



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.01.1996
COM(95) 748 final

Proposal for a

COUNCIL REGULATION (EC)

**amending Regulation (EC) N° 2413/95 imposing a definitive anti-dumping duty
on imports of ferro-silico-manganese originating in Russia, Ukraine, Brazil and
South Africa**

(presented by the Commission)

Explanatory Memorandum

1. The Council, by Regulation (EC) N° 2413/95 of 6 October 1995, imposed a definitive anti-dumping duty on imports of ferro-silico-manganese originating in Russia, Ukraine, Brazil and South Africa. This Regulation excludes from the application of the duty, inter alia, imports of the product produced by the South African producer, Highveld Steel and Vanadium Corporation Limited, on the basis of an undertaking accepted by the Commission (Commission Decision 95/418/EC of 26 July 1995).

2. Highveld Steel and Vanadium Corporation Limited has, however, in the meantime, withdrawn its undertaking. Under these circumstances, a definitive duty based on the facts established by the investigation that led to the undertaking should be imposed on imports of the product produced by this company, in conformity with Article 8(9) of Regulation (EC) N° 3283/94.

3. On the basis of the investigation findings, the amount of the duty should be set as the difference between the minimum import price of ECU 492 per metric tonne of product and the net free-at-Community frontier price, before duty, in all cases where the net free-at-Community frontier price, before duty, per metric tonne product is less than the minimum import price.

4. The duty should apply with retroactive effect to the date on which registration of the imports in question was introduced by the Commission, pursuant to Articles 10(5) and 14(5) of Regulation (EC) N° 3283/94.

5. It is therefore proposed that the Council adopts the proposal for a Regulation amending Regulation (EC) N° 2413/95 by imposing a definitive anti-dumping duty on imports of ferro-silico-manganese produced by Highveld Steel and Vanadium Corporation Limited.

COUNCIL REGULATION (EC) N°...

of

amending Regulation (EC) N° 2413/95 imposing a definitive anti-dumping duty on imports of ferro-silico-manganese originating in Russia, Ukraine, Brazil and South Africa

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) N° 3283/94 of 22 December 1994¹ on protection against dumped imports from countries not members of the European Community, as last amended by Regulation (EC) No 1251/95² and in particular Article 8, 9 and 10 thereof,

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

Whereas :

A. Background

(1) In the context of the anti-dumping proceeding concerning imports of ferro-silico-manganese originating in Russia, Georgia, Ukraine, Brazil and South Africa, the Commission, by Decision 95/418/EC of 26 July 1995³, accepted an undertaking from, inter alia, the South African producer, Highveld Steel and Vanadium Corporation Limited.

¹ O.J.N° L 349, 31.12.94 p.1

² O.J.N° L 122, 2.6.1995 p.1

³ O.J.N° L 248, 14.10.1995, p.56

(2) The Council, by Regulation (EC) N° 2413/95 of 6 October 1995⁴, imposed a definitive anti-dumping duty on imports of ferro-silico-manganese originating in Russia, Ukraine, Brazil and South Africa and excluded, inter alia, Highveld Steel and Vanadium Corporation Limited from the application of the duty on the basis of the undertaking accepted by the Commission. Since the investigation was concluded by definitive measures adopted by the Council pursuant to Article 12 of Regulation (EEC) N° 2423/88 (the former basic Anti-dumping Regulation) the proceeding is now governed by Regulation (EC) N°3283/94 (the new basic Anti-dumping Regulation) pursuant to Article 23 of that Regulation.

B. Withdrawal of undertaking

(3) Highveld Steel and Vanadium Corporation Limited has, by correspondence received by the Commission almost concurrently with the adoption by the Council of Regulation (EC) N° 2413/95, withdrawn its undertaking.

C. Definitive duty

(4) Pursuant to Article 8(9) of Regulation (EC) N° 3283/95, in case of withdrawal of an undertaking, a definitive duty shall be imposed in accordance with Article 9, on the basis of the facts established by the investigation that led to the undertaking provided that such investigation was concluded with a final determination as to dumping and injury.

⁴ O.J.N° L 248, 14.10.1995, p.1

(5) The investigation that led to the acceptance, by Decision 95/418/EC, of an undertaking from Highveld Steel and Vanadium Corporation Limited was concluded with a final determination, by the Council, of injurious dumping, as far as imports of the product produced by this company are concerned. In view of the withdrawal of the undertaking, such imports should therefore be subject to a definitive duty.

(6) Specifically, the dumping margin finally established for Highveld Steel and Vanadium Corporation Limited was 45.3% of the free-at-Community frontier prices, before duty. Since the dumping margin was lower than the injury threshold found, the duty should be set at a level that eliminates the dumping, in conformity with Article 9(4) of Regulation (EC) N° 3283/94.

(7) It is recalled that, in the present proceeding, in view of the price sensitivity of the market for ferro-silico-manganese and in order to minimize the impact of the measures on users in the event of possible significant price increases, the Council considered it appropriate that the duties be imposed in the form of variable duties based on a minimum price, free-at-Community frontier, before duty. Such minimum price should be, in the case of imports of ferro-silico-manganese produced by Highveld Steel and Vanadium Corporation Limited, ECU 492 per metric tonne of product.

(8) In light of the above, the Council concludes that Regulation (EC) N° 2413/95 should be amended and a definitive duty imposed on imports of ferro-silico-manganese produced by Highveld Steel and Vanadium Corporation Limited. The amount of the duty should be the difference between the minimum import price of ECU 492 per metric tonne product and the net free-at-Community frontier price, before duty, in all cases where the net free-at-Community frontier price, before duty, per metric tonne product is less than the minimum import price.

D. Retroactivity

(9) In the present case, given that in the absence of an undertaking a duty should have been imposed by Regulation (EC) N° 2413/95 on imports of the product produced by Highveld Steel and Vanadium Corporation Limited, it is considered appropriate that the duty apply with retroactive effect. To that end, the Commission, by Regulation (EC) N° 2698/95, of 22 November 1995⁵, introduced registration with regard to such imports, in conformity with Articles 10(5) and 14(5) of Regulation (EC) N° 3283/94.

(10) It should be noted that, upon the entry into force of the present Regulation, registration of the imports in question would serve no further purpose and Commission Regulation (EC) N° 2698/95. will cease to apply in accordance with Article 1 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

1. Article 1(5) of Regulation (EC) N° 2413/95 is replaced by the following:

"5. For the product originating in South Africa (Taric additional code 8818) the amount of the anti-dumping duty shall be the difference between the minimum import price of ECU 500 per metric tonne product and the net free-at-Community frontier price, before duty, in all cases where the net free-at-Community frontier price, before duty, per metric tonne product is less than the minimum import price, with the exception of imports produced by the following company, which will be subject to the rate of duty mentioned below.

⁵O.J. N° L 280, 23.11.1995, p.20

For the product produced by Highveld Steel and Vanadium Corporation Limited (Taric additional code 8874) the amount of the anti-dumping duty shall be the difference between the minimum import price of ECU 492 per metric tonne product and the net free-at-Community frontier price, before duty, in all cases where the net free-at-Community frontier price, before duty, per metric tonne product is less than the minimum import price."

Article 2

The reference to Highveld Steel & Vanadium Corporation Limited in Article 1(7) of Regulation (EC) N° 2413/95 is hereby deleted.

Article 3

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

It shall apply with effect from the date of entry into force of Commission Regulation (EC) N° 2698/95 introducing registration.

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

Done at Brussels, ...

For the Council
The President

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