

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) 2016/1077

of 1 July 2016

**imposing a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China following an expiry review under Article 11(2) and a partial interim review under Article 11(3) of Council Regulation (EC) No 1225/2009**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup> ('the basic Regulation'), and in particular Articles 9(4), 11(2), (3) and (5),

Whereas:

## 1. PROCEDURE

## 1.1. Measures in force

- (1) The measures currently in force are a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China ('the PRC') imposed by Council Implementing Regulation (EU) No 467/2010 <sup>(2)</sup> following an expiry review under Article 11(2) and a partial interim review ('the previous review investigations') under Article 11(3) of the basic Regulation. The measures are in force in the form of duties of between 16,3 % and 19 % of the value of the imported goods.

## 1.2. Request for an expiry review

- (2) Following the publication of a notice of impending expiry <sup>(3)</sup> of the existing measures, the Commission received on 27 February 2015 a request for the initiation of an expiry review of these measures under Article 11(2) of the basic Regulation. The request was lodged by Euroalliages on behalf of producers representing 100 % of the Union production of silicon.
- (3) The request was based on the grounds that the expiry of the measures would likely result in a continuation of dumping and recurrence of injury to the Union industry.

## 1.3. Request for a partial interim review

- (4) On 17 June 2015, the Commission received a request for a partial interim review of the existing measures, limited in scope to the examination of injury.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ L 131, 29.5.2010, p. 1.

<sup>(3)</sup> OJ C 371, 18.10.2014, p. 17.

- (5) The request for review was lodged by the European Users of Silicon Metal ('Eusmet'), an association of Union chemical users of silicon created for this investigation. Eusmet provided evidence that as far as injury is concerned the circumstances on the basis of which the existing measures were imposed have changed and that these changes are of a lasting nature.
- (6) These changes relate to the composition and the structure of the Union industry, to the silicon demand in the Union, to the economic situation of the Union producers and to the Union supply pattern.

#### 1.4. Initiation of an expiry review and a partial interim review

- (7) On 28 May 2015, the Commission initiated an expiry review of the measures in force on imports into the Union of silicon originating in the PRC and published a Notice of Initiation in the *Official Journal of the European Union* <sup>(1)</sup>.
- (8) On 1 September 2015, the Commission initiated a partial interim review limited to injury with regard to imports into the Union of silicon originating in the PRC and published a separate Notice of Initiation in the *Official Journal of the European Union* <sup>(2)</sup>.

#### 1.5. Interested parties

- (9) In the Notice of Initiation of the expiry review, the Commission invited interested parties to participate in the investigation. In addition, the Commission specifically informed known Union producers, the known exporting producers, the Chinese authorities, known importers and users about the initiation of the review and invited them to participate.
- (10) The Commission also stated that it envisaged using the United States of America ('the USA') as a third market economy country ('analogue country'), as proposed by the applicant, within the meaning of Article 2(7)(a) of the basic Regulation. Therefore, the Commission also informed the authorities and the producer in the USA about the initiation and invited them to participate.
- (11) The Commission also sent notices to the authorities in Australia, Brazil, Norway, Russia, South Africa and Thailand notifying them of the initiation of the investigation and requesting information on production and sale of silicon in those countries. Letters were then sent to all known producers of silicon in these countries asking for their cooperation with the review and enclosing a questionnaire.
- (12) In the Notice of Initiation of the partial interim review, the Commission invited interested parties to participate in the investigation. In addition, the Commission informed known Union producers, the known exporting producers, the Chinese authorities, known importers and users about the initiation of the review and invited them to participate.
- (13) Interested parties had an opportunity to comment on the initiation of these investigations and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

#### 1.6. Sampling

- (14) In both Notices of Initiation, the Commission stated that it might sample exporting producers and importers in accordance with Article 17 of the basic Regulation.

##### 1.6.1. Sampling of importers

- (15) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

<sup>(1)</sup> OJ C 174, 28.5.2015, p. 10.

<sup>(2)</sup> OJ C 287, 1.9.2015, p. 5.

- (16) One unrelated importer provided the requested information and agreed to be included in the sample. In view of the low number, the Commission decided that sampling was not necessary.

#### 1.6.2. *Sampling of exporting producers in the PRC*

- (17) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide all information specified in the expiry Notice of Initiation. In addition, the Commission asked the Mission of the PRC to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (18) Eleven Chinese exporting producers and two traders provided the requested information and agreed to be included in the sample. The Commission originally proposed a sample of three exporting producers, based on the largest volume of exports that could be verified in the time available.
- (19) During consultations on this sample one of the three companies withdrew its cooperation, and therefore it was replaced by two smaller exporting producers, making the final sample four exporting producers out of the ten cooperating.
- (20) The same ten exporting producers came forward in the sampling exercise for the partial interim review and therefore the same sample of companies was selected.

#### 1.7. **Replies to questionnaires**

- (21) The Commission sent questionnaires to the Union industry, the importer and the sampled exporting producers and received replies from all of them. Three replies were received to the analogue country questionnaire from producers in Norway, Russia and the USA.

#### 1.8. **Verification visits**

- (22) The Commission sought and verified all the information deemed necessary for a determination of dumping, resulting injury and Union interest. Verification visits under Article 16 of the basic Regulation were carried out at the premises of the following companies:

##### (a) *Union producers*

- FerroAtlántica S.L., Madrid, Spain
- Ferropem, Chambéry, France
- RW silicium GmbH, Pocking, Germany

##### (b) *Importer*

- Stanchem Sp.J., Lublin, Poland

##### (c) *Users*

- Dow Corning Limited, Barry, UK
- Raffmetal SpA, Casto, Italy
- Trimet Aluminium SE, Essen, Germany
- Wacker Chemie AG, Munich, Germany

- (d) *Exporting producers in the PRC*
- Changning Zhenyuan Smelting Silicon Co., Ltd, Yunnan
  - CIEC Westland Corporation, Xi'an
  - Sichuan Linhe Silicon Industrial Co., Ltd, Leshan
  - S.au (Guilin) Trade Co., Ltd, Guilin

- (e) *Producer in the analogue country*
- Globe Specialty Metals, Miami, Florida, USA

### 1.9. Review investigation period and period considered

- (23) The investigation of dumping and injury covered the period from 1 April 2014 to 31 March 2015 ('the review investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the review investigation period ('the period considered').

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (24) The product concerned is silicon currently falling within CN code 2804 69 00 originating in the PRC ('the product concerned').

### 2.2. Like product

- (25) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- (1) the product concerned;
  - (2) the product produced and sold on the domestic market of the USA, which was selected as analogue country; and
  - (3) the product produced and sold in the Union by the Union industry.
- (26) The Commission decided that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

## 3. DUMPING

### 3.1. Likelihood of recurrence or continuation of dumping

- (27) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether dumping was currently taking place and whether dumping was likely to continue or recur upon a possible expiry of the measures in force on imports from the PRC.

#### 3.1.1. Normal value and analogue country

- (28) According to Article 2(7)(a) of the basic Regulation normal value was determined on the basis of the price or constructed value in a market economy third country. For this purpose, a market economy third country had to be selected ('the analogue country').
- (29) In the Notice of Initiation, the Commission informed interested parties that it envisaged using the USA as an appropriate analogue country, as proposed by Euroalliages, and invited interested parties to comment.
- (30) The Commission asked producers of the like product in the USA, Norway, Brazil, Russia, Thailand, South Africa, and Australia to provide information.

- (31) Eusmet commented that the USA was not an appropriate analogue country, rejected Australia, Brazil and Russia, and proposed Norway as the alternative.
- (32) Norway had been used as analogue country in earlier investigations, but was rejected as an appropriate analogue country in the previous review investigations, for the reasons set out in recital 35 of Regulation (EU) No 467/2010. At the start of this investigation questionnaires were sent to both Norwegian producers, but only one cooperated, and this producer had no domestic sales.
- (33) Based on the evidence in this questionnaire reply, showing no domestic sales, the Commission has concluded that the circumstances regarding the Norwegian domestic market have not changed since the previous review investigations in 2010. The Commission therefore does not consider Norway as an appropriate analogue country.
- (34) Brazil had been used as analogue country in the previous investigations but no Brazilian company responded to the questionnaire sent to them, including the companies that had cooperated in the previous investigations.
- (35) Eusmet asked the Commission to reject the USA for the following reasons:
- there is only one producer in the USA who sells onto the domestic market,
  - there are duties in place against imports from some countries, in particular the PRC and Russia,
  - they consider domestic prices in the USA to be artificially high and unrepresentative.
- (36) Euroalliages responded to the comments of Eusmet concerning the USA as analogue country as follows:
- the USA is a substantial importer of silicon with increasing demand and decreasing production,
  - there are many sources of silicon imports that are either duty-free or subject only to customs duties,
  - there has been no investment in new production sites in the USA for the last 40 years, and if prices were higher than market value new production of silicon metal would have emerged, and conversion of ferro-silicon furnaces into silicon furnaces.
- (37) Eusmet then sent a further submission regarding the USA as analogue country, stating that they considered the data from the US producer as neither objective nor accurate and in a position to unduly influence the outcome of the investigation. They noted that one Russian producer had replied to the questionnaire and proposed Russia therefore as analogue country.
- (38) These allegations are unfounded. The data from the US producer was verified and found to be correct and that the domestic sales of the US producer were market prices negotiated with their customers. Eusmet provided no evidence that the domestic market price in the US during the review investigation period was affected by the merger of Globe Specialty Metals with FerroAtlantica.
- (39) Eusmet also stated that the use of US analogue data would allow FerroAtlantica and Euroalliages to calculate back the export prices of the Chinese exporting producers.
- (40) This allegation is also unfounded. No disclosure of data at this level of detail can be made to either FerroAtlantica or to Euroalliages due to reasons of confidentiality of both the Chinese exporting producers and the US producer.
- (41) Eusmet provided no evidence to support their suggestion that the Commission should use Russia as analogue country. In a previous submission Eusmet rejected Russia as an analogue country due to the dominant position of a sole producer on the Russian domestic market; energy cost distortions; and production for captive use.
- (42) Based on the information supplied by Eusmet, and the data submitted by the cooperating Russian producer, the Commission considers Russia to be a less appropriate analogue country than the USA, due to the dominant position of the sole Russian producer, limited imports (40 % of total sales), energy cost distortions, and that production in Russia is mainly for captive consumption rather than for the open market.

- (43) Although the USA also has only one producer selling onto the domestic market, there are imports from many sources (including Canada, South Africa, Australia and Norway), both with and without import duties. The US producer estimated that imports covered almost 60 % of total US market. Therefore the domestic market is open to competition and prices can be considered representative.
- (44) The Commission therefore concluded that the USA was the most appropriate analogue country under Article 2(7)(a) of the basic Regulation.
- (45) The information received from the cooperating producer in the analogue country was used as a basis for the determination of the normal value for the exporting producers, pursuant to Article 2(7)(a) of the basic Regulation.

#### 3.1.2. *Export price*

- (46) The Commission established the export price on the basis of prices actually paid or payable by independent customers for sales of the product concerned to the Union.
- (47) For three of the sampled exporting producers these sales for export to the Union were made to *a Chinese related company of the independent customer in the Union*.

#### 3.1.3. *Comparison*

- (48) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for indirect taxes, transport, insurance, handling, loading and ancillary costs, and packing.

#### 3.1.4. *Dumping margin*

- (49) For each cooperating exporting producer, the Commission compared the weighted average normal value of each type of the like product in the analogue country with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (50) On this basis the Commission found dumping margins for each cooperating exporting producer, expressed as a percentage of the CIF Union frontier price duty unpaid, in a range from 20 % to 30 %.

### **3.2. Development of imports should measures be repealed**

#### 3.2.1. *Development of prices*

- (51) As set out above, the sampled Chinese cooperating exporting producers were found to be dumping when comparing their export prices to the analogue country normal value.
- (52) However all of the sampled Chinese cooperating exporting producers were selling the product concerned to users in the Union, who were then processing the silicon into other products and exporting these products to customers outside the Union.
- (53) The users in the Union were found to be using the inward processing procedure ('IPP') whereby duties are not collected on the import of raw materials when the finished product is exported.
- (54) The export prices found were therefore negotiated between the Chinese exporting producers concerned and the Union users, in the knowledge that the anti-dumping duty in force would not be levied on these imports.

- (55) The Commission can therefore consider that the export prices verified during the review investigation period are a good indicator of the price of imports of silicon from the PRC in the absence of the anti-dumping duty in force.
- (56) There is therefore clear evidence that in the absence of measures imports will enter at such low prices.

### 3.2.2. *Production capacity and consumption in the PRC*

- (57) In the expiry review request, Euroalliages quoted a report from CRU <sup>(1)</sup> estimating the total silicon capacity in the PRC in 2014 to be 5,3 million tonnes. This compares to estimations in the expiry review request, also from CRU, that the PRC produced 1,4 million tonnes in 2014, of which half was for domestic consumption and half for export.
- (58) The CRU report quoted in the request gives Chinese spare capacity of 3,9 million tonnes in 2014, which is far in excess of the total Union consumption, as well as in excess of total Chinese consumption.
- (59) The figure of 5,3 million tonnes of total capacity is given without a source in the CRU report and does not appear to have been adjusted to take account of plants that have closed, or of restrictions on production based on the availability of electricity.
- (60) The verification visits to the sampled Chinese exporting producers confirmed that the Chinese government has policies in place to close smaller, less economic furnaces, but that they also are encouraging the building of much larger, more economic furnaces. However the Commission found no evidence of any significant funding from the government, either for the closure of small furnaces or the building of larger ones.
- (61) Nevertheless, the investigation showed that the Chinese exporting producers do have significant spare capacity. The Commission received a submission from the China Chamber of International Commerce and the Silicon Branch of the China Nonferrous Metal Industry Association ('CCIC and CNMIA'). This submission cast doubt on the CRU figures in the request for review, but submitted that Chinese capacity was 2,65 million tonnes, with spare capacity of 0,95 million tonnes. This spare capacity is still larger than total Chinese consumption and larger than total consumption in the Union.
- (62) CCIC and CNMIA submit that the overcapacity will reduce over time due to increasing Chinese demand for silicon, and increasing demand for Chinese exports from other Asian countries with no silicon production. They also expect that capacity will decrease with further enforcement of Chinese environmental and energy standards.
- (63) Euroalliages then made a further submission in response to the submission of CCIC and CNMIA with different projections as regards Chinese domestic demand, exports to Asia and the future capacity of the Chinese silicon industry.
- (64) Following disclosure CCIC and CNMIA again submitted that the spare capacity in the PRC was not as large as the expiry review request suggested, and that the overcapacity would reduce over time for the same reasons as set out above.
- (65) However they provided no evidence to show that the spare capacity in the PRC would reduce significantly in the near future to a level below that of the total Union consumption during the review investigation period.
- (66) All parties therefore still agree that there was significant spare capacity in the PRC which represents several times the volume of the Union consumption during the review investigation period. No party has provided any evidence that this spare capacity will disappear or reduce dramatically in the near future. It is therefore likely, given the tariff barriers in place in the USA and other markets that should the measures lapse, a part of this significant spare capacity is likely to be exported to the Union. Following disclosure, Euroalliages noted that the two anti-circumvention measures in force, referred to in recital 218 below, are an additional evidence of the attractiveness of the Union market. The Commission agrees that these two extensions of the measures further confirm the Commission's conclusion on this point.

<sup>(1)</sup> Chemicals Research Unit, [www.crugroup.com](http://www.crugroup.com)

### 3.2.3. Relationship between prices to third countries and on the Union market

- (67) The sampled exporting producers also provided evidence on their prices to other export markets than the Union during the review investigation period. This showed that the price to these other countries was in line with the export price to the Union.
- (68) Following disclosure one interested party provided Chinese export statistics showing that export prices to Korea and Japan were higher than export prices to the Union in 2015. The Commission does not consider that this changes the conclusion, based on verified data, that the sampled exporting companies were selling chemical grade silicon to other countries at prices in line with their export price to the Union.

### 3.2.4. Conclusion on the likelihood of continuation of dumping

- (69) The total production capacity (including the spare capacity) in the PRC in comparison with the size of the Union market suggests that the exports to the Union would likely increase if the measures were repealed. As set out in recitals 56 and 66 above those exports would likely continue to occur at dumped prices.

## 4. INJURY

### 4.1. Definition of the Union industry and Union production

- (70) The like product was manufactured by three producers in the Union during the review investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (71) Two of the three producers are in the same group of companies. For reasons of confidentiality, figures related to the Union industry are therefore indexed and/or given in a range.

### 4.2. Union consumption

- (72) The Commission established the Union consumption by adding the Union industry's sales on the Union market to the imports from the PRC and other third countries, based on data from Eurostat and questionnaire replies.
- (73) Union consumption developed as follows:

Table 1

#### Union consumption

	2011	2012	2013	2014	review investigation period
Consumption in tonnes (ranges)	500 000-550 000	470 000-520 000	510 000-560 000	540 000-600 000	540 000-600 000
Index	100	95	102	109	109

Source: Questionnaire replies and Eurostat.

- (74) Union consumption decreased by around 5 % in 2012 compared with 2011. It recovered in 2013 and steadily increased to be at around 9 % higher level in 2014 and the review investigation period as compared with the beginning of the period considered.

#### 4.3. Imports from the country concerned

##### 4.3.1. Volume of imports from the country concerned

- (75) The Commission established the volume of imports from the country concerned on the basis of Eurostat data. Imports into the Union from the country concerned developed as follows:

Table 2

#### Import volume from the country concerned

	2011	2012	2013	2014	review investigation period
Volume of total imports in tonnes	65 291	28 422	72 639	113 809	119 079
<i>Index</i>	100	44	111	174	182
Volume of duty-paid imports in tonnes	13 312	5 233	7 195	25 585	29 464
<i>Index</i>	100	39	54	192	221
Volume of imports under IPP in tonnes	51 980	23 189	65 444	88 224	89 615
<i>Index</i>	100	45	126	170	172

Source: Eurostat.

- (76) Import volumes fluctuated during the period considered. The fluctuation followed to a certain extent the trend of Union consumption. Imports from the PRC dropped significantly in 2012 and fully recovered in 2013. Similarly to the consumption they further increased in 2014 and the review investigation period, however the overall increase of 82 % during the period considered was much higher than the 9 % increase of the Union consumption in the same period.

##### 4.3.2. Imports under IPP and duty-paid imports

- (77) The vast majority of imports from the PRC are imported under IPP, as mentioned in recital 53 above and are processed as a raw material mainly by the users in the chemical industry. During the review investigation period, around 75 % of the total imports from the PRC were subject to inward processing, with no duties paid, neither anti-dumping nor conventional.
- (78) As set out in Table 2 above, duty-paid imports from the country concerned, after the significant decrease in 2012 were increasing at a higher rate than imports under IPP. Imports of silicon from the PRC under IPP increased overall by 72 % whereas duty-paid imports increased by 121 % between 2011 and the review investigation period.

4.3.3. *The market share of the imports from the country concerned*

- (79) The Commission established the market share of the imports on the basis of the Union consumption as set out in recital 72 above.
- (80) The market share of imports into the Union from the country concerned developed as follows:

Table 3

**Market share**

	2011	2012	2013	2014	review investigation period
Market share (range)	10 % - 15 %	5 % - 10 %	10 % - 15 %	17 % - 22 %	17 % - 22 %
Index	100	46	109	160	167

Source: Questionnaire replies and Eurostat.

- (81) The market share of total imports from the PRC dropped significantly in 2012 and fully recovered in 2013. The market share further increased in 2014 and the review investigation period, increasing altogether by 67 % during the period considered.

4.3.4. *Prices of the imports from the country concerned*

- (82) The Commission established the prices of imports on the basis of Eurostat data. The average price of imports into the Union from the country concerned developed as follows:

Table 4

**Import prices from the country concerned (EUR/ton)**

	2011	2012	2013	2014	review investigation period
Total imports	2 066	2 092	1 697	1 787	1 868
Index	100	101	82	86	90
Duty-paid imports	1 863	1 874	1 514	1 690	1 714
Index	100	101	81	91	92
IPP imports	2 119	2 142	1 717	1 815	1 919
Index	100	101	81	86	91

Source: Eurostat

- (83) The average import prices of silicon imported from the PRC fluctuated during the period considered, starting at 2 066 EUR per ton, decreasing by 18 % in 2013 and increasing to an average of 1 868 EUR per ton in the review investigation period, which is 10 % lower than in the beginning of the period considered.

- (84) The import prices of silicon imports under IPP and duty-paid imports fluctuated in a very similar way during the period considered. The prices of silicon imported under IPP were always higher than the imports subject to duties. During the review investigation period the average price of silicon imported under IPP was 1 919 EUR per tonne and 1 714 EUR per tonne of silicon imported with the duties paid.

#### 4.3.5. Price undercutting

- (85) The Commission determined the price undercutting during the review investigation period by comparing:
- (1) the weighted average sales prices per product type of the Union producers charged to unrelated customers on the Union market; and
  - (2) the corresponding weighted average prices per product type of the imports from the country concerned to the first independent customer, established on a cost, insurance, freight ('CIF') basis, with appropriate adjustments for conventional duty (if applicable) and importation costs.
- (86) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted for commissions where necessary.
- (87) Two separate price comparisons were made. One comparison used all imports from the PRC (duty-paid and inward processing), and the second comparison used only duty-paid imports.
- (88) The result of both comparisons showed significant levels of undercutting. When using all imports from the PRC, the overall weighted average undercutting margin is 7,6 %, despite its methodological limitations, as explained in recital 200 below. When comparing using only duty-paid prices, the overall weighted average undercutting margin is 13,6 %.

#### 4.4. Volume, market share and prices of imports from other third countries

##### 4.4.1. Volume of imports from other third countries

- (89) The main other sources of supply to the Union are Norway, Brazil, Russia, Bosnia and Herzegovina, and Australia. The seven countries with the highest imports (duty-paid and inward processing) during the review investigation period are as follows:

Table 5

#### Import volumes from other countries during the review investigation period (tonnes)

	2011	2012	2013	2014	review investigation period
Norway	117 037	135 871	151 911	161 805	160 633
Brazil	84 941	87 500	52 455	53 891	47 008
Russia	12 308	23 576	15 873	18 334	18 939
Bosnia and Herzegovina	17 618	15 919	15 796	17 015	17 628
Australia	8 944	9 180	21 716	18 459	17 032

	2011	2012	2013	2014	review investigation period
Thailand	13 857	13 422	5 395	9 639	9 064
Laos	334	7 501	9 870	7 700	7 250
All other third countries	55 485	38 077	44 903	17 341	19 665

Source: Eurostat.

- (90) Norway was the largest exporter of silicon to the Union during the review investigation period with 160 633 tonnes. Imports from the PRC set out in recital 75 above were the second largest in the review investigation period. Imports from Brazil reached 47 008 tonnes.

#### 4.4.2. Market share of imports from Norway, Brazil and all other third countries

- (91) The market share of the two other important sources of silicon imports to the Union developed during the period considered was as follows:

Table 6

#### Market shares of imports from Norway, Brazil and all other third countries

	2011	2012	2013	2014	review investigation period
Norway — market share (range)	20 % - 25 %	25 % - 30 %	25 % - 30 %	25 % - 30 %	25 % - 30 %
<i>Index</i>	100	123	127	127	126
Brazil — market share (range)	13 % - 17 %	15 % - 20 %	7 % - 11 %	7 % - 11 %	7 % - 11 %
<i>Index</i>	100	109	61	58	51
All other third countries — market share (range)	17 % - 22 %	18 % - 23 %	18 % - 23 %	12 % - 17 %	12 % - 17 %
<i>Index</i>	100	105	103	75	75

Source: Questionnaire replies and Eurostat.

- (92) The market share of imports from Norway was steadily increasing during the period considered and increased by around 26 % during this period. This increase is smaller when compared with the increase of market share of imports from the PRC that, as indicated in recital 80 above, increased by 67 % in this period.
- (93) The market share of imports from Brazil following the small increase in 2012 was decreasing to reach in the review investigation period only around half of its initial market share. The main reason for this decrease in level of imports and in the market share was a drought in Brazil that triggered high hydroelectricity prices.

- (94) The market share of imports from all other countries was increasing in 2012 and 2013 and decreased by 25 % during 2014 and the review investigation period. This indicates that between 2013 and review investigation period it was mainly imports from the PRC that experienced a considerable increase.

#### 4.4.3. Import prices from Norway, Brazil and all other third countries

- (95) The prices of imports (duty-paid and inward processing) from the other two important sources of silicon developed during the period considered as follows:

Table 7

#### Import prices from Norway and Brazil

	2011	2012	2013	2014	review investigation period
Norway	2 021	1 940	1 817	1 857	1 897
<i>Index</i>	100	96	90	92	94
Brazil	2 291	2 151	1 952	1 983	2 089
<i>Index</i>	100	94	85	87	91
All other third countries	2 129	2 018	1 793	1 857	1 919
<i>Index</i>	100	95	84	87	90

Source: Eurostat.

- (96) The evolution of prices during the period considered was similar for imports from Norway, Brazil and all other countries compared with the evolution of prices of imports from the PRC. Since both Norwegian producers are related to large users in the Union, the prices from Norway are to a significant extent transfer prices between related parties and, thus, they are not reliable for a meaningful comparison.
- (97) Import prices from Brazil were around 10 % higher than those from the PRC.

#### 4.5. Economic situation of the Union industry

##### 4.5.1. General remark

- (98) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered. The injury indicators are based on the specific data provided by the Union industry. Data were examined for the following indicators: Union consumption, production, production capacity, capacity utilisation, sales volume, market share, employment, productivity, sales prices, labour costs, inventories, profitability, cash flow, investments and return on investments. As explained in recital 71 above, for reasons of confidentiality, values are indexed and/or given in a range.

4.5.2. *Production, production capacity and capacity utilisation*

- (99) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 8

**Production, production capacity and capacity utilisation**

	2011	2012	2013	2014	review investigation period
Production volume in tonnes (ranges)	160 000-200 000	140 000-180 000	150 000-190 000	160 000-210 000	160 000-210 000
<i>Index</i>	100	90	93	102	103
Production capacity in tonnes (ranges)	210 000-260 000	220 000-280 000	220 000-280 000	220 000-280 000	220 000-280 000
<i>Index</i>	100	106	107	107	107
Capacity utilisation — <i>Index</i>	100	85	87	95	96

Source: Questionnaire replies.

- (100) The production volume decreased by 10 % in 2012 and was increasing in the following period, reaching in the review investigation period a level of 3 % higher than in 2011.
- (101) The production capacity of the Union industry increased by 6 % in 2012 and remained at an almost unchanged level, only slightly increasing towards the review investigation period. The increase in production capacity is therefore somewhat smaller than the increase in consumption, which increased by 9 % during the period considered as indicated in recital 73 above.
- (102) Unlike the production or the production capacity, the capacity utilisation was the highest in 2011. The increased production capacity and the decreased production in 2012 resulted in a 15 % decrease of the capacity utilisation. As the production capacity remained almost unchanged during 2012- review investigation period, its utilisation mirrored the development of the production volume and increased in the review investigation period to a level 4 % below the beginning of the period considered.

4.5.3. *Sales volume and market share*

- (103) The Union industry's sales volume and market share developed over the period considered as follows:

Table 9

**Sales volume and market share**

	2011	2012	2013	2014	review investigation period
Total sales volume on the Union market — <i>Index</i>	100	92	98	104	105

	2011	2012	2013	2014	review investigation period
Market share — range	27 % - 33 %	26 % - 32 %	26 % - 32 %	26 % - 32 %	26 % - 32 %
<i>Index</i>	100	97	96	95	97

Source: Questionnaire replies.

- (104) The volume of sales of the Union industry to unrelated customers decreased by 8 % in 2012 and was steadily increasing since then, to reach a level 5 % higher in the review investigation period as compared with 2011.
- (105) The market share of the Union industry developed in a different manner. It also decreased in 2012, but it continued decreasing in 2013 and 2014. The market share increased in the review investigation period, but not reaching its level of 2011, remaining 3 % below the beginning of the period considered.

#### 4.5.4. Growth

- (106) While the Union industry managed to increase their sales volume by 5 %, their market share decreased by 3 %. At the same time, production volumes increased by only 3 % in a market growing by 9 %. The Union industry therefore was not able to take advantage of the growth opportunities by losing market share in a growing market.

#### 4.5.5. Employment and productivity

- (107) Employment and productivity developed over the period considered as follows:

Table 10

#### Employment and productivity

	2011	2012	2013	2014	review investigation period
Number of employees — <i>Index</i>	100	96	101	103	104
Productivity (tonne/employee) — <i>Index</i>	100	94	93	99	100

Source: Questionnaire replies.

- (108) Employment developed favourably during the period considered, increasing by 4 %. At the same time, productivity per employee remained rather stable throughout the period considered.

#### 4.5.6. Magnitude of the dumping margin and recovery from past dumping

- (109) Dumping margins found were significantly above the *de minimis* level. The impact of the magnitude of the margins of dumping, on which the existing measures are based, on the Union industry was however mitigated by the effect of the existing measures.

4.5.7. *Prices and factors affecting prices*

- (110) The weighted average unit sales prices of the Union industry to unrelated customers in the Union developed over the period considered as follows:

Table 11

**Sales prices in the Union**

	2011	2012	2013	2014	review investigation period
Unit sales price in the Union (EUR/tonne) — <i>Index</i>	100	90	84	85	88
Unit cost of production (EUR/tonne) — <i>Index</i>	100	109	101	102	104

Source: Questionnaire replies.

- (111) The unit sales price of the Union industry to unrelated customers in the Union decreased by 10 % in 2012 and by another 6 % in 2013. It was slowly increasing since then but not reaching the level of 2011 remaining at 12 % lower level in the review investigation period.
- (112) Unlike the unit sales price, the unit cost of production of the Union industry increased in 2012 and decreased in 2013 coming back to almost the same level as in the beginning of the period considered. The unit cost of production was higher in the review investigation period by 4 % compared with 2011.

4.5.8. *Labour costs*

- (113) The average labour costs of the Union industry developed over the period considered as follows:

Table 12

**Average labour costs per employee**

	2011	2012	2013	2014	review investigation period
Average wages per employee — <i>Index</i>	100	106	90	94	94

Source: Questionnaire replies.

- (114) Average labour costs per employee decreased by a total of 6 %, mainly due to a significant decrease of 10 percentage points between 2012 and 2013.

## 4.5.9. Inventories

(115) Stock levels of the Union industry developed over the period considered as follows:

Table 13

**Inventories**

	2011	2012	2013	2014	review investigation period
Closing stocks in tonnes — <i>Index</i>	100	105	113	106	56

Source: Questionnaire replies.

(116) The closing stocks of the Union industry increased by 6 % between 2011 and 2014. The substantially lower level of inventories at the end of the review investigation period is affected by seasonal factors. While for the other periods the closing stock is taken at the end of December, for the end of the review investigation period it is taken at the end of March just after a period of rather low production due to high energy prices in winter. It is therefore to be expected to have a lower level of stocks at that time of the year.

## 4.5.10. Profitability, cash flow, investments, return on investments and ability to raise capital

(117) Profitability, cash flow, investments and return on investments of the Union industry developed over the period considered as follows:

Table 14

**Profitability, cash flow, investments and return on investments**

	2011	2012	2013	2014	review investigation period
Profitability of sales in the Union to unrelated customers (range)	20 % - 25 %	6 % - 9 %	7 % - 10 %	8 % - 11 %	9 % - 13 %
<i>Index</i>	100	33	37	41	50
Cash flow — <i>Index</i>	100	35	60	46	46
Investments — <i>Index</i>	100	180	44	70	76
Return on investments — (range)	90 % - 110 %	20 % - 25 %	25 % - 30 %	30 % - 37 %	40 % - 50 %
<i>Index</i>	100	23	27	33	44

Source: Questionnaire replies.

- (118) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. It significantly decreased by 67 % between 2011 and 2012, but subsequently increased by 17 percentage points reaching a satisfactory level during the review investigation period.
- (119) The net cash flow is the ability of the Union industry to self-finance their activities. Its development followed the profitability and remained at satisfactory levels throughout the period considered.
- (120) The return on investments is the profit in percentage of the net book value of investments. Its development largely mirrored the development of profitability, and remained at satisfactory levels throughout the period considered.
- (121) None of the Union producers reported difficulties in raising capital during the period considered.

#### 4.5.11. Conclusion on injury

- (122) Many injury indicators such as production, capacity and sales volume show a mixed picture. While they show a positive trend in absolute terms, the increase is so low that it does not allow the Union industry to benefit from the market growth. This is shown by the negative trend for capacity utilisation, market share and growth.
- (123) Employment increased by 4 % during the period considered, while productivity remained stable. Net investments and average wages per employee showed a negative trend.
- (124) While trends of the financial indicators such as profitability, cash flow and return of investments are negative, their absolute levels do not show a sign of injury.
- (125) On the basis of the above, the Commission concluded that the Union industry does not suffer material injury within the meaning of Article 3(5) of the basic Regulation.

#### 4.6. Likelihood of recurrence of injury

- (126) The above trends concerning prices and volumes of imports of the product concerned show that the Chinese exporting producers significantly increased their export volumes to the Union by 82 % despite the measures in force, holding a market share of [17 % — 22 %] during the review investigation period. Imports from the PRC subject to duties increased at even higher rate of 121 %, despite the measures in force. In the same period the production of the Union industry increased by 3 % and sales by 5 %. It was mainly imports from the PRC and Norway, and not the Union industry that replaced decreasing imports from Brazil and fulfilled the 9 % increase in the Union consumption between 2011 and the review investigation period.
- (127) As mentioned in recital 61 above, exporting producers in the PRC have significant spare capacity to increase their exports very rapidly. In addition, the domestic prices in the PRC and other third markets, for example Japan, are lower than prices on the Union market. According to CRU data, domestic prices in the PRC and in Japan were more than 25 % lower than in the Union during the review investigation period. Given the attractive prices on the Union market compared to the domestic market in the PRC and other third country markets, it is likely that significant quantities currently sold to these markets could also be redirected to the Union market should the anti-dumping measures be allowed to lapse.
- (128) In addition, major international markets such as Australia, Canada and the USA, have imposed anti-dumping duties against Chinese silicon. It will therefore be more difficult for the Chinese exporting producers to sell in those markets than into an unprotected Union market should the anti-dumping measures be allowed to lapse.
- (129) In addition, the price levels of the Chinese imports subject to anti-dumping duty significantly undercut Union industry's prices by 13,6 %. This shows the price levels at which Chinese exporting producers would likely enter the Union market in the absence of measures.

- (130) The likelihood of low-priced Chinese exports in the absence of measures is confirmed by the anti-dumping investigations on Chinese silicon in other countries mentioned in recital 128 above.
- (131) The Chinese exporting producers have the ability to significantly increase their already substantial market share at prices which significantly undercut the Union industry prices to the detriment of the Union industry.
- (132) Interested parties argued that some Union users have quality and reliability of supply requirements, especially in relation to chemical grade silicon, that cannot be met easily by Chinese producers.
- (133) The Commission established that indeed, the Union industry has a significant production of high quality silicon. However, given the large number of sources in the PRC, all qualities, including the high quality silicon can be and are imported from the PRC.
- (134) Nevertheless, the Union industry also sells significant quantities of standard grade silicon, for example to the aluminium industry. These significant quantities are in direct competition with Chinese imports. The majority of these standard grade imports are made on a duty-paid basis, and this type of imports is the most dynamic segment on the Union market, increasing by 121 % throughout the period considered as indicated in recital 75 above.
- (135) Interested parties claimed that geographical proximity, which in turn results in shorter delivery times, is another reason why Union users are unlikely to switch supply to Chinese sources should anti-dumping measures be repealed.
- (136) It is true that geographical proximity creates an advantage and that silicon is a heavy basic material with a relatively low per kilogram price. However, the existing imports from distant countries (Australia, Brazil, the PRC) mentioned in recital 89 above show that also suppliers in remote countries can effectively compete on the Union market.
- (137) Following disclosure, some interested parties reiterated the comments concerning differences in quality between the chemical and aluminium grades of silicon and between the primary and secondary applications of aluminium grades of silicon.
- (138) As explained in recital 134 above, the Commission notes these differences and observes that the Union industry's sales and imports from the PRC include significant quantities of standard grade silicon, sold for example to the aluminium industry.
- (139) With regard to the primary and secondary applications of aluminium grades of silicon, the Commission analysed the detailed data and quantified the price differences of all qualities of silicon sold to aluminium users by the Union industry. This analysis had shown that all grades commonly sold to the aluminium industry have a narrow price variation and that the particularly high-priced and low-priced grades are sold in insignificant quantities and therefore do not have any noticeable impact on the average price.
- (140) Therefore, it can be concluded that there is a likelihood of a further significant increase of Chinese imports at dumped and injurious prices leading to a recurrence of injury should the measures be allowed to lapse.

## 5. UNION INTEREST

- (141) In accordance with Article 21 of the basic Regulation, the Commission examined whether the imposition of anti-dumping measures on imports of silicon originating in the PRC following the findings of the present expiry review would not be in the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all interests involved, including those of the Union industry, importers and users. All interested parties were given the opportunity to make their views known under Article 21(2) of the basic Regulation.

### 5.1. Interest of the Union industry

- (142) The three Union producers accounting together for 100 % of Union production cooperated in this investigation. As stated in recital 125 above, Union industry does not suffer material injury within the meaning of Article 3(5) of the basic Regulation due to the measures in force.
- (143) At the same time Union industry has shown that their operations are viable when not subject to unfair competition by dumped imports.
- (144) Also, the removal of the measures would very likely lead to an increase of low-priced dumped Chinese imports, threatening the continued operation of the remaining producers in an otherwise viable industry. It is recalled that two producers in the Union had closed down since the initial imposition of measures.
- (145) It is therefore concluded that it is in the interest of the Union industry to maintain the measures in force.

### 5.2. Interest of unrelated importers

- (146) As stated in recital 16 above, only one unrelated importer submitted a sampling reply. The silicon trade constituted around 10 % of the total turnover for this importer. The importer did neither oppose nor support the measures.
- (147) It is therefore concluded that it is not against the interest of the unrelated imports to maintain the measures in force.

### 5.3. Interest of users

- (148) The Commission has received seven full replies from users from the chemical and aluminium industries.
- (149) For the aluminium industry, silicon is only marginally needed for their products to improve the properties of aluminium. In their opinion it is not easy to substitute silicon, therefore the security of supply is often of a higher importance than the price. The financial effect of the measures on these users is low, due to the relatively low importance of silicon in their cost structure. One large aluminium user is in favour of maintaining the anti-dumping duty, arguing that it is important that Union industry is able to continue its production in the Union, while an aluminium user consuming lower quantities of silicon is in favour of repealing the measures in force.
- (150) For users producing chemical products accounting for around 60 % of total Union consumption, silicon is of significant importance accounting for a large share of their raw materials cost. In the opinion of three of the chemical users the anti-dumping measures should not be maintained. Two of the chemical users neither opposed nor supported the measures.
- (151) Some users also pointed to the good financial situation of the Union producers. The effect of the measures on these users is potentially more significant than in the aluminium industries. However, the information supplied by the cooperating users producing chemical products shows that they almost exclusively import silicon under IPP, thereby being exempted from the anti-dumping duty. The effect of the measures on these users is therefore considered to be limited.
- (152) Users were concerned about the security of supply. One concern was the inability of the Union industry to fully supply the Union market. However, the measures in force did not stop Chinese imports from entering the Union market in significant quantities. As set out in recital 89 above, also imports from Norway, Brazil, Russia, Bosnia and Herzegovina, and a number of other countries allow them to supply the part of the market which cannot be supplied by the Union industry.

- (153) In this regard Eusmet submitted that the high capacity utilisation of the Union industry and increased production prove that the Union industry is not injured. The Commission confirmed that the Union industry has a relatively high capacity utilisation of around 70 % - 90 %. As set out in recital 99 above, based on verified information of Union producers, the production slightly increased during the period considered. However, as indicated in recital 122 above, the increase is so low that it does not allow the Union industry to benefit from the market growth. This is shown by the negative trend for capacity utilisation.
- (154) Following disclosure, European Aluminium, an association of aluminium users in the Union, supported maintaining the anti-dumping duty, arguing that overcapacity in the PRC and possible dumping from the PRC can threaten the supply of silicon to the aluminium industry on the Union market.
- (155) On balance, the positive effect of the measures on the Union industry by far outweighs the limited or insignificant negative impact of the measures in force on the users.

#### 5.4. Sources of supply on the Union market/competition concerns

- (156) Interested parties complained about an alleged lack of competition on the Union market. Indeed, the Union has only three Union producers belonging to two groups of companies. The Union industry held a market share of around 30 %, as indicated in recital 103 above. In order to meet the demands of Union users, the Union market therefore needs imports. Despite the existence of the measures in force, Chinese imports kept entering the Union market in increasing quantities, holding a market share of around [17 % - 22 %] during the review investigation periods explained in recital 75 above.
- (157) As stated in recital 89 above, the main other sources of supply to the Union are Norway, Brazil and a number of other countries being an alternative source of silicon imports.
- (158) The alleged duopoly therefore only holds a market share of 30 %, while imports from a number of third countries hold a market share of 70 %. Therefore, users have a choice between silicon metal produced by the Union industry and silicon metal from a variety of other third countries. The argument concerning an alleged duopolistic situation on the Union market can therefore not be accepted.

#### 5.5. Silicon as a critical raw material

- (159) Eusmet took note of the fact that in 2014 silicon metal was added to the list of Union critical raw materials. The Commission stated in its communication that the 20 raw materials listed '*are critical because risks of supply shortage and their impacts on the economy are higher than those of most of the other raw materials*'<sup>(1)</sup>.
- (160) On the same issue of silicon being added to the list of Union critical raw materials, Euroalliages argues that, should the measures be allowed to lapse, this would constitute a threat to sustainable supply of silicon from within the Union.
- (161) The fact of including silicon to this list, as such, did not influence findings of the Commission in the anti-dumping proceeding.
- (162) Following disclosure, CCIC and CNMIA submitted that there is a contradiction between the WTO dispute settlement proceeding in respect of export duty applicable to, among other raw materials, silicon<sup>(2)</sup> and the findings in this case. They submit that the initiation of the WTO dispute, with a possible result in lowering prices of silicon imported from the PRC, confirms that the interest of Union users in access to silicon supply outweighs the interest of Union producers in maintaining the anti-dumping measures.

<sup>(1)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the review of the list of critical raw materials for the EU and the implementation of the Raw Materials Initiative, of 26 May 2014, COM/2014/0297.

<sup>(2)</sup> WT/DS395 — China — Measures related to exportation of various raw materials.

- (163) The Commission found this argument unfounded. The fact that silicon was among the raw materials subject to the WTO dispute settlement does not remove the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition.

#### **5.6. The FerroAtlantica-Globe Speciality Metals merger**

- (164) Interested parties argued that the FerroAtlantica-Globe Speciality Metals ('FerroGlobe') merger will limit the supply of silicon on the Union market and lead to a dominant position of the merged entity FerroGlobe on the Union market.
- (165) However, Globe Speciality Metals produces silicon metal in Canada and the USA. During the period considered, only insignificant quantities of silicon were imported into the Union from Canada and the USA. The combined market share of imports from Canada and the USA remained well below 1 % during the period considered. It is therefore clear that the FerroGlobe merger cannot limit the supply of silicon on the Union market.

#### **5.7. The new Union Customs Code**

- (166) Eusmet argued that silicon users in the Union chemical industry will not be able to rely on inward processing in the future under the new Union Customs Code. It is Eusmet's understanding that according to Article 169(2) of the Union Customs Code Delegated Act <sup>(1)</sup>, the use of equivalent goods will not be permitted under the inward processing procedure from May 2016 onwards, for products subject to trade defence measures such as silicon.
- (167) Article 169(2) states that goods imported under IPP, only if they are processed and later released for free circulation, would be subject to anti-dumping duty. If the processed goods are re-exported, then there is no anti-dumping duty to pay. This would mean no change as compared to the current provisions.
- (168) The argument raised by Eusmet with regard to the new Union Customs Code therefore appears to be based on a misinterpretation of Article 169(2) of the Union Customs Code Delegated Act, and is therefore unfounded.

#### **5.8. Duration of measures**

- (169) Interested parties submitted that the anti-dumping measures on the product concerned that are in force since 1990 are not a temporary measure and should therefore be allowed to lapse.
- (170) The Commission found this argument unfounded. Under conditions set by the basic Regulation, the measures have to be extended if the specific legal conditions are met.

#### **5.9. Conclusion on Union interest**

- (171) On the basis of the above, the Commission concluded that there were no compelling reasons that it is not in the Union interest to maintain the measures on imports of silicon originating in the PRC.

### **6. LASTING NATURE OF THE CHANGED CIRCUMSTANCES**

- (172) As set out in recital 5 above, following the request for a partial interim review lodged by Eusmet, the Commission, needed to examine and conclude on the lasting nature of the changed circumstances.
- (173) These changes related mainly to the composition and the structure of the Union industry, to the silicon demand in the Union and to the Union supply pattern.

<sup>(1)</sup> OJ L 343, 29.12.2015, p. 1.

- (174) Euroalliages responded to the arguments included in the request, disagreeing among other elements, with the reference period of the changes observed being longer than the past five years.
- (175) The Commission concluded on the existence of a number of circumstances that changed since the previous review of the injury level that the Commission concluded in the Regulation (EC) No 2496/97 <sup>(1)</sup> ('the previous injury review'), and that the nature of these changes is lasting.
- (176) These changes, as listed in recital 173 above, relate mainly to the composition and structure of the Union industry. In this regard the number of producers constituting the Union industry reduced and constitutes currently of one group of producers and one producer, compared with four producers during the previous injury review. One of the producers active during the previous injury review has ceased operations, while two other previously independent producers have merged. There are no indications that these changes are not of a lasting nature.
- (177) The silicon demand in the Union, set out in recital 73 above, more than doubled compared to the investigation period in the previous injury review. Eusmet has provided evidence that the demand in the Union is likely to further increase in the coming years. The increase in demand is therefore considered to be of a lasting nature.
- (178) Concerning the Union supply pattern, the investigation has shown that the Union is increasingly dependent on imports of silicon metal. During the investigation period of the previous injury review, Union consumption exceeded the production of the Union industry by 134 000 tonnes. Since then, this gap increased to [350 000-400 000 tonnes]. Due to the increasing demand and the high capacity utilisation of the Union industry, this change in supply pattern is considered to be of a lasting nature.
- (179) On this basis, the Commission concluded that the changed circumstances are of a lasting nature and that the request for a partial interim review limited to injury is therefore substantiated.

## 7. ANTI-DUMPING MEASURES

### 7.1. Injury elimination level

- (180) To determine the level of the measures, the Commission first established the amount of duty necessary to avoid recurrence of injury to the Union industry.
- (181) During the review investigation period, the Commission established that the sales of the Union industry were profitable. The injury elimination level is therefore established at the level of the sales price of the Union industry during the review investigation period.
- (182) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average duty-paid import price from the PRC, as established for the price undercutting in recital 88 above, with the weighted average price of the like product sold by the Union producers on the Union market during the review investigation period.
- (183) With regard to the import price, the four sampled exporting producers exclusively sold silicon imported under IPP and therefore not subject to the anti-dumping duty. These prices could not therefore be used to establish the injury elimination level.
- (184) Eusmet, the applicant in the interim review, argued that the injury elimination level should be calculated on the basis of all imports irrespective of the customs regime. Eusmet and certain parties further argued that the conventional customs duty should be added to the price of all imports to obtain a 'free circulation' price, even for IPP sales where no customs duties are paid. They support this argument by referring to the previous review investigations.
- (185) The previous review investigations were however an interim review limited to dumping and an expiry review. Therefore, no injury elimination level was calculated in the interim review, and the parallel expiry review only examined a likelihood of recurrence of injury. Therefore, the previous review investigations had a different scope.

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

- (186) Eusmet argued that imports for chemical grade products are almost exclusively made under IPP while imports for free circulation are mainly of aluminium grade silicon. In addition, imports under IPP are priced around 12 % higher due to the more demanding specifications of chemical grade products. Disregarding these higher priced sales would therefore result in a flawed injury elimination level determination.
- (187) However, the anti-dumping duty is only levied on imports to the Union that are subject to duties. Imports under IPP are not subject to duties because they are not released for free circulation, and it is therefore not appropriate to use such prices to establish the injury elimination level. As a consequence, the injury elimination level is established on the basis of imports subject to duties.
- (188) Since all sales for export to the Union of the four cooperating sampled exporting producers have not entered the Union, but were used under IPP for products exported from the Union, the injury elimination level is established using only the duty-paid imports on a country-wide basis using statistical information from Eurostat.
- (189) Furthermore, it is widely confirmed by interested parties that imports subject to duties are sales predominantly made to the aluminium industry and the chemical industry predominantly imports Chinese silicon under IPP. Therefore, sales by the Union industry to users in the aluminium industry were compared to all imports from the PRC subject to duties.
- (190) Eusmet requested that an adjustment should be made for the difference in quality between chemical and aluminium grade silicon metal, between the different types of chemical grade silicon and for the niche silicon metal types that are produced by the Union industry but not imported from the PRC.
- (191) Certain parties provided information that indicates a difference in price of selected aluminium and chemical grade silicon of up to 23 %.
- (192) Euroalliages responded to the comments of Eusmet concerning the different types of silicon by stating that chemical and aluminium grades are interchangeable in terms of prices and cost of production. Indeed, the investigation has shown that the Union sales price of the Union industry to chemical users was not higher than the sales price to aluminium users. Also, the sales prices in the analogue country USA did not show such a marked difference between the sales prices to chemical and aluminium users. The main cause of the price difference between IPP sales and duty-paid sales is therefore rather the customs regime than the chemical difference between these products.
- (193) As indicated in recital 189 above, sales to the aluminium industry were used on both sides of the comparison. The question concerning an adjustment for differences between the aluminium and chemical grades is not relevant in such a comparison.
- (194) Following disclosure, Eusmet stated that by accepting the interim review request which referred amongst other points to the increasing imports of silicon under IPP, the Commission created legitimate expectations. Eusmet further alleged that the Commission later breached these legitimate expectations by excluding chemical grade silicon metal imports from the injury elimination level calculation.
- (195) The argument concerning legitimate expectations is unfounded. First, the initiation of a review is governed by a specific legal framework and cannot give rise to legitimate expectations on the outcome of the investigation. Second, all grades of silicon are subject to the present investigation. For the reasons set out in recitals 183 to 188 above, imports made under IPP have not been included in the calculation of the injury elimination level.
- (196) Following disclosure, some interested parties alleged that the Commission had incorrectly excluded imports of silicon made under IPP from its calculation of the injury elimination level. They further argued that by doing so, the Commission had excluded over 75 % of imports of silicon into the Union from the PRC during the review investigation period, failed to calculate individual injury elimination levels for the sampled Chinese exporting producers, failed to calculate a representative injury elimination level and had in fact applied facts available.
- (197) The Commission had not excluded imports of silicon made under IPP from the PRC or from any other country in its analysis for the expiry review of the likelihood of continuation or recurrence of dumping and injury, because imports under IPP compete with the Union industry's sales of silicon metal.

- (198) However for the partial interim review, limited in scope to the examination of injury, the Commission, as set out in recital 187 above, established the injury elimination level on the basis of imports subject to duties. The imports of silicon made under IPP were not taken into account in the calculation of the injury elimination level because imports under IPP are not released for free circulation and therefore they are neither subject to anti-dumping, nor to conventional customs duties.
- (199) As set out in recital 189 above imports subject to duties are sales predominantly made to the aluminium industry and imports under IPP are sales predominantly made to the chemical industry. The Commission carefully analysed the price difference between these imports. As explained in recital 192 above the price difference had to be the result of the customs regime, as no marked price difference existed within the Union industry's sales prices, nor the domestic sales prices of the analogue country producer.
- (200) The price of silicon imports made under IPP appears to result from a different pricing practice by Chinese exporting producers. This is also confirmed by claims with regard to price differences made by the same interested parties in their comments following disclosure. The Commission therefore decided to establish the injury elimination level based on significant volumes of imports of silicon for free circulation.
- (201) Following disclosure some interested parties argued that the higher price of chemical grade silicon is not due to the different pricing practice by Chinese exporting producers.
- (202) As explained in recital 189 above, the Commission compared sales by the Union industry to users in the aluminium industry to all imports from the PRC subject to duties. Sales to the aluminium industry are used on both sides of the comparison. Only aluminium grades, produced by the Union industry on one side, and subject to duty-paid imports on the other, were used for establishing the injury elimination level. Therefore, the question of whether the prices of imports under IPP are linked to different pricing practice by Chinese exporting producers is not relevant in such a comparison.
- (203) As already set out in recital 196 above, interested parties submitted that the Commission had failed to calculate individual injury elimination levels for the sampled Chinese cooperating exporting producers and to calculate a representative injury elimination level. This allegation relates to the fact that all of these producers were selling the product concerned to users in the Union, who were processing the silicon and then exporting products containing this silicon to customers outside the Union under IPP.
- (204) As stated in recital 188 above, all sales for export to the Union of the four cooperating sampled exporting producers were made for IPP. It was thus only possible to calculate the injury elimination level on a country-wide basis using statistical information for duty-paid imports from Eurostat. The Commission considered that it would be neither practicable nor possible to simulate what would be the prices of silicon imported from the PRC by each of the sampled producers, when sold to the chemical users in the Union, if those imports were released for free circulation. The Commission found that such a simulation would in any event lead to less reliable results than results based on actual prices of silicon sold to the aluminium industry. The Commission found it impracticable to establish what the effect would be on the prices resulting from removing imports under IPP from the specific market conditions of the IPP, apart from a simple addition of the conventional duty and anti-dumping duties.
- (205) Also for these reasons, and due to the interchangeability mentioned in recital 192 above, it was thus only possible to calculate the injury elimination level on a country-wide basis using statistical information for duty-paid imports from Eurostat. Any other calculation would be impracticable.
- (206) The same interested parties had referred to previous anti-dumping investigations in which imports under IPP were part of the Commission's analysis.
- (207) As underlined in recital 196 above, imports made under IPP were included in the Commission's expiry review analysis. The Commission noted the references made by interested parties to previous investigations under Article 11(3) but found no analogy between these cases and the current partial interim review.

- (208) With regard to the proceedings on calcium metal, the Regulation of 1999 <sup>(1)</sup> raised an issue of imports under IPP, but this concerned including those imports in the calculation of market share for the assessment of injury. In current proceedings on silicon, the Commission in determination of the market share in the likelihood of recurrence of injury analysis also included imports under IPP from the PRC, Brazil and Australia.
- (209) With regard to the proceedings on furfuraldehyde, the Regulation of 2012 <sup>(2)</sup> terminated the interim review of the anti-dumping measures and repealed those measures. It did not establish an injury elimination level.
- (210) With regard to the proceedings on glyphosate, the investigation found that while more than 90 % of recent imports originating in the PRC had been made under IPP, it was necessary to include in the calculation all sales from the sole cooperating exporter <sup>(3)</sup>. In fact, it was not possible to separately identify sales under IPP and other sales as only one importer and no users cooperated. In addition, the Commission could not use statistical information since different product types (acid with a concentration of 95 % and salt with a concentration of 62 %) were reported under the same customs code. Lastly, the resulting injury elimination level was not used, since it was higher than the dumping margin.
- (211) The same interested parties stated that the calculation of the injury elimination level is incorrect also due to differences in prices between the primary and secondary applications of aluminium grades of silicon.
- (212) As explained in recital 138 above, the Commission, on the basis of detailed data on all silicon grades sold to aluminium users by the Union industry, found no noticeable impact of differences in grades on the average price. With regard to silicon imported from the PRC, since all sales for export of the four cooperating exporting producers were made for IPP, the same detail of analysis of silicon grades sold to aluminium users, based on statistical information for duty-paid imports from Eurostat, was not possible.
- (213) However, in order to assess the claim with regard to primary and secondary application of aluminium grades, in addition to the analysis described in recital 139 above, the Commission analysed data with regard to a substantial part of sales on the Union market, where the differentiation of sales to primary and secondary application was provided. Based on that analysis, the Commission concluded that even assuming that all the duty-paid imports, as the parties suggest, are sold exclusively to the secondary aluminium users, it has no noticeable impact on the result of the injury elimination level calculation.
- (214) Following disclosure, Euroalliages referred to Eurostat data that indicated a decrease of average import price seven and eight months after the review investigation period, and alleged that by not taking into account these reduced prices, the Commission failed to assess the lasting nature of the changes in the injury elimination level.
- (215) According to Article 6(1) of the basic Regulation, the findings of an investigation are based on an investigation period and information relating to period subsequent to the investigation period shall normally not be taken into account. The claim was therefore rejected.
- (216) Any difference resulting from the comparison in recital 189 above was expressed as a percentage of the weighted average import CIF value. The resulting injury elimination level is 16,8 %.

## 7.2. Definitive anti-dumping measures

- (217) In view of the findings with regard to the expiry review, the Commission concludes that the anti-dumping measures applicable to imports of silicon originating in the PRC should be maintained.
- (218) As a consequence, the extension of the measures for the product concerned originating in the PRC to imports consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, by virtue of Council Regulation (EC) No 42/2007 <sup>(4)</sup>, and to imports consigned from Taiwan, whether declared as originating in Taiwan or not, by virtue of Council Implementing Regulation (EU) No 311/2013 <sup>(5)</sup>, should also be maintained.

<sup>(1)</sup> OJ L 94, 9.4.1999, p. 1.

<sup>(2)</sup> OJ L 165, 26.6.2012, p. 4.

<sup>(3)</sup> OJ L 303, 30.9.2004, p. 1.

<sup>(4)</sup> OJ L 13, 19.1.2007, p. 1.

<sup>(5)</sup> OJ L 95, 5.4.2013, p. 1.

- (219) In view of the findings with regard to the partial interim review limited to injury, the Commission concludes that the level of the anti-dumping measures applicable to imports of silicon originating in the PRC should be amended. Anti-dumping measures should be imposed on imports of silicon originating in the PRC, in accordance with the lesser duty rule provided for in Article 7(2) of the basic Regulation. The Commission compared the injury elimination level as established in recital 211 above and the dumping margin previously established by Implementing Regulation (EU) No 467/2010. The amount of the duty should be set at the level of the lower of the dumping margin and the injury elimination level.
- (220) On the basis of the above, the anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Dumping margin	Injury elimination level	Definitive anti-dumping duty
Datong Jinneng Industrial Silicon Co., Pingwang Industry Garden, Datong, Shanxi	16,3 %	16,8 %	16,3 %
All other companies	19,0 %	16,8 %	16,8 %

- (221) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, it reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (222) A company may request the application of these individual anti-dumping duty rates if it changes the name or the address of its entity. The request must be addressed to the Commission <sup>(1)</sup>. The request must contain all the relevant information to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name or address of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name or address will be published in the *Official Journal of the European Union*.
- (223) The Committee established by Article 15(1) of Regulation (EC) No 1225/2009 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is imposed on imports of silicon, currently falling within CN code 2804 69 00 and originating in the People's Republic of China.
2. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Definitive anti-dumping duty (%)	TARIC additional code
Datong Jinneng Industrial Silicon Co., Pingwang Industry Garden, Datong, Shanxi	16,3	A971
All other companies	16,8	A999

<sup>(1)</sup> European Commission, Directorate-General for Trade, Directorate H, CHAR 04/39, 1049 Brussels, Belgium.

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

*Article 2*

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

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

Done at Brussels, 1 July 2016.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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