption requests, thus the number of parties requesting an exemption has significantly increased. At the same time, there have been no apparent indications of circumvention practices by companies having been granted an exemption.

(6) Furthermore, the Commission had at its disposal sufficient *prima facie* evidence that if the anti-circumvention measure was removed, there would be no continuation or recurrence of circumvention practices.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ L 228, 9.9.1993, p. 1.
[3] OJ L 183, 14.7.2005, p. 1.
[4] OJ L 16, 18.1.1997, p. 55.
[5] OJ L 17, 21.1.1997, p. 17.

(7) In addition, the anti-circumvention measure has been in force for 10 years and it has never been reviewed since its introduction.

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review in accordance with Article 13(4) and 11(3) of the basic Regulation, on 28 November 2006, the Commission initiated this review of the anti-circumvention measure, by publishing a notice of initiation in the *Official Journal of the European Union* [1].

3. **Investigation**

(9) The aim of the investigation was to assess the need for the continuation of the anti-circumvention measure.

3.1. *Investigation period*

(10) The investigation covered the period from 1 October 2005 to 30 September 2006 (review investigation period or RIP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of circumvention covered the period from 2003 up to the end of the RIP (period considered).

3.2. *Parties concerned by the investigation*

(11) The Commission officially advised the known Community assemblers and their associations 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 in the notice of initiation.

(12) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(13) In view of the apparent large number of Community assemblers involved in this review investigation, it was considered appropriate to apply sampling, in conformity with Article 17 of the basic Regulation. In order to enable the Commission to select a sample, the above parties were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the investigation and to provide the Commission with the information requested in the notice of initiation.

(14) A large number of Community assemblers — 158 companies — properly completed the sampling form and agreed to cooperate further in the investigation. Out of these 158 companies eight, which were found to be representative of the Community industry in terms of volume of assembly and sales of bicycles in the Community, were selected for the sample. The eight sampled Community assemblers accounted for almost one third of the total production of the Community industry during the RIP, whilst the 158 Community assemblers represented almost the totality of the production in the Community. This sample constituted the largest representative volume of production and sales of bicycles in the Community which could reasonably be investigated within the time available.

(15) In accordance with Article 17(2) of the basic Regulation, the parties concerned were consulted on the sample chosen and raised no objection thereto.

(16) Questionnaires were therefore sent to the eight sampled Community assemblers, and replies to the questionnaires were received from them.

(17) The Commission sought and verified all the information it deemed necessary for its analysis, and carried out verification visits at the premises of the following sampled Community assemblers:

— Planet'Fun S.A., Périgny, France,

— Decathlon Italia SRL, Milano, Italy,

— F.lli Masciaghi SPA, Basiano, Italy,

— Denver SRL, Dronero-Cuneo, Italy.

B. **PRODUCT UNDER REVIEW**

(18) The product under review is essential bicycle parts:

— painted or anodized or polished and/or lacquered bicycle frames, currently classifiable within CN code ex 8714 91 10,

— painted or anodized or polished and/or lacquered bicycle front forks, currently classifiable within CN code ex 8714 91 30,

— derailleur gears, currently classifiable within CN code 8714 99 50,

— crank-gear, currently classifiable within CN code 8714 96 30,

— free-wheel sprocket-wheels, currently classifiable within CN code 8714 93 90, whether or not presented in sets,

— other brakes, currently classifiable within CN code 8714 94 30,

[1] OJ C 289, 28.11.2006, p. 15.

— brake levers, currently classifiable within CN code ex 8714 94 90, whether or not presented in sets,

— complete wheels with or without tubes, tyres and sprockets, currently classifiable within CN code ex 8714 99 90, and,

— handlebars, currently classifiable within CN code 8714 99 10, whether or not presented with a stem, brake and/or gear levers attached,

— originating in the People's Republic of China (the product concerned). These CN codes are only given for information.

C. CIRCUMVENTION OF THE ANTI-CIRCUMVENTION MEASURES AND LASTING NATURE LASTING NATURE

1. Legal framework

(19) In order to assess the need for the continuation of the anti-circumvention measure as mentioned above in recital (9), this review examined whether circumvention in the form of assembly operations was taking place during the RIP, and whether these circumstances were of a lasting nature.

(20) More specifically, it was examined whether the criteria for circumvention in the form of assembly operations, as laid down in Article 13(2) of the basic Regulation, were fulfilled during the RIP, and whether these criteria are likely to be fulfilled should the anti-circumvention measure be removed.

(21) For ease of reference, these criteria are set out below:

'(a) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures; and

(b) the parts constitute 60 % or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25 % of the manufacturing cost; and

(c) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.'

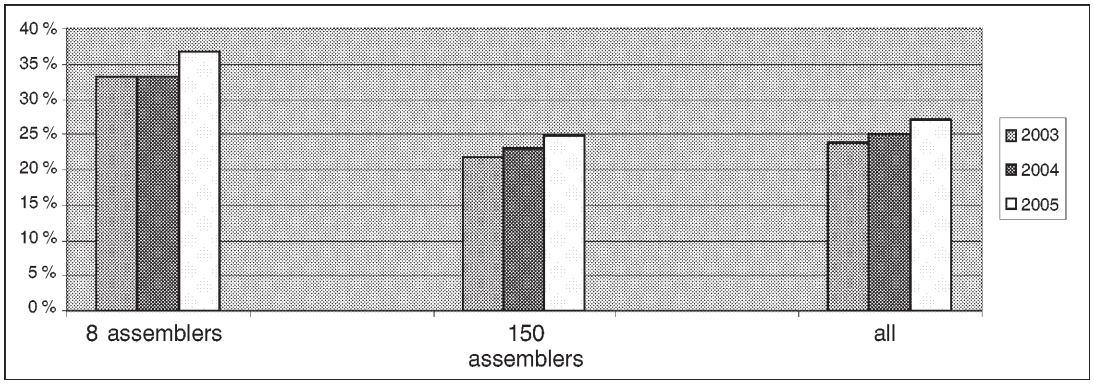
2. Existence of circumvention during the RIP

(22) It was examined whether during the RIP the Community assemblers circumvented the anti-circumvention measures in force.

(23) All companies cooperating in the investigation were Community assemblers exempted from the anti-circumvention measure, i.e. they could import and use Chinese bicycle parts for their bicycle assembly free of anti-dumping duty, if the proportion of such Chinese parts did not exceed 60 % of the total value of the parts of the assembled bicycles. The investigation showed that the sampled Community assemblers complied with this rule as it could not be found that their use of Chinese parts exceeded 60 %.

(24) After the evaluation of the eight sampled Community assemblers and of the 158 complete sampling returns, it was established that the average proportion of Chinese parts from the sampled eight assemblers was 37 %, i.e. far below the 60 % threshold. The overall proportion of all cooperating assemblers was even lower and stood at 29 % during the RIP.

(25) The above proportions for the years 2003, 2004 and 2005 are shown in the chart below:



(26) As one of the circumvention criteria was not fulfilled, these assemblers were found not to be circumventing the existing measures and to comply with the conditions related to their exemptions.

(27) The percentage of cooperating Community assemblers was very high, i.e. above 90 % in terms of volume of bicycles sold by EC assemblers, and no evidence was found that the principal measure would have been circumvented by other bicycle assemblers. Therefore, and in the absence of evidence pointing to the contrary, it can be concluded that no circumvention of the principal measure was taking place during the RIP.

3. **Lasting nature**

(28) Pursuant to Article 11(3) of the basic Regulation, it was further examined whether the non-existence of circumvention practices would be of a lasting nature, i.e. if circumvention was not likely to recur should the anti-circumvention measure be removed.

3.1. *Start or substantial increase of the assembly operation*

(29) It was firstly analysed if assembly operations would start or substantially increase following the removal of the anti-circumvention measure. In this respect, it is recalled that during the initial anti-circumvention investigation it was found that after the imposition of the principal measures of Chinese bicycles in 1993, assembly of Chinese bicycle parts substantially increased until 1997 when the anti-circumvention measure was imposed. There were significant changes in the pattern of trade: imports of Chinese bicycles dropped sharply, whereas imports of Chinese parts started to increase quickly. This past experience indicates that there is a risk that in the absence of an anti-circumvention measure, imports of Chinese parts and the assembly of bicycles using these parts could substantially increase again.

(30) In addition, the investigation has shown that Chinese bicycle parts are in general cheaper than bicycle parts of any other origin. Consequently, if some Community assemblers would increase the use of Chinese parts, then others would probably also start using more Chinese parts, in order to stay competitive.

(31) In view of the above, it cannot be excluded that the removal of the anti-circumvention measure would result in a substantial increase of imports of Chinese parts and of assembly operations.

3.2. *Criterion regarding the 60 % threshold of Chinese parts*

(32) It was examined whether the proportion of Chinese parts used by EC assemblers is likely to exceed 60 % of the value of all parts used in the assembly of bicycles, in case the anti-circumvention measure was removed.

(33) It is recalled that, as mentioned above in recital (24), the overall average proportion of Chinese parts was 29 % during the RIP, i.e. far below the 60 % threshold. The average proportion of the eight sampled producers was somewhat higher: 37 %.

(34) The investigation has revealed that the following may, to a certain extent, explain why EC assemblers used far lower proportions of Chinese parts than 60 % as allowed by the rules related to their exemption:

— most importantly, each model of the exempted EC producers has to be in line with the 60 % rule, and the high quality models (where fewer, if any, Chinese parts are used) distort the average ratio of Chinese parts,

— constant fluctuations in prices of imported parts, transport costs and exchange rates and other practical reasons require a room of manoeuvre to be kept by the EC assemblers in order not to risk losing their right of exemption.

(35) However, it is very difficult to determine whether the above arguments provide an adequate explanation for the significant gap between the current proportion of Chinese bicycle parts used by EC assemblers and the 60 % limit allowed by the rules related to circumvention and to the exemption scheme.

(36) In addition, some of the Community assemblers claimed that they only imported less than 60 % of Chinese bicycle parts in order to comply with their obligations stemming from the exemptions granted to them.

(37) In fact, as already stated in recital (30), Chinese bicycle parts are in general cheaper than bicycle parts of any other origin and for this reason the Community assemblers may start using more Chinese parts in order to keep pace with their competitors.

(38) The picture is therefore somewhat mixed. On the one hand, in view of the substantial gap between the actual and the allowed proportion of Chinese parts used, the risk that the bicycle assemblers would exceed the 60 % threshold in the short term does not appear to be evident.

(39) On the other hand, in the medium term, Chinese bicycle assemblers would still have a rather strong incentive to import more than the 60 % limit allowed and could hence start again circumventing the principal measure by way of exporting to the EC so-called semi-knocked down kits or completely knocked down kits, i.e. almost complete bicycles in separate containers. This would actually bring back the circumvention that took place in the 1990s before the introduction of the anti-circumvention measure and would then result in a clear excess of the 60 % threshold.

(40) On balance, as the incentive to import more than the allowed 60 % threshold is indeed quite strong, it appears that there is a certain risk that the 60 % limit would be exceeded should measures be removed.

(41) As concerns the 25 % added-value rule, which is an exception to the criterion regarding the 60 % threshold, it has been found that the average value added by the EC assemblers — on the basis of the 158 replies to the sampling forms — was 20 % during the RIP. As concerns the eight sampled companies, their average value added was 22 % during the RIP. Given the low level of part production in the Community, this added value would most likely not surpass the 25 % threshold, in the event that the proportion of Chinese parts were to exceed the 60 % threshold. Therefore, it is unlikely that Community assemblers would add more than 25 % value.

3.3. *Undermining of the remedial effects of the duty in terms of sales prices or quantities, and dumping*

(42) It had to be examined whether the remedial effects of the anti-dumping duty would be undermined and whether dumping would recur should the anti-circumvention measure be removed. However, in the current market conditions, i.e. while the anti-circumvention measure and the related exemption scheme exist, it was impossible to carry out a reasonable analysis whether the duties would be undermined in terms of sales prices and whether dumping would exist, because for the calculation EC prices should have been based on a situation where bicycles were composed solely of Chinese parts. In contrast, EC bicycles assembled during the RIP were made of parts of various origins including the EC, the PRC and other third countries.

(43) It is, however, recalled that during the investigation leading to the anti-circumvention measure in 1997 it was proved that the remedial effect of the duty on Chinese bicycles was undermined in terms of sales prices, and dumping existed. In the absence of comparable prices during the RIP, the findings of this earlier investigation for undermining and dumping, as set out in recitals (19) to (24) of the anti-circumvention measure, remain valid.

D. **CONCLUSIONS**

(44) The review has shown that currently no circumvention appears to be taking place. However, it has also shown that the risk of recurrence of circumvention cannot be fully excluded. On the basis of the analysis carried out above, there seems to be a risk, though limited, that in the medium term, the current non-existence of circumvention will not last should the anti-circumvention measure be removed, as Community assemblers could substantially increase assembly operation by using more Chinese bicycle parts than the 60 % threshold, which would then undermine the remedial effects of the anti-dumping duty on Chinese bicycles.

(45) Therefore, the anti-circumvention measure shall be maintained, in order to ensure that the principal measure, i.e. the anti-dumping duty on bicycles, is effective and cannot be undermined by circumvention in the form of assembly operations,

HAS ADOPTED THIS REGULATION:

Article 1

The extension of the antidumping duty imposed on imports of bicycles originating in the People's Republic of China to imports of certain bicycle parts originating in the People's Republic of China by Regulation (EC) No 71/97, is hereby maintained, and the review concerning these imports is terminated.

Article 2

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

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

Done at Brussels, 25 February 2008.

For the Council
The President
A. VIZJAK

COUNCIL REGULATION (EC) No 172/2008

of 25 February 2008

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

1. PROCEDURE

1.1. **Provisional measures**

(1) The Commission, by Regulation (EC) No 994/2007 [2] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of ferro-silicon (FeSi), currently classifiable within CN codes 7202 21 00, 7202 29 10 and 7202 29 90, originating in the People's Republic of China (PRC), Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia.

1.2. **Subsequent procedures**

(2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures (provisional disclosure), several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(3) The Commission continued its investigation with regard to Community interest aspects and carried out analysis of data within the questionnaire replies provided by some users in the Community after the imposition of the provisional anti-dumping measures.

(4) In recital 166 of the provisional Regulation the Commission undertook to analyse further and in more detail the effect of provisional measures on the situation of the users, before any final determination is made.

(5) For this purpose, the Commission contacted and sent questionnaires directly and via associations to around 500 foundries located in the Community, since this category of user industry had not shown any particular interest in the current proceeding prior to the imposition of provisional measures. In addition, all steel producers cooperating at provisional stage were requested to provide additional information in order to enable the Commission to analyse the possible effect of provisional measures on their activity.

(6) Questionnaire replies were received from only seven foundries and additional information was received from eight steel producers. All seven of the former and three of the latter undertakings provided the necessary information to analyse in depth the effect of the provisional measures on their economic situation.

(7) In view of the complex structure in which the Chinese exporting producer granted market economy treatment (MET) was operating during the period under investigation, additional information was requested in order to reach definitive findings. Moreover, as indicated in recital 49 of the provisional Regulation, because of the fact that the Chinese exporting producer was purchasing electricity from a related supplier, its costs associated with the production of FeSi were also further investigated.

(8) In view of the above, three additional verification visits were carried out at the premises of the following companies:

— Erdos, Ordos City, Inner Mongolia, electricity supplier in the PRC,

— Trompetter Guss, Chemnitz, Germany, user (foundry) in the Community,

— Arcelor Mittal, Genk, Belgium, user (steel producer) in the Community.

(9) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings have been modified accordingly.

[1] OJ L 56, 6.3.1996, p. 1, Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ L 223, 29.8.2007, p. 1.

(10) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures on imports of FeSi originating in the PRC, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

(11) It is recalled that the investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (investigation period or IP). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2003 to the end of the IP (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product concerned**

(12) As indicated in recitals 15 and 16 of the provisional Regulation, several exporters alleged that slag containing significantly less then 45 % silicon, i.e. low purity FeSi, should be excluded from the scope of the investigation due to alleged lack of the same basic physical characteristics and the same basic uses. The Commission undertook to clarify the matter further. Further comments were received from several interested parties on this issue after provisional disclosure.

(13) It is firstly noted in this regard that the product concerned by the current investigation refers to FeSi containing at least 4 % iron and more than 8 % and less than 96 % of silicon. The investigation also revealed that slag with silicon content below 45 % can be used in the steel industry under the form of briquettes as it is the case for FeSi with silicon content above 45 %. Therefore, it can be concluded that slag shares the same basic physical characteristics and is interchangeable with other types of FeSi with higher silicon content. On the basis of the above, the provisional conclusions set out in recital 16 of the provisional Regulation that low purity FeSi should be considered as product concerned are hereby confirmed.

(14) One unrelated importer claimed that 'atomised' FeSi powder of 15 % and of 45 % silicon content should be excluded from the product scope of this investigation. However, an exclusion of 'atomised powder FeSi' from the present investigation is not warranted, in particular since FeSi with 15 % and 45 % of silicon content falls under the definition of the product concerned. In addition, following a hearing, this importer did not submit any evidence to substantiate its claim, despite a request by the Commission. The claim had therefore to be rejected.

2.2. **Like product**

(15) In the absence of any comments concerning the like product, recital 17 of the provisional Regulation is hereby confirmed.

3. DUMPING

3.1. **Market economy treatment (MET)**

(16) Following the provisional disclosure, one Chinese exporting producer reiterated its comments described in recital 26 of the provisional Regulation as to the change in the estimated useful life of its assets. However, the exporting producer failed to provide any new arguments not brought forward in the earlier stages of the investigation, which would substantiate its claim that the provisional findings concerning the MET situation as described in recital 23 of the provisional Regulation were not correct.

(17) In the absence of any other comments concerning MET, recitals 18 to 26 of the provisional Regulation are hereby confirmed.

3.2. **Individual treatment (IT)**

(18) In the absence of any comments with regard to IT, recitals 27 to 31 of the provisional Regulation are hereby confirmed.

3.3. **Normal value**

3.3.1. *Analogue country*

(19) Following the provisional disclosure, one Chinese exporting producer argued that Norway is not an appropriate analogue country due to high electricity costs which are allegedly not representative for the industry worldwide, and due to differences in access to raw materials compared to Chinese producers. The exporting producer claimed also that Norwegian producers mainly sell to export markets since most of their domestic consumption is captive and that Norwegian producers focused largely on specialty grades FeSi while Chinese exporting producers manufacture only standard grades during the IP. On that basis, the exporting producer claimed adjustments to the Norwegian normal value.

(20) It should be noted that, while it is true that Norwegian producers sell large quantities on export markets, given the size of the domestic market and the conditions of competition thereon, as stated in recital 35 of the provisional Regulation, Norway is considered to be an appropriate analogue country.

(21) With regard to the other claims of the company, it was found that the share of electricity in the costs of production of Chinese producers was significantly greater than that of Norwegian companies. In addition, the Chinese exporter did not provide any evidence that the price of electricity was higher in Norway or that the alleged difficulty in access to raw material had an impact on normal value in Norway. These claims were therefore rejected.

(22) It was found, however, that the types of FeSi sold by Norwegian producers in Norway were different to those exported from the PRC to the Community, insofar as purity is concerned. It was therefore considered that an adjustment was warranted, as explained in recital 25 below.

(23) In the absence of any other comments concerning the analogue country, recitals 32 to 36 of the provisional Regulation are hereby confirmed.

3.3.2. *Methodology applied for the determination of normal value*

(24) In the absence of any comments concerning the methodology applied for the determination of normal value, recitals 37 to 47 of the provisional Regulation are hereby confirmed.

3.3.3. *Determination of normal value*

A. **PRC**

(25) One Chinese exporting producer which did not obtain MET claimed that the normal value was incorrectly calculated as it did not reflect the differences in the various types of the product concerned sold in Norway and the like product exported from the PRC. Having examined this claim, it was considered appropriate to recalculate the normal value to take into account the differences in physical characteristics between product types sold on the Norwegian domestic market and those exported from the PRC to the Community. Normal value was calculated on a product type basis with adjustments for the titanium impurity and FeSi contents in case of product types which could not be matched directly.

(26) The one Chinese exporting producer which was granted MET is part of a very large Chinese group comprising almost one hundred related companies operating in various industrial sectors. Because of the complex structure of the group and the operations of consolidation which concerned companies involved in the production and the sale of FeSi, updated data concerning the group was further requested and examined. Moreover, it had been foreseen in recital 49 of the provisional Regulation that the costs associated with the production and sale of electricity would be further investigated.

(27) The additional investigation showed that the exporting producer's purchase price of electricity from a related supplier had to be rejected as it did not allow for the recovery of all the costs incurred in producing the electricity. Further, the selling, general and administrative (SG&A) costs of the exporting producer were adjusted to take account of the full amount of financial costs associated with the production of the product concerned. Indeed, the investigation showed that some of these costs were borne by related parties and had not been taken into account in the calculation of the provisional normal value.

(28) Having made the above adjustments to costs in accordance with Article 2(5) of the basic Regulation, it was found that the domestic sales prices of all types of the product concerned that were sold for export to the Community were unprofitable. As a result, the normal value for the company had to be constructed. The normal value was constructed on the basis of the company's own cost of manufacturing plus amounts for adjusted SG&A costs as described above. In regard to profit, in the absence of profitable transactions of the company and lack of possibility of using profits for the same general category of products of other Chinese exporting producers, a profit margin of 5 % was applied for the construction of normal value in accordance with Article 2(6)(c) of the basic Regulation. This margin is in line with that used in constructing normal value for the exporting producer in the former Yugoslav Republic of Macedonia as stated in recital 45 of the provisional Regulation. No information was provided that this amount of profit would exceed the profit normally realised by other exporters or producers on sales of products of the same general category on the Chinese market.

B. **EGYPT**

(29) Following the imposition of provisional measures, one of the Egyptian exporting producers claimed that, when determining the normal value based on constructed value, a lower profit margin should be used in line with that used for the exporting producer in former Yugoslav Republic of Macedonia.

(30) It should be noted that constructed normal values were established in line with the methodology set out in recitals 43 to 45 of the provisional Regulation. The profit margin used reflects the market situation in Egypt and has been applied in accordance with the requirements of the introductory words of Article 2(6) of the basic Regulation. Hence, the margin applied was based on the exporting producer's own actual profitable domestic sales, in the ordinary course of trade, of the like product during the IP. The basic Regulation does not provide that this profit level be substituted by another level as suggested by the company concerned. Consequently, this claim had to be rejected.

C. **KAZAKHSTAN**

(31) In the absence of any comments concerning the determination of normal value for Kazakhstan, recital 51 of the provisional Regulation is hereby confirmed.

D. **THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

(32) In the absence of any comments concerning the determination of normal value for the former Yugoslav Republic of Macedonia, recital 52 of the provisional Regulation is hereby confirmed.

E. **RUSSIA**

(33) Following the provisional disclosure, one Russian exporting producer claimed that the exchange rates applied in the calculation of normal value did not correspond to the actual timing of sales. After verification it was found that the claim was justified, and the calculation was amended accordingly.

(34) Following the provisional disclosure, one Russian exporting producer contested the adjustment of its energy costs by arguing that the prices of energy set by the Russian authorities are not compulsory but rather indicative. This was demonstrated by the company's claim that they paid above the recommended price and that its electricity supplier was profitable. The company also argued that the electricity supplier is one of the few independent electricity suppliers in Russia that does not belong to the United Electricity System of Russia and therefore this supplier is not involved in any cross-subsidisation practices highlighted in the OECD report which is referred to in the provisional Regulation.

(35) In the light of the substantiated arguments submitted by the company concerning electricity, it is considered that an energy cost adjustment should not be made in the definitive calculation of its normal value.

3.4. **Export price**

A. **PRC**

(36) Following the provisional disclosure, one Chinese exporting producer pointed out that in calculating its export price, the exchange rate that was applied between the RMB and the euro was that at the end of the IP, which overstated the value of the exchange rate. The company suggested using the IP average exchange rate instead. Having examined this claim, in the definitive calculation, it has been decided that the average exchange rate of the month during which the actual sale transactions took place should be used.

(37) In the absence of any other comments concerning Chinese export prices, recitals 55 to 56 of the provisional Regulation are hereby confirmed.

B. **EGYPT**

(38) Following the imposition of provisional measures, one of the Egyptian exporting producers claimed that there were some errors in the exchange rates applied for export transactions to the Community and also in the determination of the weighted average net export value for some types of the product concerned. It was found that these claims were justified and the export prices were revised accordingly.

C. **KAZAKHSTAN**

(39) In the absence of any comments concerning Kazakh export prices, recital 58 of the provisional Regulation is hereby confirmed.

D. **THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

(40) In the absence of any comments concerning export prices for the former Yugoslav Republic of Macedonia, recital 59 of the provisional Regulation is hereby confirmed.

E. **RUSSIA**

(41) Following the provisional disclosure, one Russian exporting producer claimed that the profit margin of its related importer in the EC used in constructing the export price in accordance with Article 2(9) of the basic Regulation was overstated. It is recalled that the profit used in constructing the export price at the provisional stage was that of the related importer concerned. However, in line with the institutions' consistent practice, the amount of profit to be used should be based on that achieved by unrelated importers. In these circumstances, the profit margin used at the provisional stage had to be corrected. The effect of this change was to slightly increase the profit used contrary to the claim of the company that the profit level was overstated.

(42) Following the provisional disclosure, another Russian exporting producer claimed that the provisional calculation of its export price was incorrect as the SG&A and profit of its related trading company based in the British Virgin Islands, as well as transport costs, were deducted from the price to the first independent customer to arrive at ex-factory level. The company claimed that the trading company is, in fact, the sales department of the manufacturer. Both companies are

under common control and perform complementary tasks which would normally fall under the responsibility of a single management structure. Additionally, it was stressed that the trading company does not handle any other product. On this basis, the company claimed that excessive deductions were made in establishing the ex-factory price. In this regard, it was found that invoices were issued by the trading company to customers in the Community and payments were received by the trading company from the customers in the Community. Furthermore, it is to be noted that the sales made by the related trader included a markup. Also, the financial accounts of the trader showed that it bore selling, general and administrative costs. The company did not demonstrate that these costs were not incurred in selling, inter alia, the product concerned to the Community. On this basis, the company's claim was rejected. Similar to the adjustment mentioned in the preceding recital concerning the level of profit used in constructing the export price for the other Russian exporting producer, the profit margin used at the provisional stage had to be corrected. The effect of this change was to slightly reduce the profit used.

3.5. **Comparison**

3.5.1. *Import charges*

(43) Following the imposition of provisional measures, one of the Egyptian exporting producers argued that it should be granted an allowance for the payment of customs duties on imported raw materials used in producing the product concerned that was sold on the domestic market.

(44) In reply to this, it should be recalled that pursuant to Article 2(10)(b) of the basic Regulation, an adjustment shall be made for an amount corresponding to any import charges or indirect taxes borne by the like product and by materials physically incorporated therein, when intended for consumption in the exporting country and not collected or refunded in respect of the product concerned exported to the EC.

(45) The claim for an allowance for import charges for one raw material used for the production of the product concerned sold on the domestic market was accepted, since it was demonstrated that appropriate customs duties were paid for the raw material imported and physically incorporated in the product concerned sold in Egypt. However, the claim for an allowance relating to two other imported raw materials had to be rejected, since the investigation revealed that, during the IP, all such imports were used for exports of the product concerned. The company did not demonstrate that during the IP it had paid import duties which were not subsequently reimbursed and consequently borne by the like product when sold on the domestic market.

3.5.2. *Level of trade*

(46) One of the Egyptian exporting producers made a claim for a level of trade adjustment based on an alleged difference between sales on the domestic market and on the export market. The company claimed that sales on the domestic market were all made to end-users while sales to the Community were made to distributors. The company provided information and claimed that a special adjustment should be made under Article 2(10)(d)(ii) of the basic Regulation.

(47) In this regard, it should be noted that a claim for a level of trade adjustment, pursuant to Article 2(10)(d)(i) of the basic Regulation, can only be considered where it is demonstrated that there exist consistent and distinct differences in functions and prices for the different levels of trade in the domestic market.

(48) In the present case, following the provisional disclosure, it was confirmed that all domestic sales in Egypt were made to end-users. In accordance with Article 2(10)(d)(i) of the basic Regulation, a difference in level of trade between domestic and export sales could not be quantified because of the absence of the relevant different levels of trade on the domestic market in Egypt.

(49) As regards the company's export sales to the Community, it is confirmed, having analysed the comments of the company following the provisional disclosure that all sales were made to distributors. In accordance with the provisions of Article 2(10)(d)(ii) of the basic Regulation, it was examined whether there were grounds for making a special adjustment for a level of trade as claimed by the company on the basis of its own data.

(50) It was considered, however, that the data provided by the company did not provide an appropriate basis for quantifying any special adjustment. Given that Article 2(10)(d)(i) of the basic Regulation provides that 'the amount of the adjustment shall be based on the market value of the difference' it was considered that, if it could be shown that there was a price difference on the Community market for sales to different types of customers, this could be deemed an appropriate basis to quantify the market value of the difference equally under Article 2(10)(d)(ii) of the basic Regulation. In this regard, the information received from various interested parties in the Community in relation to their sales to different types of customers was examined. It was found that differences existed in prices on the Community market when sold by the Community industry to different types of customers (in this case, sales prices to end-users and to distributors were examined). It was considered that a special adjustment equivalent to the said difference in prices should therefore be made to the Egyptian exporter's normal value.

(51) Following the final disclosure of the facts and considerations on the basis of which it was intended to recommend the imposition of definitive measures, one Russian exporter claimed that to not grant it a claimed level of trade adjustment was discriminatory as one of the Egyptian exporters had been granted a similar adjustment. In the case of the Russian exporter's claim, it was found that there was no justification for such an adjustment. On the basis of verified data provided by the company, there was no consistent price difference in prices for sales of FeSi to the different levels of trade on the Russian market. On this basis, no adjustment was warranted under Article 2(10)(d)(i) of the basic Regulation.

(52) With the exception of the adjustment mentioned in recital 50 above, recitals 61 to 63 of the provisional Regulation are hereby confirmed.

3.6. **Dumping margins**

3.6.1. *General Methodology*

(53) Further analysis after the provisional stage proved that the level of cooperation from Russia had been incorrectly estimated. In fact, while the cooperation was around 100 %, it was wrongly estimated to be 32 % (see recital 76 of the provisional Regulation). Therefore, the residual dumping margin should be set at the level of the company with the highest dumping margin (rather than on the methodology used at provisional stage, i.e. the weighted average dumping margin of the most representative product type with the highest dumping margin).

(54) In the absence of any other comments concerning the general methodology of the dumping margin calculation, recitals 64 to 68 (except for the change described in recital 46 above) of the provisional Regulation are hereby confirmed.

3.6.2. *Dumping margins*

A. **PRC**

(55) For the companies granted MET or IT, the weighted average normal value of each type of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for in Article 2(11) and (12) of the basic Regulation.

(56) On this basis, the definitive dumping margins expressed as a percentage of the cif Community frontier price, duty unpaid, are:

— Erdos Xijin Kuangye Co., Ltd 15,6 %,

— Lanzhou Good Land Ferroalloy Factory Co., Ltd 29,0 %.

(57) The basis for establishing the countrywide dumping margin was set out in recital 71 of the provisional Regulation. In light of the changes to Chinese normal values and export prices as set out above, the countrywide margin has also been adjusted and should be now set at 55,6 % of the cif Community frontier price, duty unpaid.

B. **EGYPT**

(58) Following the imposition of provisional measures, one of the Egyptian companies complained about the method of calculation of the anti-dumping duty without elaborating any further. In reply to this, it should be noted that the company did not substantiate its comments. Consequently, the claim had to be rejected.

(59) The definitive dumping margins, expressed as a percentage of the cif import price at the Community border, duty unpaid, are the following:

— The Egyptian Ferroalloys Company, Cairo 15,4 %,

— Egyptian Chemical Industries KIMA, Cairo 24,8 %,

— All others 24,8 %.

C. **KAZAKHSTAN**

(60) In the absence of cooperation, only a countrywide dumping margin was established. The definitive dumping margin, expressed as a percentage of the cif import price at the Community border, duty unpaid, is set at 37,1 %.

D. **THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

(61) The cooperating exporting producer is the only known FeSi producer in the former Yugoslav Republic of Macedonia. The definitive dumping margins, expressed as a percentage of the cif import price at the Community border duty unpaid, are the following:

— SILMAK DOOEL Export Import, Jegunovce 5,4 %,

— All others 5,4 %.

E. **RUSSIA**

(62) The two cooperating Russian exporting producers are the only known FeSi producers in Russia. The definitive dumping margins, expressed as a percentage of the cif import price at the Community border, duty unpaid, are the following:

— Chemk Group (Chelyabinsk Electrometallurgical Integrated Plant and Kutznetsk Ferroalloy Works), Chelyabinsk and Novokuznetsk 22,7 %,

— ICT Group of Companies (Bratsk Ferroalloy Plant, TD North West Ferro Alloy Company and Bakersfield Marketing Ltd), Bratsk and Saint Petersburg 17,8 %,

— All others 22,7 %,

4. INJURY

4.1. **Definition of the Community industry**

(63) Certain interested parties claimed that the injury assessment should not be made on an aggregate basis but on a company-by-company basis, in view of alleged divergent injury trends between the different Community producers.

(64) Pursuant to Article 3(5) of the basic Regulation the examination of injury shall include an evaluation of the relevant factors having a bearing on the Community industry. The term 'Community industry' is defined in Article 4 of the basic Regulation as Community producers as a whole of the like products or those whose collective output represents a major proportion of the total Community production. From the above it is clear that the determination of injury shall be conducted at the level of the Community industry examined as a whole, rather than on the individual situation of each Community producer in isolation.

(65) On the basis of the above, the claims were rejected and recitals 78 to 80 of the provisional Regulation are hereby confirmed.

4.2. **Community consumption**

(66) One interested party claimed that the Commission did not provide in its provisional Regulation essential information for its injury analysis, such as a monthly breakdown of demand of FeSi, price development on the EU market, including Community industry price and cost developments.

(67) The basic Regulation does not require Community producers or other interested parties to provide data for the period considered on a monthly basis. It is considered that this would be unduly burdensome for all interested parties and it is common practice to request data on a yearly basis for the investigation of dumping and injury. In addition, the party did not provide any evidence demonstrating that a monthly analysis was necessary in the current case to assess injury. In fact, the tables provided in recitals 81, 85, 96 and 97 of the provisional Regulation reflect adequately the Community consumption, prices on the Community market, profit and thus the cost development of the Community industry during the period considered. Therefore, this claim had to be rejected.

4.3. **Imports into the Community from the countries concerned**

(68) One interested party claimed that imports from Russia should not be cumulated with those from the PRC for the purpose of the injury assessment since these imports allegedly did not operate under similar conditions of competition on the Community market. In particular, it claimed that (i) the majority of Chinese exporting producers operate under non-market economy conditions, (ii) the Russian companies sell through related companies whereas the Chinese exporting producers sell directly to independent customers, (iii) the dumping and undercutting margins for Chinese companies are significantly higher than those of the Russian companies and that (iv) Chinese exporting producers have been increasingly penetrating the EU market in the first six months of 2006 being 50 % higher than Russian exporting producers.

(69) Regarding the first claim, the fact that the majority of Chinese exporting producers operate under non-market economy conditions is not one of the reasons for decumulation foreseen in Article 3(4) of the basic Regulation. The fact whether or not the product concerned is produced under market economy conditions in the domestic market is therefore not relevant for deciding on the cumulation of imports.

(70) As to the second claim concerning the alleged difference in sales channels, it is noted that, even though the Russian exporting producers were using related traders, the like products imported both from the PRC and Russia are sold to the same type of end-customers in the Community, namely to users and distributors.

(71) As to third claim regarding the dumping and undercutting margins, it is noted that for both countries dumping margins have been established above *de minimis* levels as required by Article 3(4)(a) of the basic Regulation and that for both countries undercutting was found to exist.

(72) Regarding the last claim on import volumes, it is noted that the volumes imported from Russia (and the PRC) were not negligible as required by Article 3(4)(a) of the basic Regulation as they reached a market share of 18 % and 21 %, respectively, during the IP.

(73) For all these reasons, a decumulation of imports from Russia is not warranted and the claim is rejected.

(74) Another interested party claimed that the Commission did not analyse the conditions of competition between the products imported from the countries concerned and submitted that the effects of the dumped Egyptian imports on the situation of the Community industry should, therefore, be assessed separately.

(75) As suggested in recitals 83 and 89 of the provisional Regulation, the conditions of competition between the imported products regarding the likeness of the product and the similarity of the exporters' behaviour (i.e. the significance of the import volume level, the development and level of the price of imports and their undercutting of prices of the Community industry and the similarity of sales channels) were analysed. It was thereby found that the conditions justifying the cumulative assessment of imports from the countries concerned were met. On this basis, this claim had to be rejected and recital 84 of the provisional Regulation is confirmed.

(76) One Egyptian exporting producer also claimed that its limited export volume during the IP had not caused injury to the Community industry and that thus its situation should be assessed separately. In this regard, it is noted that pursuant to Article 3(4) of the basic Regulation the effect of dumped imports on the situation of the Community industry shall be cumulatively assessed if, amongst others, the volume of imports from each country subject to the investigation is not negligible. Since imports from Egypt were found to have reached a market share of 3,7 % during the IP, they were not negligible within the meaning of Article 5(7) of the basic Regulation. Therefore, this claim had to be rejected.

(77) In the absence of any other comments in this regard, recitals 82 to 89 of the provisional Regulation are hereby confirmed.

4.4. **Price undercutting**

(78) One interested party claimed that the undercutting margins found in the provisional Regulation should be reduced by 3 % to 5 % in order to reflect 'locally sourced' FeSi, since the steel producer in the Community would allegedly pay a premium for locally (EU)-sourced material reflecting reliability, quality and timing of supply.

(79) Recitals 38 and 87 to 89 of the provisional Regulation explain the basis for the comparison of the prices charged by the Community industry with those charged by the exporters concerned. The comparison took account of the various qualities of the product concerned as defined in recital 13 of the provisional Regulation. Moreover, as regards reliability and timing of supply, the investigation did not reveal that the payment of any such premium was taking place or that this potential competitive advantage was included in the price charged by the Community industry to steel producers. Finally, the interested party did not provide any evidence to substantiate its claim which therefore had to be rejected.

4.5. **Situation of the Community Industry**

(80) Certain interested parties questioned the methodology used in recital 93 of the provisional Regulation to calculate the production capacity of the Community industry. In particular, they suggested applying a capacity figure taking into account closures for maintenance and electricity cuts, instead of the 'theoretical nominal capacity' as used in the provisional Regulation.

(81) The investigation has shown that any closures of the Community industry machinery for maintenance or electricity cuts were of a temporary nature and that these did not occur on a regular basis within the period considered. It is worth noting that, even if adjustments were to be made to production capacity, as suggested by these interested parties, the trends concerning the production capacity and of the capacity utilisation would remain unchanged. The conclusions reached on the existence of material injury suffered by the Community industry would also remain the same. Consequently, the claim to apply a different definition of production capacity has to be rejected.

(82) Based on the above facts and considerations, the conclusion that the Community industry suffered material injury, in recitals 107 to 110 of the provisional Regulation are hereby confirmed.

5. CAUSATION

(83) Certain interested parties claimed that the assessment of the causal link between the injury suffered by the Community industry and the dumped imports should not be made on an aggregate basis but on a company-by-company basis, in view of alleged divergent causation factors between the different Community producers.

(84) As already noted in recital 64 above concerning injury, there is no legal ground in Article 3(5), 3(6) and 3(7) of the basic Regulation suggesting that causation should be assessed on the basis of individual Community producers included in the definition of the Community industry. The latter is defined in Article 4 of the basic Regulation as Community producers as a whole of the like products or those whose collective output represents a major proportion of the total Community production.

5.1. **Effect of dumped imports**

(85) It is recalled that the dumped imports volume from the countries concerned and market share increased significantly during the period considered. There was also a clear coincidence in time between the surge of dumped imports and the deterioration of the economic situation of the Community industry. That industry was not able to increase its sales prices to the necessary level to cover its full costs, as its prices were undercut during the IP by dumped imports.

(86) On that basis, the findings and the conclusions reached in recitals 112 to 114 of the provisional Regulation are confirmed.

5.2. **Price setting of ferro-silicon**

(87) Certain interested parties claimed that FeSi is a commodity traded on the global market and that market prices for FeSi were set by fluctuating demand of the steel industry and were not cost-based.

(88) In market economies and in normal market conditions, the prices are generally set by the levels of the demand and the offer for a certain product in the market. However, there might be other factors such as the presence of low-priced dumped imports, which are playing a major role in the level of the prices. In the current case, the investigation showed that indeed the price setting mechanisms for FeSi were influenced by the presence of significant quantities of dumped imports. While it is certainly true that global demand for FeSi, in particular from the steel industry, influenced the price setting in certain parts of the period considered, the information available has shown that there were periods in which FeSi contractual prices decreased despite the growing demand.

(89) The same interested parties provided information showing the development of EU crude and stainless steel production and EU FeSi spot prices from 2002 onwards. From this data the interested parties drew the conclusion that FeSi prices could only have been driven by demand (primarily from steel producers). However, the analysis of this information confirmed the conclusion reached in recital 88, namely that even on the Community level, FeSi prices were in certain periods decreasing despite an increasing demand from the steel industry.

(90) Therefore, the claim that the low level of FeSi prices was determined by demand and not by the dumped imports has to be rejected.

5.3. **Competitiveness of the Community industry**

(91) One interested party claimed that the injury suffered by the Community industry had to be attributed solely to the alleged lack of competitiveness of the Community producers and not to the dumped imports. In particular, this interested party cited a working document [1] where raw materials and energy were cited as the most important competitiveness factors for the EU metals industry.

(92) The analysis of the aforementioned working document showed, however, that no conclusion is drawn in the text which refers to any lack of competitiveness of the European ferro-alloys industry. On the contrary, this working document indicates that the ferro-alloy producers 'are facing growing imports from third countries e.g. the PRC, Russia, Ukraine, Brazil and Kazakhstan. This might become a threat to the long-term sustainability of the EU Ferro-alloys industry if a level playing field with third country competitors is not rapidly ensured [2]'. On the basis of the above, the claim was rejected.

(93) The same interested party further argued that most of the Community producers were already unprofitable before any injurious dumping took place in the Community market. Therefore, it would not be the dumped imports but vulnerable costs structures that have caused the weak economic situation of the Community industry.

(94) As it is clearly demonstrated in recital 97 of the provisional Regulation, the Community industry was profitable in 2003 with a pre-tax profit margin of 2,3 %, which increased to 2,7 % in 2004. In 2005, however, a significant downwards trend in profitability took place and losses reached – 9,2 % of turnover. The highest losses of – 12,9 % were incurred during the IP. In this context, it is recalled that part of 2005 is covered by the IP. Consequently, the argument that the Community industry was already unprofitable before any injurious dumping took place has to be rejected.

5.4. **Imports from other third countries**

(95) With regard to imports form other third countries, in the absence of any new comments, the conclusion reached in recital 121 of the provisional Regulation that these imports have not materially contributed to the injury suffered by the Community industry is confirmed.

[1] Commission Staff Working Document, Analysis of economic indicators of the EU metals industry: the impact of raw materials and energy supply on competitiveness, Brussels 2.8.2006, SEC(2006) 1069.

[2] Ibid. p. 88.

5.5. **Effects of further factors**

5.5.1. *Comments by the interested parties*

(96) Various interested parties reiterated the claims put forward before the imposition of the provisional measures, that the material injury suffered by the Community industry was allegedly caused by factors other than the dumped imports. These claims were already duly addressed in the provisional Regulation. More specifically, the claims referring to alleged self-inflicted material injury were addressed in recitals 134 to 136 of the provisional Regulation and the claims concerning the downturn in steel demand were addressed in recital 124 of the provisional Regulation. Even though no new elements were provided to support these claims, the main findings and conclusions set out in the provisional Regulation are further clarified below.

5.5.1.1. **Increase in costs of production of the Community industry**

(97) Several interested parties claimed that the sharp increase in costs, in particular raw materials and electricity, suffered by the Community industry and the reduction in production capacity of one Community producer have caused the material injury found during the IP.

(98) With regard to the alleged reduction in production capacity of one Community producer, it is recalled that an adjustment to capacity was made as mentioned in recital 93 of the provisional Regulation to take full account of this particular situation.

(99) With regard to cost increases, the Community industry alleged that cost increases observed in the alloy industry usually occur on a worldwide scale thereby affecting equally the worldwide industry. An analysis of the price development of major cost items over the period considered shows that costs have increased (electricity, quartzite and electrode paste). However, the investigation has shown that even if these increases were partly compensated by sale price increases the presence of low-priced dumped imports did not allow the Community industry to pass on the full effect of its increases in costs in its sales price. Recitals 131 to 140 of the provisional Regulation are therefore confirmed.

(100) Several interested parties argued that one specific Community producer had problems with its electricity supplier leading to reduced production quantities in 2005 and 2006. They argued that this fully explained the decrease in production and sales volume by the Community industry and the loss in profitability.

(101) As already mentioned in recital 84 above, the cause of the injury suffered shall be analysed at the level of the Community industry as a whole. However, for the sake of argument, even if the data pertaining to this producer could be excluded from the injury assessment, the trends observed for the remainder of the Community industry would remain highly negative and continue to show material injury. Therefore this claim had to be rejected.

5.5.2. *Conclusion on causation*

(102) Given the above analysis which has properly distinguished and separated the effects of all other known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that the material injury assessed must be attributed to the dumped imports.

(103) Given the above, it is concluded that the dumped imports of FeSi originating in the PRC, Kazakhstan, Egypt, the former Yugoslav Republic of Macedonia and Russia have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

(104) In the absence of other comments in this respect, the conclusions in recitals 137 to 140 of the provisional Regulation are hereby confirmed.

6. COMMUNITY INTEREST

6.1. **Interest of the Community industry and of the other Community producer**

(105) Certain interested parties argued that the market of FeSi has recovered since the end of the IP and that prices have allegedly reached record levels. The Community industry could thus resume production and increase its profitability without the need to impose any anti-dumping measures. In addition, it was also alleged that only exporting producers located in third countries not concerned by anti-dumping measures would be the beneficiary from the imposition of measures rather than the Community industry.

(106) According to Article 6(1) of the basic Regulation, information relating to a period subsequent to the IP shall normally not be taken into account to reach a finding. In any event, while the information available shows that FeSi prices have indeed followed an upward trend in the months following the IP, the prices for major cost inputs of FeSi have also increased in the same period. On this basis, it cannot be concluded that the Community industry has recovered to the extent that the imposition of measures would not be warranted. This argument had therefore to be rejected.

(107) With regard to the argument that only exporting producers located in third countries not concerned by anti-dumping measures would in fact be the beneficiary from the imposition of measures rather than the Community industry, it is recalled that the aim of anti-dumping measures is to correct the trade distorting effects of dumping and restore effective competition on the Community market. On the one hand, the imports from the countries concerned will therefore not be prevented from entering the Community market where effective competition will prevail for the benefit of all operators. Likewise, the Community industry will reap the benefits of the restoration of effective competition on the Community market. On that basis, it is considered that the argument is unfounded and must therefore be rejected.

(108) In the absence of any other comments in this particular regard, the findings set out in recitals 143 to 149 of the provisional Regulation are hereby confirmed.

6.2. **Interest of the suppliers of raw materials**

(109) In the absence of comments from suppliers, following the disclosure of provisional findings, recitals 150 to 152 of the provisional Regulation are hereby confirmed.

6.3. **Interest of the importers**

(110) One interested party importing FeSi from the PRC and delivering it mainly to foundries alleged that the imposition of any anti-dumping measures will have serious negative effects on the iron casting industry resulting in the closing down of undertakings in such industry and consequently in job losses in the Community market.

(111) However, as outlined in recital 115 below, despite a very limited cooperation from foundries, the further investigation carried out after the imposition of provisional measures showed that the imposition of measures is not likely to have a significantly negative effect on foundries. Therefore, this claim had to be rejected.

(112) In the absence of any other comments in this particular regard, the findings set out in recitals 153 to 158 of the provisional Regulation are hereby confirmed.

6.4. **Interest of users**

(113) As outlined in recitals 3 to 5 above, the possible effect of provisional measures on the situation of the user industries, in particular foundries and steel producers, was further examined. Although more than 500 questionnaires were sent to interested parties, their cooperation, as explained in recital 5 above, was very poor.

(114) The additional analysis concentrated on the two main groups of users, namely steel producers and foundries. Based on additional information received, it was confirmed that on average FeSi accounts for approximately 0,7 % of the cost of production of steel producers. For foundries, this share was found to be higher (1,4 % of the cost of production).

(115) On that basis, and taking into account that the average definitive duty rate is 23,4 %, the impact of measures on the steel and the foundry industry is not expected to be significant as it will effect at maximum their financial results by 0,16 % and 0,33 %, respectively. This worst case scenario situation should be seen in the light of the beneficial effects the correction of the trade distortion will have on the Community market overall. Moreover, if the fact that imports from the countries concerned account for about 50 % of Community consumption is factored into this analysis, then the effect of the measures to the financial results of the user industries would indeed be significantly lower.

(116) Given the above, recital 166 of the provisional Regulation is hereby confirmed.

6.5. **Previous proceedings**

(117) Several interested parties claimed that because the anti-dumping measures imposed in the past allegedly did not have the expected remedial effect on the Community industry, the institutions decided to let the anti-dumping measures lapse in 2001, see recital 129 of Commission Decision 2001/230/EC of 21 February 2001 terminating the anti-dumping proceeding concerning imports of ferro-silicon originating in Brazil, the People's Republic of China, Kazakhstan, Russia, Ukraine and Venezuela [1].

(118) Without commenting on the correctness of the above claim, the basic Regulation requires that decisions are taken on the basis of the information gathered and analysed during the relevant investigation and not on the basis of previous investigations. The above assumption made by these interested parties is therefore not relevant in the present case and must be rejected.

6.6. **Conclusion on Community interest**

(119) Given the results of the further investigation of the Community interest aspects of the case described above, the findings and conclusions contained in recitals 141 to 168 of the provisional Regulation are hereby confirmed.

[1] OJ L 84, 23.3.2001, p. 36.

7. DEFINITIVE ANTI-DUMPING MEASURES

7.1. **Injury elimination level**

(120) Several interested parties contested the provisional finding that a profit margin of 5 % would be the profit margin that could reasonably be achieved by an industry of this type in the sector under normal conditions of competition.

(121) One interested party claimed that the profit margin for the Community industry used for the determination of the injury elimination level should be set at the level of the profit realised by the Community industry in the year 2003, i.e. 2,3 %, and in no case more than that of the year 2004 which was an exceptionally prosperous year for the alloy sector.

(122) The determination of the injury elimination level has to be based on an evaluation of the level of the profit margin which the Community industry can reasonably expect to achieve in the absence of dumped imports, on the sales of the like product on the Community market. The profit margin realised at the beginning of the period considered in a given investigation may be considered as the profit realised in the absence of dumped imports. However, it is also recalled that during the expiry review investigation which led to the termination of the anti-dumping measures applicable to imports of FeSi originating in Brazil, the PRC, Kazakhstan, Russia, Ukraine and Venezuela the profits realised by the Community industry in the absence of dumped imports reached levels up to 11,2 %, see recital 105 of Commission Decision 2001/230/EC. Accordingly, the applied target profit of 5 % used in the present investigation as explained in recital 171 of the provisional Regulation reflects a rather conservative approach. On the basis of the above, the claim had to be rejected.

(123) In the absence of any other comments concerning the injury elimination level, recitals 169 to 171 of the provisional Regulation are hereby confirmed.

7.2. **Form and level of the duties**

(124) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level sufficient to eliminate the injury caused by the dumped imports without exceeding the dumping margin found.

(125) In view of the comments received by certain interested parties following the provisional disclosure and in view of the revisions described in this Regulation, certain margins have been amended.

(126) The rate of the definitive duties are definitively set as follows:

Country	Company	Injury elimination margin	Dumping margin	Anti-dumping duty rate
PRC	Erdos Xijin Kuang Co., Ltd., Qipanjing Industry Park	21,4 %	15,6 %	15,6 %
	Lanzhou Good Land Ferroalloy Factory Co., Ltd., Xicha Village	31,4 %	29,0 %	29,0 %
	All other companies	31,2 %	55,6 %	31,2 %
Russia	Chelyabinsk Electrometallurgical Integrated Plant, Chelyabinsk and Kuznetsk Ferroalloy Works, Novokuznetsk	31,3 %	22,7 %	22,7 %
	Bratsk Ferroalloy Plant, Bratsk	18,8 %	17,8 %	17,8 %
	all other companies	31,3 %	22,7 %	22,7 %
Egypt	The Egyptian Ferroalloys Company, Cairo	27,1 %	15,4 %	15,4 %
	Egyptian Chemical Industries KIMA, Cairo	18,0 %	24,8 %	18,0 %
	all other companies	18,0 %	24,8 %	18,0 %

Country	Company	Injury elimination margin	Dumping margin	Anti-dumping duty rate
Kazakhstan	All companies	33,9 %	37,1 %	33,9 %
The former Yugoslav Republic of Macedonia	All companies	19,0 %	5,4 %	5,4 %

(127) Some interested parties proposed to impose a minimum import price instead of an *ad valorem* duty. However, it was considered that the imposition of a minimum import price was not appropriate in this case. It was found that FeSi is imported in a wide range of different types with significantly different price levels. In addition, all cooperating exporters have different duty levels (some based on dumping margins, some on the injury margins) requiring a multitude of different minimum import prices. The imposition of a minimum import price would, in these circumstances, be a highly inefficient measure. This proposal was therefore rejected.

(128) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the countries concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(129) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

7.3. **Undertakings**

(130) The undertaking offered by the exporting producer in the former Yugoslav Republic of Macedonia was accepted at the provisional stage by the provisional Regulation. Following the disclosure of the definitive findings, one exporting producer in Egypt, the two cooperating producers in Russia and one Chinese exporter offered price undertakings in accordance with Article 8(1) of the basic Regulation.

(131) It is noted, however, that since the imposition of the provisional measures the product concerned and the like product have shown a considerable volatility in prices and therefore FeSi is not considered anymore suitable for a fixed price undertaking. In order to overcome this problem, the possibility to index the minimum import price to the price of the main cost input was examined. It was concluded, however, that the volatility in prices on the market cannot be merely explained by an increase in the price of the main cost input, thus it is not possible to index the minimum import prices to the price of the main cost input. On the basis of the above, it was concluded that the undertakings offered by the exporters cannot be accepted.

(132) In examining whether or not the four undertakings offered following the disclosure of the definitive findings should be accepted, the Commission also examined the workability of the undertaking accepted at provisional stage from the exporting producer in the former Yugoslav Republic of Macedonia under the changed circumstances of price volatility. Due to the above described high volatility of the price, the minimum import price of the undertaking is no longer sufficient to eliminate the injurious effect of dumping as established by the investigation. Indeed, prices have considerably increased in the months following the acceptance of the undertaking. Given the fact that the minimum import price cannot be indexed, it was concluded that the undertaking in its current form, namely with fixed minimum prices is not workable any longer. Thus the acceptance of the undertaking offered by the exporting producer in the former Yugoslav Republic of Macedonia should be withdrawn. In this regard, the Commission withdrew its acceptance of the undertaking by Commission Regulation (EC) No 174/2008 [2].

[1] European Commission, Directorate-General for Trade, Directorate H, Office J-79 4/23, B-1049 Brussels, Belgium.

[2] See page 23 of this Official Journal

7.4. **Definitive collection of provisional duties and special monitoring**

(133) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation should be definitively collected to the extent of the amount of the definitive duties imposed. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitely collected.

(134) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures, which only apply to companies for which an individual duty rate is introduced, include the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.

(135) It is recalled that should the exports by the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the anti-dumping measures, such increase could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a countrywide duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ferro-silicon falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90 and originating in the People's Republic of China, Kazakhstan, Egypt, the former Yugoslav Republic of Macedonia and Russia.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products manufactured by the companies listed below shall be as follows:

Country	Company	AD duty rate (%)	TARIC additional code
The People's Republic of China	Erdos Xijin Kuangye Co., Ltd., Qipanjing Industry Park	15,6	A829
	Lanzhou Good Land Ferroalloy Factory Co., Ltd, Xicha Village	29,0	A830
	All other companies	31,2	A999
Egypt	The Egyptian Ferroalloys Company, Cairo	15,4	A831
	All other companies	18,0	A999
Kazakhstan	All companies	33,9	—
The former Yugoslav Republic of Macedonia	All companies	5,4	—
Russia	Bratsk Ferroalloy Plant, Bratsk	17,8	A835
	All other companies	22,7	A999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

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

Article 2

Amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EC) No 994/2007 on imports of ferro-silicon falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90 and originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia shall be definitely collected. The amounts secured in excess of the amount of the definitive anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article 3

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

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

Done at Brussels, 25 February 2008.

For the Council
The President
A. VIZJAK

ANNEX

A declaration signed by an official of the company, in the following format must appear on the valid commercial invoice referred to in Article 1(3):

1. the name and function of the official of the company which has issued the commercial invoice.

2. the following declaration 'I, the undersigned, certify that the [volume] of ferro-silicon sold for export to the European Community covered by this invoice was manufactured by (company name and registered seat) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.

   Date and signature'

COMMISSION REGULATION (EC) No 173/2008

of 27 February 2008

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector [1], and in particular Article 138(1) thereof,

Whereas:

(1) Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

(2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 28 February 2008.

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

Done at Brussels, 27 February 2008.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

[1] OJ L 350, 31.12.2007, p. 1.

ANNEX

to Commission Regulation of 27 February 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	JO	69,6
	MA	47,6
	TN	129,8
	TR	92,1
	ZZ	84,8
0707 00 05	JO	190,5
	MA	64,7
	TR	203,0
	ZZ	152,7
0709 90 70	MA	90,3
	TR	142,6
	ZZ	116,5
0709 90 80	EG	54,8
	ZZ	54,8
0805 10 20	AR	69,8
	EG	43,5
	IL	52,7
	MA	49,3
	TN	47,3
	TR	73,3
	ZA	57,8
	ZZ	56,2
0805 20 10	IL	116,5
	MA	113,8
	ZZ	115,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	84,3
	MA	152,0
	PK	48,1
	TR	73,3
	ZZ	89,4
0805 50 10	AR	48,9
	EG	85,4
	IL	90,4
	TR	114,7
	UY	52,4
	ZA	79,7
	ZZ	78,6
0808 10 80	AR	102,3
	CA	86,4
	CL	63,5
	CN	76,6
	MK	42,4
	US	108,6
	UY	89,9
	ZA	106,7
	ZZ	84,6
0808 20 50	AR	89,9
	CL	76,0
	CN	113,3
	US	123,2
	ZA	97,7
	ZZ	100,0

(1) Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 174/2008

of 27 February 2008

amending Commission Regulation (EC) No 994/2007 imposing a provisional anti-dumping duty on imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 8 thereof,

After consulting the Advisory Committee,

Whereas:

(1) On 30 November 2006, the Commission announced, by a notice published in the *Official Journal of the European Union* [2], the initiation of an anti-dumping proceeding with regard to imports into the Community of ferro-silicon (FeSi) originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia.

(2) The Commission, by Regulation (EC) No 994/2007 [3] imposed a provisional anti-dumping duty on imports of FeSi, currently classifiable within CN codes 7202 21 00, 7202 29 10 and 7202 29 90, originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia. The measures applicable to these imports consist of an *ad valorem* duty, except for an exporting producer in the Former Yugoslav Republic of Macedonia from which an undertaking was accepted in the said Regulation.

(3) In the context of the examination on whether the price undertaking continues to be practical, it was found that FeSi prices continued to fluctuate after the imposition of the provisional measures and the acceptance of the undertaking. Overall, it was found that FeSi prices showed a considerable volatility. Due to the above described volatility of the price, it was concluded that the fixed minimum import prices (MIPs) of the undertaking are no longer a valid form of measure in view of the findings made during the investigation.

(4) In order to overcome this problem, the possibility to index the MIPs to the price of the main cost input was examined. It was concluded, however, that the volatility in prices on the market cannot be merely explained by an increase in the price of the main cost input, thus it is not possible to index the minimum import prices. Therefore, it was concluded that the undertaking in its current form, namely with fixed minimum prices is not workable any longer and that the problem posed by the fixed character of the minimum price would not be remedied by means of price indexation. Therefore, it was concluded that FeSi is not considered anymore suitable for a fixed price undertaking (see also recitals 131 and 132 of Council Regulation (EC) No 172/2008 [4]) and that the acceptance of the undertaking offered by the company concerned should be withdrawn.

(5) The company concerned was informed of the Commission's conclusions and given an opportunity to comment.

(6) The company claimed that the Commission's reasoning for the withdrawal of the undertaking contradicts its Community interest analysis whereby it stated in its disclosure to the company that 'while the information available shows that FeSi prices have indeed followed an upward trend in the months following the IP, the prices for major cost inputs of FeSi have also increased in the same period'.

(7) In this respect, it is noted that the above statement, as confirmed in recital 106 of Regulation (EC) No 172/2008, does not establish a correlation between the price evolution of FeSi and the cost of inputs but was intended to explain the economic situation of the Community industry. Indeed, in accordance with the Commission established practice regarding indexation of the MIPs, the MIPs can be indexed only in cases where the price of the product subject to the undertaking varies depending on the main input. In this particular case, the cost of the main input (electricity) did not show a strong correlation with the increase of the price of FeSi. Even if there had been correlation between the prices of FeSi and its main input, in view of the divergent electricity prices on different markets, no suitable source of information regarding electricity prices exists as a basis to index a MIP, contrary to commodity prices for other products such as oil. Moreover, other raw materials such as coke and quartzite also constitute major but variant

[1] OJ L 56, 6.3.1996, p. 1, Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ C 291, 30.11.2006, p. 34.
[3] OJ L 223, 29.8.2007, p. 1.
[4] See page 6 of this Official Journal.

components of the cost of production of FeSi. Therefore, if the MIPs were indexed to the price of each of these inputs, complex indexing formulae would have to be established making the determination of the parameters of indexation and the workability of the undertakings extremely complex. Therefore, it was concluded that it is not possible to index the minimum import prices to the price of the main cost input, thus the company's claim was rejected accordingly.

(8) The company further claimed that it is against the practice of the Commission to change the level or the form of the measure provisionally determined and/or proposed at definitive stage on the basis of information that covers a period which is subsequent to the IP. In accordance with the clauses of the undertaking, the company was made aware that the Commission may withdraw the acceptance of the undertaking at any stage during its implementation due to changed circumstances from those prevailing at the time of acceptance of the undertaking or because the monitoring and enforcement of the undertaking prove to be impractical and a solution which is acceptable to the Commission is not found. On this basis, the claim was rejected.

(9) The company also claimed that the Commission came to a wrong conclusion in its assessment of the effectiveness of the undertaking partially because it used unverified post-IP data. In this respect, it is noted that the Commission followed its regular practice as it primarily used Eurostat data for its analysis as well as the periodic undertaking report submitted by the company. Accordingly, this claim was rejected.

(10) Therefore, in accordance with Article 8(9) of the basic Regulation and also in accordance with the relevant clauses of the undertaking, which authorise the Commission to unilaterally withdraw the acceptance of the undertaking, the Commission has concluded that the acceptance of the undertaking offered by Silmak Dooel Export Import, Jegunovce should be withdrawn.

(11) In parallel to the current Regulation, the Council, by Regulation (EC) No 172/2008, has imposed a definitive anti-dumping duty on imports of ferro-silicon originating, inter alia, in the former Yugoslav Republic of Macedonia, which will be applicable to the imports of these products manufactured by the exporting producer concerned,

HAS ADOPTED THIS REGULATION:

Article 1

The acceptance of the undertaking offered by Silmak Dooel Export Import, Jegunovce in connection with the anti-dumping proceeding concerning imports of ferro-silicon originating, inter alia, in the former Yugoslav Republic of Macedonia is hereby withdrawn.

Article 2

Article 2 of Commission Regulation (EC) No 994/2007 is hereby repealed.

Article 3

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, 27 February 2008.

For the Commission
Peter MANDELSON
Member of the Commission

COMMISSION REGULATION (EC) No 175/2008

of 27 February 2008

on the issue of licences for importing rice under the tariff quota opened for the February 2008 subperiod by Regulation (EC) No 327/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1785/2003 of 29 September 2003 on the common organisation of the market in rice [1],

Having regard to Commission Regulation (EC) No 327/98 of 10 February 1998 opening and providing for the administration of certain tariff quotas for imports of rice and broken rice [2], and in particular the first subparagraph of Article 5 thereof,

Whereas:

(1) Commission Regulation (EC) No 327/98 opens and provides for the administration of certain import tariff quotas for rice and broken rice, broken down by country of origin and split into several subperiods in accordance with Annex IX to that Regulation and Commission Regulation (EC) No 60/2008, which opens a specific subperiod in February 2008 for the import tariff quota for wholly milled and semi-milled rice originating in the United States of America [3].

(2) The February subperiod is the second subperiod in 2008 for the quota with the number 09.4127 provided for under Article 1(1)(a) of Regulation (EC) No 327/98.

(3) The notification sent in accordance with Article 8(a) of Regulation (EC) No 327/98 shows that, for the quota with serial number 09.4127, the applications lodged in the first 10 working days of February 2008 under Article 4(1) of the Regulation cover a quantity less than (or equal to) that available.

(4) The total quantity available for the following subperiod should therefore be fixed for the quota with serial number 09.4127, in accordance with the first subparagraph of Article 5 of Regulation (EC) No 327/98,

HAS ADOPTED THIS REGULATION:

Article 1

The total quantity available under the quota with serial number 09.4127 as referred to in Regulation (EC) No 327/98 for the next subperiod shall be as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day 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, 27 February 2008.

For the Commission
Jean-Luc DEMARTY
Director-General for Agriculture and Rural Development

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[1] OJ L 270, 21.10.2003, p. 96. Regulation as last amended by Regulation (EC) No 797/2006 (OJ L 144, 31.5.2006, p. 1). Regulation (EC) No 1785/2003 is to be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 September 2008.

[2] OJ L 37, 11.2.1998, p. 5. Regulation as amended by Regulation (EC) No 1538/2007 (OJ L 337, 21.12.2007, p. 49).

[3] OJ L 22, 25.1.2008, p. 6.

ANNEX

Quantity to be allocated for the February 2008 subperiod and quantity available for the following subperiod under Regulation (EC) No 327/98

Quota for wholly milled or semi-milled rice falling within CN code 1006 30 provided for in Article 1(1)(a) of Regulation (EC) No 327/98:

Origin	Serial number	Allocation coefficient for February 2008 subperiod	Total quantity available for April 2008 subperiod (kg)
United States of America	09.4127	— [1]	12 365 684

[1] Applications cover quantities less than or equal to the quantities available: all applications are therefore acceptable.

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 13 November 2007

State aid C 39/06 (ex NN 94/05) — First time shareholders scheme implemented by the United Kingdom

(notified under document number C(2007) 5398)

(Only the English version is authentic)

(Text with EEA relevance)

(2008/166/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1], and in particular Article 6(1) and Article 14 thereof,

Having called on interested third parties to submit their comments pursuant to the provisions cited above [2],

Whereas:

I. PROCEDURE

(1) By letter dated 15 June 2004, the Commission was informed by a citizen of the United Kingdom of unlawful aid granted by the Shetland Islands Council, the public authority of the Shetlands Islands of the United Kingdom. By letters dated 24 August 2004, 4 February 2005, 11 May 2005 and 16 December 2005, the Commission requested the United Kingdom to provide information about such aid. The United Kingdom provided the Commission with further information by letters dated 10 December 2004, 6 April 2005, 8 September 2005 and 31 January 2006.

(2) By letter dated 13 September 2006, the Commission informed the United Kingdom of the decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid. The United Kingdom provided its comments on the aid by letter dated 16 October 2006.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 30 November 2006 [3]. The Commission invited any interested parties to submit their comments on the aid. No comments were received.

II. DETAILED DESCRIPTION

(4) The Shetland Islands Council made payments to the fisheries sector under the scope of two general aid measures named 'Aid to the Fish Catching and Processing Industry' and 'Aid to the Fish Farming Industry', which actually consisted of several different types of aid schemes in force since the 1970s. One of these schemes was the 'First time shareholders scheme' (the scheme). Under that scheme, which was

[1] OJ L 83, 27.3.1999, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

[2] OJ C 291, 30.11.2006, p. 5.

[3] OJ C 291, 30.11.2006, p. 5.

in force from 1982 until 14 January 2005, grants could be given as contribution to matching own financial contribution for the purchase of a share in an existing or new fishing vessel. Aid was only granted to persons over 18 years old that did not already own a share in a fishing vessel.

(5) Aid was granted for 50 % of the acquisition costs of the share, with a maximum of GBP 7 500 in case of an existing vessel and GBP 15 000 in case of a new vessel. The other 50 % could only be financed by the beneficiaries own contribution, derived either from his own savings or from a family loan. The amount of aid could never exceed 25 % of the value of the vessel.

(6) The aid was granted subject to the condition that the vessel would be used for full-time fishing for the following five years and that the beneficiary retained his share in the vessel for a period of five years from receipt of the aid.

Grounds for initiating the procedure

(7) The Commission had serious doubts that the aid granted under the scheme for individuals who acquired for the first time a share in a second-hand vessel could to be compatible with the requirements established in point 2.2.3.3 of the Guidelines for the examination of State aid to fisheries and aquaculture of 1994, 1997 and 2001 respectively [1]. In particular, it had doubts on the compliance of the scheme with the condition to grant aid only with regard to vessels not older than 10 [2] or respectively 20 [3] years that could be used for at least another 10 years. In addition, the Commission had doubts on the compatibility of the aid rate of the scheme of 25 % of the actual cost of acquisition of the vessel, which seemed not to comply with the 2001 Guidelines, applicable to existing aid schemes as from 1 July 2001, allowing an aid rate up to 20 % only [4].

As regards the aid granted for the acquisition of a share in a new vessels the Commission considered that the scheme seemed to make no reference to the reference level for the size of the fishing fleet nor to the hygiene and safety requirements and the obligation for the registration of the vessel in the fleet register, in accordance with the conditions of Articles 6, 7, 9 and 10 of and Annex III to Council Regulation (EC) No 2792/1999 of 17 December laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector [5], as amended by Regulation (EC) No 2369/2002 of 20 December 2002 [6]. In addition, the scheme seemed not to contain any provisions with regard to the additional requirements provided for in Regulation (EC) No 2792/1999 as amended by Regulation (EC) No 2369/2002.

III. **COMMENTS FROM THE UNITED KINGDOM**

(8) In its reply dated 16 October 2006, the United Kingdom provided further information on the aid granted under the scheme. It pointed out that the total amount of aid granted under the scheme was GBP 581 750 rather that the GBP 8 000 000 referred to by the Commission in its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty. The United Kingdom also pointed out that after 1 July 2001, no aid had been granted with regard to new vessels, and that, therefore, the question of the non-compatibility of the scheme after that date was of no relevance.

(9) Concerning the aids for acquisition of a share in a second-hand vessel, the United Kingdom confirmed that the scheme did not contain any condition regarding the age of the vessel, nor a provision requiring that the vessels could be used for at least another 10 years. However, the United Kingdom argued that the scheme did contain a five-year grant condition and that this provision represented an implicit commitment that the vessel would at least continue to be used for fishing for that length of time.

(10) The United Kingdom provided a list of all 78 individual aids, each amounting to GBP 7 500, granted between 25 April 1996 and 15 July 2003 for the acquisition of a share in a second-hand vessel, specifying the name of the beneficiary and the name and age of the vessel. The rate of the aid varied between 0,12 % and 25 %. After 1 January 2001, the aid rate was never higher than 3,75 %.

(11) The United Kingdom pointed out that 36 of those 78 grants seemed to be non-compliant, but that 28 of those had been or were in the process of being recovered following the loss, sequestration, sale, or decommissioning of the vessel in question. In the case of two of the eight residual items, grant recovery had not been not pursued as the loss occurred after the expiry of the five-year grant period. The United Kingdom thus concluded that only six potentially non-compliant grants remained, concerning vessels that were still in operation or subsequent vessels to which the benefit of the grant in question had been transferred.

[1] OJ C 260, 17.9.1994, p. 3; OJ C 100, 27.3.1997, p. 12; and OJ C 19, 20.1.2001, p. 7.
[2] Guidelines of 1994 and 1997.
[3] Guidelines of 2001.
[4] Point 2.2.3.3(c) of the Guidelines for the examination of State aid to fisheries and aquaculture of 2001.
[5] OJ L 337, 30.12.1999, p. 10. Regulation as last amended by Regulation (EC) No 1421/2004 (OJ L 260, 6.8.2004, p. 1).
[6] OJ L 358, 31.12.2002, p. 49.

(12) Finally, the United Kingdom maintained that, should the Commission adopt a negative decision, recovery of aid granted prior to 3 June 2003 should not be required as that be contrary to the principle of the protection of legitimate expectations. In that respect, the United Kingdom made reference to Commission Decision 2003/612/EC of 3 June 2003 on loans for the purchase of fishing quotas in the Shetland Islands (United Kingdom) [1] and Commission Decision 2006/226/EC of 7 December 2005 on Investments of Shetland Leasing and Property Developments in the Shetland Islands (United Kingdom) [2], stating that until 3 June 2003 the Shetland Islands Council legitimately considered the funds used for such aid to be private rather than public.

IV. ASSESSMENT OF THE AID

(13) It must be determined firstly if the measure can be regarded as State aid and if so, if it is compatible with the common market.

(14) The aid has been granted to a limited number of companies within the fisheries sector and is thus of a selective nature. The aid has been granted by the Shetland Islands Council from state resources and benefited companies which are in direct competition with other companies in the fisheries sector, both within the United Kingdom and in other Member States. Therefore, the aid distorts or threatens to distort competition and appears to be State aid within the meaning of Article 87 of the EC Treaty.

Legality

(15) According to the United Kingdom, the two general schemes referred to in Recital 4 have been applied before the accession of the United Kingdom to the European Economic Community. However, the Commission notes that according to the information provided, the First time shareholders scheme was only put in place in 1982. In any event, due to the absence of past records, the United Kingdom has not been able to provide evidence that the aid existed already before the United Kingdom joined the Community. In addition, the United Kingdom confirmed that the aid schemes have been changed over the years and that these changes were never notified to the Commission in accordance with Article 88(3) of the EC Treaty (former Article 93(3)). As a result, the aid should be considered as new aid.

Basis for the assessment

(16) Regulation (EC) No 659/1999 does not lay down any limitation period for the examination of 'unlawful aid', as defined in Article 1(f) thereof, namely aid implemented before the Commission is able to reach a conclusion as to its compatibility with the common market. However, Article 15 of that Regulation stipulates that the power of the Commission to require the recovery of aid is subject to a limitation period of 10 years and that the limitation period begins on the day on which the unlawful aid is awarded to the beneficiary and that that limitation period is interrupted by any action taken by the Commission. Consequently, the Commission considers that it is not necessary in this case to examine the aid covered by the limitation period, namely aid granted more than ten years before any measure taken by the Commission concerning it.

(17) The Commission considers that in this case the limitation period was interrupted by its request for information sent to the United Kingdom on 24 August 2004. Accordingly, the limitation period applies to aid granted to beneficiaries before 24 August 1994. Consequently, the Commission has limited its assessment to the aid granted between 24 August 1994 and January 2005.

(18) State aid can be declared compatible with the common market if it complies with one of the exceptions provided for in the EC Treaty. As regards State aid to the fisheries sector, State aid measures are deemed to be compatible with the common market if they comply with the conditions of the Guidelines for the examination of State aid to fisheries and aquaculture. According to the second paragraph of point 5.3 of the Guidelines of 2004: 'An unlawful aid' within the meaning of Article 1(f) of Regulation (EC) No 659/1999 will be appraised in accordance with the guidelines applicable at the time when the administrative act granting the aid has entered into force.' This is also in accordance with the general rules expressed in Commission notice on the determination of the applicable rules for the assessment of unlawful State aid [3]. The aid thus needs to be assessed on the basis of its compatibility with the Guidelines of 1994, 1997 and 2001.

New Vessels

(19) As regards the aid granted for the acquisition of a share in a new vessel, in its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty, the Commission pointed out that the aid granted before 1 July 2001 could be regarded compatible with the common market. After that date, however, the conditions of the scheme seemed no longer compatible with the applicable conditions and therefore the Commission has had serious doubts that any such aid granted after that date would be incompatible.

(20) From the information provided by the United Kingdom, it can be established that no aid has been granted after 1 July 2001 for the acquisition of a share in a new vessel and that since 14 January 2005 the scheme is no longer in force.

[1] OJ L 211 of 21.8.2003, p. 63.
[2] OJ L 81 of 18.3.2006, p. 36.
[3] OJ C 119, 22.5.2002, p. 22.

Used vessels

(21) According to point 2.2.3.3 of the 1994, 1997 and 2001 Guidelines, aid may be deemed compatible with the common market only when the vessel can be used for at least another 10 years. In addition, under the 1994 and 1997 Guidelines the vessel has to be at least 10 years old, and under the 2001 Guidelines, at least 20 years old.

(22) The scheme does not contain any conditions with regard to the age of the vessels and the United Kingdom has confirmed that no other conditions or actions could have ensured the compatibility with this condition. Moreover, the scheme did not require that the vessels be used for at least another 10 years. This makes the scheme clearly incompatible with the 1994, 1997 and 2001 Guidelines.

(23) Such incompatibility cannot be removed by the requirement of the scheme to keep the share in the vessel for at least another five years and to use the vessel for fishing during those years. This provision merely ensured that vessels would be operational for the first five years, thus only for half of the time required by the Guidelines.

(24) Therefore, it is considered that the aid granted under the scheme for the acquisition of a share in a second-hand vessel is incompatible with the common market.

Recovery of the aid

(25) Under Article 14(1) of Regulation (EC) No 659/1999, where negative decisions are taken in the case of unlawful aid, the Commission is to decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary.

(26) The United Kingdom has raised the issue that the Commission is not to require recovery of the aid if that would be contrary to the principle of the protection of legitimate expectations and claims that this principle applies to this case.

(27) The funds used for the financing of the scheme are the same funds used for the aids subject to the negative decisions taken by the Commission in Decisions 2003/612/EC and 2006/226/EC, as referred to in Recital 12 of the present Decision. In those cases the Commission considered that these funds have to be regarded as State resources for the purposes of Article 87(1) of the EC Treaty. At the same time, the Commission acknowledged that in the specific circumstances of the cases in question, legitimate expectations as to the private nature of the fund in question had been created on the part of the Shetland authorities and bodies involved through the combination of a number of elements taken together which precluded recovery of the incompatible State aid.

(28) The Commission considers, however, that in this case the elements taken into account in the Decisions 2003/612/EC and 2006/226/EC cannot be applied in the same way and the legitimate expectations have not been created. The Commission notes, in particular, the actions and statements from the United Kingdom, clearly showing that, at the respective times of granting of aid, the responsible authorities were convinced that the scheme was in fact a State aid scheme and that the rules on State aid were applicable.

(29) To reach that conclusion, the Commission observes that, unlike the aids the subject of Decisions 2003/612/EC and 2006/226/EC, the scheme in question has been set up as a normal aid scheme and concerns direct grants to fishermen, granted directly by the Shetland Islands Council. In addition, the specific circumstances of this case clearly show that the United Kingdom considered the State aid rules to be applicable, as they have continuously included the expenditure under the scheme in the annual UK State aid reports submitted to the Commission in accordance with Community obligations. In fact, in response to questions raised by the Commission, the United Kingdom stated in its letter dated 10 December 2004 that: 'payments under the schemes have been included in the Annual State Aid Inventory and sent to the Commission annually, as required, for many years' and in its letter dated 6 April 2005 that 'My authorities have, over many years, acted in good faith and in the belief that the Schemes were compliant with the State aid guidelines'.

(30) With regard to those statements and the circumstances of the case, the Commission therefore considers that requiring the recovery of the aid cannot be considered to be contradictory to a general principle of Community law. Thus, in accordance with Article 14(1) of Regulation (EC) No 659/1999, the Commission considers that United Kingdom must take all necessary measures to recover the aid from the beneficiaries of the scheme (regardless of the actions already taken), without prejudice to cases falling within the scope of Commission Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid in the fisheries sector and amending Regulation (EC) No 1860/2004 [1].

[1] OJ L 193, 25.7.2007, p. 6.

(31) In that respect, it should be pointed out that in accordance with Article 14(2) of Regulation (EC) No 659/1999, in order to ensure that effective competition be restored, the recovery should include interest. This interest should be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 [1]. The United Kingdom should therefore ensure that also the recoveries already undertaken or still in progress will comply with this condition and, where such interest has not been included in the recovery, take the necessary measures to recover also the concerned amount of interest from those beneficiaries.

(32) The Commission would ask United Kingdom to return to it the attached questionnaire concerning the current status of the recovery procedure and to draw up a list of beneficiaries to which the recovery relates.

V. **CONCLUSION**

(33) In the light of the assessment made in Section IV, the Commission finds that the United Kingdom has, in breach of Article 88(3) of the EC Treaty, unlawfully granted aid under the scheme.

(34) The Commission considers that the aid granted under the scheme is not compatible with the common market as far as it concerns aid granted for the first time acquisition of a share in a second-hand fishing vessel.

(35) As, after 1 July 2001, no aid has been granted for the first time acquisition of a share in a new fishing vessel, all such aid granted under the scheme is considered compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

1. The State aid which the United Kingdom has implemented on the basis of the First time shareholder scheme (the scheme) is compatible with the common market as far as it concerns aid granted for the first time acquisition of a share in a new fishing vessel.

2. The State aid which the United Kingdom has implemented on the basis of the scheme is incompatible with the common market as far as it concerns aid granted for the first time acquisition of a share in a second-hand fishing vessel.

Article 2

Individual aid referred to in Article 1(2) of this Decision does not constitute aid if it fulfils the conditions of Commission Regulation (EC) No 875/2007.

Article 3

1. The United Kingdom shall take all necessary measures to recover from the beneficiaries the aid granted under the scheme referred to in Article 1(2), other than that referred to in Article 2.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) 794/2004.

4. The United Kingdom shall cancel all outstanding payments of aid under the scheme referred to in Article 1(2) with effect from the date of adoption of this Decision.

Article 4

1. The recovery of the aid granted under the scheme referred to in Article 1(2) shall be immediate and effective.

2. The United Kingdom shall ensure that this Decision is implemented within four months following the date of its notification.

Article 5

1. Within two months following notification of this Decision, the United Kingdom shall submit the following information to the Commission:

(a) the list of beneficiaries that have received aid referred to Article 1 of this Decision that does not fulfil the conditions laid down by Regulation (EC) No 875/2007, and the total amount of aid received by each of them;

(b) total amount (principal and interests) to be recovered from each beneficiary;

(c) a detailed description of the measures already taken and planned to comply with this Decision; and

(d) documents demonstrating that the beneficiaries have been ordered to repay the aid.

[1] OJ L 140, 30.4.2004, p. 1. Regulation as last amended by Regulation (EC) No 1935/2006 (OJ L 407, 30.12.2006).

2. The United Kingdom shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid granted under the scheme referred to in Article 1(2) has been completed.

It shall immediately submit any information which the Commission requests on the measures already taken and planned to comply with this Decision.

It shall also provide detail information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 6

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 13 November 2007.

For the Commission

Joe BORG

Member of the Commission