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## V

(Acts adopted from 1 December 2009 under the Treaty on European Union, the Treaty on the Functioning of the European Union and the Euratom Treaty)

## ACTS WHOSE PUBLICATION IS OBLIGATORY

## COUNCIL IMPLEMENTING REGULATION (EU) No 1297/2009

of 22 December 2009

repealing the anti-dumping duty imposed by Regulation (EC) No 172/2008 on imports of ferro-silicon originating in the former Yugoslav Republic of Macedonia

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup> (the basic Regulation), and in particular Article 11 paragraphs 3 and 6 thereof,

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

Whereas:

#### 1. PROCEDURE

##### 1.1. Existing measures

- (1) The Council, by Regulation (EC) No 172/2008<sup>(2)</sup> (‘the original Regulation’), imposed a definitive anti-dumping duty on imports of ferro-silicon (‘FeSi’) originating in the People’s Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia. The measures consist of *ad valorem* duties in the range of 5,4 % to 33,9 % depending on the country of origin, with the exception of four companies expressly mentioned in the original Regulation which are subject to individual duty rates.

##### 1.2. Request for a review

- (2) Subsequent to the imposition of definitive measures, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation (‘the interim review’). The request, limited in scope to the examination of dumping, was lodged by an exporting producer from the former Yugoslav Republic of Macedonia, Silmak Doel Export Import (‘the applicant’ or ‘Silmak’). The applicant cooperated in the investigation which led to the findings and conclusions laid down in the original Regulation (‘the original investigation’). The anti-dumping duty applicable to the applicant, which is the only known exporting producer of the product

concerned originating in the former Yugoslav Republic of Macedonia, is 5,4 %.

- (3) In its request for the interim review, the applicant argued that a comparison of its constructed normal value and its export prices to the Union indicated that the dumping margin was substantially lower than the current level of measure. Therefore, it claimed that the continued application of the measure at its current level was no longer necessary to offset dumping.

##### 1.3. Initiation of a partial interim review

- (4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission decided to initiate a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping as far as Silmak is concerned. The Commission published a notice of initiation on 22 April 2009 in the *Official Journal of the European Union*<sup>(3)</sup> and commenced an investigation.

##### 1.4. Product concerned and like product

- (5) The product concerned by the interim review is the same as that in the original investigation, i.e. a ferro-alloy containing by weight more than 8 % and less than 96 % silicon and at least 4 % iron. Production of FeSi takes place in electric arc furnaces by means of reducing quartz using carbon-bearing products. The product is essentially used as a deoxidiser and as an alloying component in the iron and steel industry. FeSi is sold in the form of lumps, grains or powder and exists in various qualities depending on the silicon and the impurity content (e.g. aluminium). FeSi with a silicon content of 70 % and higher was considered as high purity, with a silicon content of more than 55 % and less than 70 % as medium purity, and with a silicon content of less than 55 % as low purity FeSi. The product concerned currently falls within CN codes 7202 21 00, 7202 29 10. and 7202 29 90.

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1.

<sup>(2)</sup> OJ L 55, 28.2.2008, p. 6.

<sup>(3)</sup> OJ C 93, 22.4.2009, p. 22.

- (6) The product produced and sold in the former Yugoslav Republic of Macedonia and that exported to the Union have the same basic physical, technical and chemical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

#### 1.5. Parties concerned

- (7) The Commission officially advised the Union industry, the applicant and the authorities of the exporting country of the initiation of the interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (8) The Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping, and a verification visit was carried out at the premises of the applicant:

— Silmak Dooel Export-Import, Jegunovica, the former Yugoslav Republic of Macedonia.

#### 1.6. Investigation period

- (9) The investigation of dumping covered the period from 1 January 2008 to 31 December 2008 ('the investigation period' or 'IP').

## 2. RESULTS OF THE INVESTIGATION

### 2.1. Normal value

- (10) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the applicant's domestic sales of the like product to independent customers were representative, i.e. whether the total volume of such sales was equal to at least 5 % of the total volume of the corresponding export sales to the Union.
- (11) As the investigation established that there were no representative domestic sales of the like product in the former Yugoslav Republic of Macedonia, normal value had to be constructed. In accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types a reasonable amount for selling, general and administrative expenses ('SG&A') and a reasonable profit margin.
- (12) In order to establish whether the applicant's own SG&A and profit margin realised on the domestic sales of the like product could be used, the Commission subsequently examined whether there were any domestic sales of FeSi in the IP which could be regarded as having been made

in the ordinary course of trade, pursuant to Article 2(4) of the basic Regulation. It was found that the company had few profitable domestic sales transactions during the IP, corresponding to very small quantities. The company claimed that these transactions concerned trial product types which could not therefore be considered to be in the ordinary course of trade. The claim was examined and accepted.

- (13) Based on the above analysis, it was concluded that the applicant did not have any domestic sales of the like product in the ordinary course of trade during the IP. Thus, pursuant to point (c) of Article 2(6) it was considered reasonable, when constructing the normal value, to follow the same method as that applied in the original investigation. As a consequence, the weighted average SG&A incurred by the Egyptian producers in the original investigation, because of their comparable production and sales structures, and a profit margin of 5 % which was considered a reasonable profit for this type of commodity market, were added to the cost of manufacturing of the applicant.

### 2.2. Export price

- (14) Since all export sales of the applicant to the Union were made directly to independent customers, the export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

### 2.3. Comparison

- (15) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis and at the same level of trade. In order to ensure a fair comparison between normal value and export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were demonstrated to affect prices and price comparability. For this purpose, due allowance in the form of adjustments was made for costs of freight and insurance, handling, packing and ancillary expenses, financial costs, bank charges and anti-dumping duties paid by the applicant where applicable and justified.

### 2.4. Dumping margin

- (16) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. This comparison did not show the existence of dumping.

## 3. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (17) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.

- (18) In this regard, the investigation showed that Silmak had made substantial efforts to change the structure of its production towards higher grade product types (with a silicon content of 75 % or higher) resulting in an increase in its export prices, which was on average higher than the increase in the costs.
- (19) The applicant provided full cooperation in this interim review and the data collected and verified allowed to establish a dumping margin based on its own data, including individual export prices to the Union. The result of this calculation indicates that the continued application of the measure at its current level would no longer be justified.
- (20) Evidence obtained and verified during the investigation also showed that the changes in the applicant's production structure are to be considered lasting. No element emerged in the course of the investigation that would suggest otherwise. It was therefore considered that the circumstances that led to the initiation of this interim review are unlikely to change in the foreseeable future in a manner that would affect the findings of the interim review. Therefore, it was concluded that the changed circumstances are of a lasting nature.

#### 4. ANTI-DUMPING MEASURES

- (21) It is noted that the comparison of the applicant's export data with Eurostat showed that the company's export quantity of the product concerned in the IP corresponded to the total quantity of the product concerned imported

into the Union from the former Yugoslav Republic of Macedonia during the same period.

- (22) In the light of the results of this review investigation, it is considered appropriate to repeal the anti-dumping duty applicable to imports of the product concerned originating in the former Yugoslav Republic of Macedonia.
- (23) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the repeal of the measure imposed by Regulation (EC) No 172/2008 and were given an opportunity to comment. No comments were received from the interested parties,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

The partial interim review of the antidumping measures applicable to imports of ferro-silicon, currently falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90, originating in the former Yugoslav Republic of Macedonia, initiated pursuant to Article 11(3) of Regulation (EC) No 384/96, is hereby terminated and the measure in force on imports originating in the former Yugoslav Republic of Macedonia is repealed.

#### *Article 2*

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

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

Done at Brussels, 22 December 2009.

*For the Council*  
*The President*  
A. CARLGREN

## ACTS WHOSE PUBLICATION IS NOT OBLIGATORY

## COUNCIL IMPLEMENTING DECISION

of 15 December 2009

**authorising the Republic of Estonia to apply a measure derogating from Article 167 of Directive 2006/112/EC on the common system of value added tax**

(2009/1022/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Directive 2006/112/EC <sup>(1)</sup>, and in particular Article 395(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Republic of Estonia (hereinafter 'Estonia') was authorised by Council Decision 2007/133/EC <sup>(2)</sup>, by derogation from Article 167 of Directive 2006/112/EC, to postpone the right of deduction of value added tax (VAT) until it has been paid to the supplier of goods or of services, in respect of taxable persons applying an optional scheme under which, in accordance with Article 66(b) of that Directive, VAT on their supplies of goods and of services becomes chargeable on receipt of payment (cash accounting scheme). In order to qualify for this scheme, the taxable persons must be registered as sole proprietors.

(2) Estonia requested authorisation to extend this special derogating measure by letter registered by the Commission's Secretariat-General on 4 September 2009.

(3) In accordance with Article 395(2) of Directive 2006/112/EC, by letter of 1 October 2009, the Commission forwarded the request to the other Member States. By letter of 5 October 2009, the Commission informed Estonia that it had all the information it considered necessary for appraisal of its request.

(4) The cash accounting scheme is a simplified optional scheme intended for small undertakings which do not

qualify for tax exemption. It allows such taxable persons to apply a simple rule based on the date of payment for their input and output transactions, to determine when they must exercise their right to deduct VAT and pay the tax to the revenue authorities. This scheme thus constitutes for those taxable persons a simplification measure, which can, furthermore, create a cash-flow advantage for them.

(5) On 28 January 2009, the Commission submitted a proposal of a directive with a view to amending Directive 2006/112/EC as regards the rules on invoicing and also allowing the Member States to postpone the right to deduct VAT arising until it has been paid to the supplier in respect of taxable persons with an annual turnover not exceeding a ceiling, which could be fixed by Member States at up to EUR 2 000 000, and accordingly entitled to use an optional scheme under which the VAT to which their transactions are liable does not become chargeable until they have received the payment.

(6) The special derogating measure in question does not affect the amount of VAT revenue collected by Estonia at the final consumption stage and has no impact on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

*Article 1*

By way of derogation from Article 167 of Directive 2006/112/EC, Estonia is authorised to postpone the right of deduction of VAT in respect of taxable persons, as defined in the second paragraph, until it has been paid to the supplier of goods or of services.

The taxable persons concerned must have opted for a scheme under which the VAT on their supplies of goods and of services becomes chargeable on receipt of the payment.

<sup>(1)</sup> OJ L 347, 11.12.2006, p. 1.

<sup>(2)</sup> OJ L 57, 24.2.2007, p. 12.

Until 31 December 2010, the scheme referred to in the second paragraph shall be applicable to taxable persons registered as a sole proprietor.

As from 1 January 2011, the scheme referred to in the second paragraph shall be applicable to taxable persons whose annual turnover does not exceed a threshold which shall be set by Estonia at up to the equivalent in national currency of EUR 200 000, determined in accordance with Articles 399 and 400 of Directive 2006/112/EC.

*Article 2*

This Decision shall apply from 1 January 2010 until the date of entry into force of a directive authorising the Member States to postpone the right of deduction of VAT arising until it has been paid to the supplier of goods or of services in respect of taxable persons whose annual turnover does not exceed a certain ceiling

and who therefore benefit from an optional scheme according to which the tax on their supplies of goods and of services becomes chargeable when they have received the payment. In any event, this Decision shall apply until 31 December 2012 at the latest.

*Article 3*

This Decision is addressed to the Republic of Estonia.

Done at Brussels, 15 December 2009.

*For the Council*

*The President*

E. ERLANDSSON









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