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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 4 June 1999

terminating the anti-dumping proceeding concerning imports of ferro-silicon
originating in Egypt and Poland

(notified under document number C(1999) 1466)

(1999/426/EC)

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⁾, as last amended by Regulation (EC) No 905/98⁽²⁾, and in particular Articles 9 and 11 thereof,

After Consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

- (1) Anti-dumping duties of 32 % on imports of ferro-silicon originating in Egypt and Poland have been in force since 1992, when definitive anti-dumping duties were imposed by Council Regulation (EEC) No 3642/92⁽³⁾. The duties did not apply to exports by one Egyptian and one Polish exporting producer from which price undertakings were accepted by the Commission by Decisions 92/331/EEC⁽⁴⁾ and 92/572/EEC⁽⁵⁾ respectively.
- (2) As regards other anti-dumping measures currently in force, definitive anti-dumping measures on ferro-silicon were imposed against Kazakhstan,

Russia, Ukraine, Norway, Iceland, Brazil and Venezuela by Council Regulation (EC) No 3359/93⁽⁶⁾ in December 1993. Measures on imports from Iceland and Norway were suspended with the application of Council Regulation (EC) No 5/94 of 22 December 1993 on the suspension of anti-dumping measures against EFTA countries from 1 January 1994⁽⁷⁾. Measures on imports from Brazil were partially reviewed and, by Council Regulation (EC) No 351/98⁽⁸⁾ the duty on two Brazilian exporting producers was reduced to 0 % because of a finding of no dumping.

Definitive anti-dumping measures were also imposed against imports from China and South Africa by Council Regulation (EC) No 621/94⁽⁹⁾ in March 1994.

2. Request for Review

- (3) Following the publication of the notice of impending expiry⁽¹⁰⁾ of the anti-dumping measures, the complainant in the original investigation, the Liaison Committee of the Ferro-Alloy Industry ('Euroalliages', hereinafter 'the applicant'), requested an expiry review of the measures pursuant to Article 11(2) of Regulation (EC) No 384/96 (hereinafter the 'basic Regulation').

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 128, 30.4.1998, p. 18.

⁽³⁾ OJ L 369, 18.12.1992, p. 1.

⁽⁴⁾ OJ L 183, 3.7.1992, p. 40.

⁽⁵⁾ OJ L 369, 18.12.1992, p. 32.

⁽⁶⁾ OJ L 302, 9.12.1993, p. 1.

⁽⁷⁾ OJ L 3, 5.1.1994, p. 1.

⁽⁸⁾ OJ L 42, 14.2.1998, p. 1.

⁽⁹⁾ OJ L 77, 19.3.1994, p. 48.

⁽¹⁰⁾ OJ C 387, 21.12.1996, p. 3.

- (4) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission published a notice of initiation in the *Official Journal of the European Communities*⁽¹⁾ and commenced the investigation.

3. Investigation

- (5) The investigation of dumping covered the period from 1 July 1996 to 30 June 1997 (hereinafter the 'investigation period'). The examination of injury covered the period from 1993 up to the end of the investigation period.
- (6) At the time of the original investigation, the Community industry on behalf of which the complaint was lodged consisted of six producers; Pechiney Electrometallurgie, France; SKW Trostberg AG, Germany; Ferrolegierungswerk Lippendorf GmbH, Germany; Carbuos Metalicos, Spain; Industria Elettrica Indel Spa, Italy; and Utilizzazioni Elettro Industriali UEI, Italy.
- (7) After the imposition of the measures under review, the structure of the Community industry changed as a result, on the one hand, of the accession of the new Member States, and, on the other, of economic changes within the industry. This resulted in there being four Community producers of the product concerned producing for sale on the Community market. The present expiry review was requested on behalf of these four producers representing all of the Community's non-captive production of the product concerned.
- (8) Three of the four Community producers (Vargön Alloys AB in Sweden, Ferroatlantica in Spain, formerly Carbuos Metalicos, and Pechiney Electrometallurgie in France), representing 96 % and thus a major proportion of Community production, cooperated actively in the investigation and responded to the Commission's questionnaire. The fourth producer, Industria Elettrica Indel Spa (Italy) was not able to cooperate since it was undergoing a restructuring process. Hereinafter the 'Community industry' is defined as the three abovementioned cooperating Community producers.
- (9) The Commission officially advised the applicant Community producers, exporting producers and importers known to be concerned, representatives of the exporting countries concerned, as well as the applicant, of the initiation of the review investigation, and gave interested parties the opportunity to make their views known and to request a hearing within the time limit set in the notice of initiation.

The Commission sent questionnaires to all parties known to be concerned and received replies from Community producers and importers, as well as from exporting producers in Egypt and Poland.

A number of exporting producers in the countries concerned, as well as Community producers, Community users and importers made their views known in writing. All parties who so requested within the above time limit, and indicated that there were particular reasons why they should be heard, were granted hearings.

- (10) The Commission sought and verified all the information deemed necessary for its investigation, and carried out verifications at the premises of the following companies:

(a) Community producers:

- Vargön Alloys AB, Sweden,
- Ferroatlantica, Spain,
- Pechiney Electrometallurgie, France.

(b) Importers:

Deutsche Erz- and Metall-Union GmbH, Germany.

(c) Exporting producers in Egypt:

EFACO, KIMA.

(d) Exporting producers in Poland:

Huta Laziska.

B. PRODUCT UNDER CONSIDERATION

1. Product concerned

- (11) The product concerned by this investigation is the same as that concerned by the original investigation, i.e. ferro-silicon. Production of ferro-silicon takes place in electric arc furnaces by means of reducing quartz using carbon bearing products.

The product is used as a deoxidiser and as an alloying component by the iron and steel industry.

Ferro-silicon is sold in the form of lumps, grains or powder and exists in various qualities depending on the silicon content and the impurity content (i.e. aluminium, carbon, etc.).

- (12) It was found that all different forms and qualities of ferro-silicon exported from the countries concerned had the same basic physical and chemical characteristics and essentially the same end uses. They were therefore considered to form a single product. The product under consideration currently falls within CN codes 7202 21 10, 7202 21 90 and 7202 29 90.

⁽¹⁾ OJ C 204, 4.7.1997, p. 2.

2. Like product

- (13) It was established that the ferro-silicon produced and sold in the Egyptian and Polish markets was alike within the meaning of Article 1(4) of the basic Regulation to the ferro-silicon exported, from Egypt and Poland to the Community as they were identical, or closely resembling, in terms of physical characteristics and end uses. Furthermore, ferro-silicon produced and sold in the Community market by the Community industry was found equally to be alike to that exported from Egypt and Poland within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

- (14) The question of dumping was not pursued, given the findings on the situation of the Community industry and recurrence of injury below.

D. SITUATION IN THE COMMUNITY MARKET OF FERRO-SILICION

1. Community market for ferro-silicon

- (15) Taking into account the production of the complainant Community producers, and an estimate of the production of the non-cooperating producer, together with the total imports of the product concerned into the Community minus exports from the Community, the development of Community apparent consumption of the product concerned is shown below:

(tonnes)

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Community apparent consumption	618 805	494 750	595 586	603 394	630 623

2. Volumes and market shares of the imports concerned

- (16) The development of import volumes from the two exporting countries concerned based on the data reported by Eurostat was as follows:

(tonnes)

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Imports from Poland	1 029	3 835	21 742	21 172	30 303
Imports from Egypt	10 712	21 873	29 851	15 252	11 098

- (17) The differences in the development of imports from Egypt and Poland are reflected in the market shares of the countries concerned. The share of the Community market for ferro-silicon accounted for by Poland was:

(%)

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Poland's market share	0,2	0,8	3,7	3,5	4,8

It should be noted that at the time of the previous investigation the market share of Poland was around 5 %.

The market share accounted for by Egypt, on the other hand, peaked in 1995, but by the investigation period had fallen back to the levels prevailing in 1993. The market share of Egypt was as follows:

(%)

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Egypt's market share	1,7	4,4	5,0	2,5	1,8

The market share of Egypt, at the time of the previous investigation, was about 4 %.

3. Prices of the imports concerned

- (18) The investigation found that the prices of the exporting producers in both Egypt and Poland for exports to the Community were, during the investigation period, above the non-injurious levels which determined the price undertakings accepted with respect to both Egypt and Poland (Commission Decisions 92/331/EEC and 92/572/EEC respectively).
- (19) As to the development of the prices of the imports subject to investigation over the period examined as a whole, the Commission established trends using Eurostat figures. On this basis, import prices were as follows, with 1993 = 100 in both cases:

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Egypt	100	106	111	138	129
Poland	100	143	121	132	131

- (20) Price undercutting was established at the same level of trade on the basis of a comparison of the ex-works prices of the Community producers and the cif price, Community frontier duty paid, for the imports from the countries concerned.
- (21) The exporting producer in Poland claimed an adjustment for quality differences and for the cost of packaging for the purposes of calculating the margin of undercutting.

As far as the adjustment for quality differences is concerned, it was claimed that the silicon content of the imports from Poland was often lower than that of Community-made ferro-silicon. Second, it was alleged that the types of ferro-silicon produced in Poland and exported to the Community were of a lower quality than the types typically produced by the Community industry, due to the high impurity content of the Polish ferro-silicon that made it unsuitable for certain uses.

- (22) These claims were confirmed by the investigation. The transactions listing submitted by the company showed that the ferro-silicon exported from Poland in the investigation period had, in around one third of the cases, a silicon content lower than 75 %, which is the standard of Community production. Moreover, it was found that the degree of impurity of aluminium and carbon in the ferro-silicon exported was higher than that sold by the Community producers in the Community.

As to the differences in the packaging of the product, the exporting producer claimed that an adjustment should be made to take into account the different costs between the goods which were delivered in bulk and those delivered in drums or bags. This claim was also considered justified, and the adjustment agreed. Since these adjustments for differences in silicon content, impurities and packaging were already reflected in the existing price undertaking, it was decided to confirm the levels set out in the price undertaking.

- (23) The same adjustments were made for imports from Egypt, since the same differences were found with regard to the Egyptian exporting producer.
- (24) Therefore, the sales prices of all types of ferro-silicon sold on the Community market during the investigation period were, where necessary, adjusted to the price for a single reference type of ferro-silicon, for the sales of both the exporting producers concerned and those of the Community industry. Undercutting was then calculated by comparing the ex-works sales price of this standard, reference type of ferro-silicon sold by the Community industry, and the cif Community frontier price, duty paid, for the same product sold by the exporting producers concerned.

On this basis, the weighted average level of price undercutting found was 4,6 % for Polish exports, and 4,5 % for the Egyptian exports.

4. The situation of the Community industry

- (25) The sales volume of the Community industry was as follows:

(tonnes)

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Sales volume of the Community industry	84 499	92 094	101 040	99 647	101 603

- (26) The corresponding market share over the period was:

(%)

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Market share of the Community industry	13,6	18,6	17,0	16,5	16,1

- (27) The trend in prices of the cooperating Community industry, in index form (1993 = 100) is shown below:

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Community industry's prices	100	108	123	132	128

- (28) The turnover of the Community industry (in 000's ecus) was as follows:

(ECU 1 000)

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Turnover of the Community industry	48 718	57 324	71 367	75 799	74 790

Thus, over the period considered, turnover increased by 53 %.

- (29) The investigation has established that, on a weighted average basis, the profitability of the Community industry, calculated as the return on sales, showed an improvement of almost 18 percentage points, as shown in the following table:

(%)

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Weighted average profitability of the Community industry	-5,38	8,1	10,1	11,2	12,2

- (30) Production of the Community industry was as follows:

(tonnes)

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Community industry production	79 935	93 188	100 757	96 004	100 066

The above table shows that production increased by 25 % over the period considered.

- (31) The development of production capacity is shown below:

(tonnes)

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Production capacity	137 000	141 700	141 200	144 800	144 500

From this it can be seen that capacity grew by 5 % over the period considered.

- (32) Capacity utilisation, on a weighted average basis, was therefore:

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Capacity utilisation	58	66	71	66	69

Capacity utilisation increased by 19 %, or 11 percentage points, over the period concerned.

It should be noted that it is normal for part of the ferro-silicon industry to shut down its manufacturing plants during the winter months. The process of manufacturing ferro-silicon is extremely energy-intensive, and in order to reduce costs, production ceases during the time when the cost of electricity rises — i.e. during winter. This production organisation is not reflected in the production capacity table shown above which reflects a maximum production capacity over a full 12 month period. This also explains the relatively low levels of capacity utilisation.

A certain amount of stock-piling occurs therefore before the onset of winter so that deliveries can continue.

- (33) The level of employment directly connected with ferro-silicon production was relatively stable, as can be seen in the following table:

	1993	1994	1995	1996	Investigation period 1.7.1996 to 30.6.1997
Employment	635	635	627	630	610

5. Conclusion

- (34) While some of the major economic indicators showed a clear positive development over the period, with a particular improvement throughout in financial performance, where the losses of more than 5 % on turnover in 1993 had become profits of over 12 % in the investigation period, other indicators, particularly market share, show a less positive development. It has also been established that imports from Egypt and Poland taken together remained significant, and in the case of Poland increased, although from a low basis, and were made at prices slightly undercutting those of the Community industry. It should be noted, however, that the relative strengthening of the position of Polish imports occurred after the imposition in the Community of definitive anti-dumping measures on other third countries as mentioned above at recital 2 and that the exports made by the exporting producers were covered by undertakings which were fully respected, i.e. export prices obtained were above the undertaking prices.

Therefore, it was concluded that the Community industry has benefited from the anti-dumping measures in force which have served their purpose

in removing injury caused by imports from the two exporting countries concerned.

E. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

1. Egypt

- (35) The development of imports from Egypt is described at recital 20. After rising to a peak in 1995, import levels and market share sharply declined to the levels prevailing in 1993. The market share in the investigation period (1,8 %), was well below the market share found at the time of the previous investigation.
- (36) As to prices for exports to the Community market, these still undercut those of the Community industry, although they constantly increased after the introduction of the anti-dumping measures and they were also higher than the undertaking price.

In addition, prices at which exports were made to non-Community markets were higher than for exports to the Community market during the investigation period, indicating that a redirection

of such exports to the Community market was not likely from an economic point of view.

- (37) In the Egyptian industry, capacity utilisation is currently very high; at 94 %, capacity is effectively fully used, and there were no plans to increase capacity in 1998.

Further, while in 1995 exports to the Community represented 68 % of the total sales volume, this proportion had fallen to 45 % in the investigation period; this decline has been compensated by export sales to non-Community markets which almost doubled over the same period (from 15 to 35 % of the total sales volume), while domestic sales rose slightly in percentage terms (17 to 20 %).

2. Poland

- (38) Community imports from Poland showed a large increase in volume terms between 1993 and the investigation period. However, it has been pointed out by the Polish exporting producer that, in 1993, the company suffered a major factory breakdown which resulted in virtually no ferro-silicon production that year. Production only resumed in 1994 but was significantly below the levels reached prior to 1993. Therefore, the Polish producer submitted that a 1993 benchmark is not appropriate and that comparisons should be made on the basis of 1995 figures where production was again at a normal level.

- (39) On the basis of the above, the Commission examined the development of volumes and export prices between 1995 and the investigation period and found a rising trend of these two parameters. It should be noted, however, that the market share of Poland at the end of the period examined was still below the market share found in the previous investigation. The increase in Polish exports to the Community also coincided with the imposition of definitive anti-dumping measures on imports from Russia, Ukraine and Kazakhstan and the consequent reduction of imports from these countries.

- (40) As to the capacity utilisation of the Polish exporting producer, this was 93 % in the investigation period, thus making an increase in the volumes produced in the short term unlikely. As to the proportion of sales to the Community, this rose from 39 % of total sales in 1995 to 45 % in the investigation period.

In the light of these developments, the Commission examined the possibility of a change in the distribution of the Polish exporting producer's sales, i.e. whether there would be a further rise in the proportion destined for export to the Community. In particular, it was examined whether the restructuring of the Polish steel industry prior to any accession to the European Union would lead to a collapse in domestic demand for ferro-silicon, and consequently to an increase in the supply available for exports to, *inter alia*, the Community. Given that domestic sales in the investigation period accounted for 37 % of the sales of the Polish exporting producer, the potential effect of a fall in domestic demand appeared to be substantial. Statistics relating to the steel market in Poland, however, show that the production of steel increased by 31 % over the period 1992 to 1996, and estimates for 1997 indicate a further increase.

As to the possibility of reducing exports to non-Community third countries, it was found that average prices for standard 75 % ferro-silicon are higher on non-Community markets than on the Community market, with no substantial alteration in the pattern of exports from Poland to the Community and other countries expected.

- (41) In the light of the foregoing, Polish exports to the Community are not expected to further increase to any substantial degree, nor are their prices expected to fall should anti-dumping measures be removed. Even with measures in force, and with prices in excess of those in the undertaking, the Polish exporting producer recovered, after the factory breakdown in 1993/94, a consolidated position on the Community market, maintaining at the same time strong domestic sales; it has therefore shown itself able to compete in the Community with prices at a non-injurious level. Indeed, the level of the price-undertaking offered by the Polish producer was determined by the injury threshold in the investigation leading to the measures reviewed. It would not be economically rational behaviour, if the anti-dumping measures are allowed to expire, to try to gain further market share on the Community market by cutting export prices. Moreover, given that production capacity is fully utilised, an increase of exports to the Community could only be achieved at the expense of domestic sales or of exports to other third countries, which makes such a strategy even more unlikely.

3. Conclusion

(42) In the light of the above findings, notwithstanding the fact that the prices of the imports concerned, though having increased by around 30 % since 1993, still undercut slightly the prices of the Community industry, and on the basis of the substantially improved financial situation of this industry, the Commission concludes that the expiry of the measures on Egyptian and Polish imports is not likely to lead to a continuation or recurrence of injury.

In reaching this conclusion, the Commission also took into account the arguments presented by the Community industry that, even in the absence of an expansion of exports to the Community, the exporting producers in the countries concerned could still cause material injury by concentrating sales and depressing prices on the spot market, with subsequent downwards pressure on the Community industry's prices.

In the view of the Commission, this argument is not well-founded. The exporting producers' prices on the Community market were well above the undertaking prices, which were, at the time of acceptance, set at the levels required to remove the injury due to dumping. This, combined with their fully-utilised production capacities and improving or stable demand in their domestic and non-Community export markets, makes it unlikely that the Community spot market will be affected by exports from the countries concerned to the extent that injury would re-occur.

In this respect, it is recalled that, should the situation of the Community industry deteriorate due to dumped imports from the countries concerned, the industry is free to lodge a new anti-dumping

complaint as provided for in Article 5 of the basic Regulation.

(43) The Commission informed interested parties, including the Community industry, of its conclusions. After being informed by the Commission of the above facts and conclusions, representatives of the Community industry made further representations, both in writing and orally, concerning the impact of the imports in question on the Community industry. However, no information or argument was provided which could, on examination, revise the above conclusions.

F. TERMINATION OF THE PROCEEDING

(44) It is concluded, therefore, that this proceeding should be terminated and that the anti-dumping measures adopted on 14 December 1992 by Regulation (EEC) No 3642/92 and by Decisions 92/331/EEC and 92/572/EEC should be allowed to expire,

HAS ADOPTED THIS DECISION:

Sole Article

The anti-dumping proceeding concerning imports of ferro-silicon falling within CN codes 7202 21 10, 7202 21 90 and 7202 29 90 originating in Egypt and Poland is hereby terminated.

Done at Brussels, 4 June 1999.

For the Commission

Leon BRITTAN

Vice-President