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

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2016/297**of 2 March 2016****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

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

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

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

Done at Brussels, 2 March 2016.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development*

ANNEX

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

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	EG	371,5
	IL	236,2
	MA	89,6
	SN	174,9
	TN	116,3
	TR	106,5
	ZZ	182,5
0707 00 05	JO	194,1
	MA	80,8
	TR	166,7
	ZZ	147,2
0709 93 10	MA	51,3
	TR	164,9
	ZZ	108,1
0805 10 20	EG	47,8
	IL	76,4
	MA	56,2
	TN	50,0
	TR	65,7
	ZZ	59,2
0805 50 10	MA	110,9
	TN	91,8
	TR	97,7
	ZZ	100,1
0808 10 80	CL	93,5
	US	114,3
	ZZ	103,9
0808 30 90	CL	161,2
	CN	90,6
	ZA	91,5
	ZZ	114,4

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COUNCIL DECISION (EU) 2016/298

of 29 February 2016

on the position to be adopted by the European Union within the ACP-EU Committee of Ambassadors regarding approval of derogations to the Financial Regulation of the Centre for the Development of the Enterprise (CDE)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 209(2) in conjunction with Article 218(9) thereof,

Having regard to Annex III to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part ⁽¹⁾, and in particular Article 2(6) thereof,

Having regard to Decision No 5/2004 of the ACP-EC Committee of Ambassadors of 17 December 2004 concerning the Financial Regulation of the Centre for the Development of Enterprise ⁽²⁾,

Having regard to the proposal from the European Commission,

Whereas:

- (1) At its 39th session from 19 to 20 June 2014 in Nairobi, Kenya, the ACP-EU Council of Ministers agreed, in a Joint Declaration, to proceed with the orderly closing of the Centre for the Development of Enterprise ('CDE'), and to the amendment of Annex III to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part ('ACP-EU Partnership Agreement') and to that end, to delegate powers to the ACP-EU Committee of Ambassadors to take the matter forward with a view to the adoption of the necessary decisions.
- (2) In its Decision No 4/2014 ⁽³⁾, the ACP-EU Committee of Ambassadors recalls that the closure of the CDE is to respect the competences of the CDE's supervisory authorities set out in Annex III to the ACP-EU Partnership Agreement and the detailed arrangements laid down by the ACP-EU Council of Ministers in its Joint Declaration.
- (3) Annex III to the ACP-EU Partnership Agreement requires the ACP-EU Committee of Ambassadors to monitor the overall strategy of the CDE and supervise the work of the Executive Board.
- (4) Annex III to the ACP-EU Partnership Agreement requires the CDE Executive Board to lay down the financial and staff regulations and the rules of operations.
- (5) The request from the CDE Executive Board to the ACP-EU Committee of Ambassadors by letter dated 19 October 2015 explains that, in the context of the closing down of the CDE, the CDE Executive Board wishes to derogate from Article 27(1) and (5) of Decision No 5/2004 of the ACP-EC Committee of Ambassadors of 17 December 2004 concerning the Financial Regulation of the Centre for the Development of Enterprise ('CDE Financial Regulation') and seeks prior approval from the supervisory authorities.

⁽¹⁾ Agreement signed in Cotonou on 23 June 2000 (OJ L 317, 15.12.2000, p. 3), as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 209, 11.8.2005, p. 27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3).

⁽²⁾ OJ L 70, 9.3.2006, p. 52.

⁽³⁾ Decision No 4/2014 of the ACP-EU Committee of Ambassadors of 23 October 2014 regarding the mandate to be given to the Executive Board of the Centre for the Development of Enterprise (CDE) (OJ L 330, 15.11.2014, p. 61).

- (6) The modification of, or derogations to, the CDE Financial Regulation and CDE Staff Regulations ⁽¹⁾, depending on the needs that may arise from the implementation of the orderly closure process of the CDE, necessitates a flexible procedure.
- (7) The requirement of the appointment of a firm of auditors for a period of three years, as set out in Article 27(1) of the CDE Financial Regulation, and the requirement for this firm to draw up each year a statutory audit report, in accordance with Article 27(5) of that Regulation, need to be adapted in order to ensure a more efficient procedure in the context of the closing-down of the organisation,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be adopted by the Union in the ACP-EU Committee of Ambassadors regarding the approval of the derogations to the CDE Financial Regulation shall be based on the draft Decision of the ACP-EU Committee of Ambassadors attached to this Decision.
2. Minor changes to the draft Decision may be agreed by the representatives of the Union in the ACP-EU Committee of Ambassadors without further decision of the Council.

Article 2

After its adoption, the Decision of the ACP-EU Committee of Ambassadors shall be published in the *Official Journal of the European Union*.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 29 February 2016.

For the Council
The President
H.G.J. KAMP

⁽¹⁾ Decision No 9/2005 of the ACP-EC Committee of Ambassadors of 27 July 2005 concerning the Staff Regulations of the Centre for the Development of Enterprise (CDE) (OJ L 348, 30.12.2005, p. 54).

DRAFT

DECISION OF THE ACP-EU COMMITTEE OF AMBASSADORS**of ...****on the approval of derogations to the Financial Regulation of the Centre for the Development of the Enterprise (CDE)**

THE ACP-EU COMMITTEE OF AMBASSADORS,

Having regard to Annex III to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part ⁽¹⁾, and in particular Article 2(6) thereof,

Having regard to Decision No 5/2004 of the ACP-EC Committee of Ambassadors of 17 December 2004 concerning the Financial Regulation of the Centre for the Development of Enterprise ⁽²⁾,

Whereas:

- (1) Annex III to the ACP-EU Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, (ACP EU Partnership Agreement) requires the ACP-EU Committee of Ambassadors to monitor the overall strategy of the CDE and supervise the work of the Executive Board.
- (2) Annex III to the ACP-EU Partnership Agreement requires the CDE Executive Board to lay down the financial and staff regulations and the rules of operations.
- (3) The Statutes and Rules of Procedure of the Centre for the Development of Enterprise adopted by Decision No 8/2005 of the ACP-EU Committee of Ambassadors ⁽³⁾ (the 'CDE Statutes') and Decision No 5/2004 of the ACP-EC Committee of Ambassadors ('CDE Financial Regulation') ⁽⁴⁾ provide the safeguards in terms of information of and supervision by the ACP-EU Committee of Ambassadors.
- (4) At its 39th session held from 19 to 20 June in Nairobi, the ACP-EU Council of Ministers agreed, in a Joint Declaration, to proceed with the orderly closing of the CDE and to the amendment of Annex III to the ACP-EU Partnership Agreement and, to that end, to delegate powers to the ACP-EU Committee of Ambassadors to take the matter forward with a view to the adoption of the necessary decisions.
- (5) In its Decision No 4/2014 ⁽⁵⁾, the ACP-EU Committee of Ambassadors recalls that the closure of the CDE is to respect the competences of the CDE's supervisory authorities set out in Annex III to the ACP-EU Partnership Agreement and the detailed arrangements laid down by the ACP-EU Council of Ministers in its Joint Declaration.
- (6) The request from the CDE Executive Board to the ACP-EU Committee of Ambassadors by letter dated 19 October 2015 explains that in the context of the closing down of the CDE, the CDE Executive Board wishes to derogate from Article 27(1) and (5) of the CDE Financial Regulation, and seeks prior approval from the Supervisory Authorities.
- (7) The modification of or derogations to the CDE Financial Regulation and CDE Staff Regulations ⁽⁶⁾, depending on the needs that may arise from the implementation of the orderly closure process of the CDE, necessitates a flexible procedure.

⁽¹⁾ Agreement signed in Cotonou on 23 June 2000 (OJ L 317, 15.12.2000, p. 3), as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 209, 11.8.2005, p. 27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3).

⁽²⁾ OJ L 70, 9.3.2006, p. 52.

⁽³⁾ OJ EU L 66, 8.3.2006, p. 16.

⁽⁴⁾ Decision No 5/2004 of the ACP-EC Committee of Ambassadors of 17 December 2004 concerning the Financial Regulation of the Centre for the Development of Enterprise (OJ L 70, 9.3.2006, p. 52).

⁽⁵⁾ OJ L 330, 15.11.2014, p. 61.

⁽⁶⁾ OJ L 348, 30.12.2005, p. 54.

- (8) The requirements of the appointment of a firm of auditors for a period of three years, as set out in Article 27(1) of the CDE Financial Regulation, and the requirement for this firm to draw up each year a statutory audit report, in accordance with Article 27(5) of that Regulation, need to be adapted in order to ensure a more efficient procedure in the context of the closing-down of the organisation,

HAS ADOPTED THIS DECISION:

Article 1

1. The ACP-EU Committee of Ambassadors gives its favourable opinion regarding the derogation from Article 27(1) and (5) of the CDE Financial Regulation, with immediate effect.
2. By derogation from Article 27(1) of the CDE Financial Regulation, the CDE shall be able to appoint a firm of auditors for a period of four years covering the financial years 2013 to 2016. This firm of auditors shall be selected in accordance with the procurement procedures foreseen in the CDE Financial Regulation.

By derogation from Article 27(5) of the CDE Financial Regulation, a multiannual audit will be launched for the years not yet audited and a single final report will be presented to the CDE Executive Board.

Article 2

The ACP-EU Committee of Ambassadors authorises the CDE Executive Board to derogate from and/or to modify the CDE Financial Regulation and CDE Staff Regulation depending on the needs that may arise from the implementation of the orderly closure process of the CDE. The CDE Executive Board shall inform the ACP-EU Committee of Ambassadors of any such decision of derogation and /or modification of the CDE regulations immediately.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at ...,

For the ACP-EU Committee of Ambassadors
The President

COMMISSION IMPLEMENTING DECISION (EU) 2016/299**of 2 March 2016****terminating the anti-dumping proceedings concerning imports of silico-manganese originating in India**

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 ⁽¹⁾ ('the basic Regulation'), and in particular Article 9(2) thereof,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 20 December 2014, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of silico-manganese originating in India ('the country concerned') on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 10 November 2014 by the Comité de Liaison des Industries de Ferro-Alliages ('Euroalliages' or 'the complainant') on behalf of three Union producers. The complainant represents more than 25 % of the total Union production of silico-manganese. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Interested parties

- (3) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed other known Union producers, the known exporting producers, importers, users, associations known to be concerned and the Indian authorities about the initiation of the investigation and invited them to participate.
- (4) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.3. Sampling

- (5) In the Notice of Initiation, the Commission stated that it might sample exporting producers in India and unrelated importers in accordance with Article 17 of the basic Regulation.

(a) Sampling of Union producers

- (6) Due to the limited number of known Union producers, no sampling was necessary. All known Union producers were informed about the initiation of the investigation and were invited to make themselves known and participate in the investigation.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 461, 20.12.2014, p. 25.

(b) Sampling of importers

- (7) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all unrelated importers were requested to make themselves known to the Commission and to provide information specified in the Notice of Initiation.
- (8) Four unrelated importers replied to the Commission but only two 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.

(c) Sampling of exporting producers in India

- (9) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in India were requested to make themselves known to the Commission and to provide information specified in the Notice of Initiation.
- (10) Originally, 21 exporting producers replied to the sampling questionnaire within the given deadline. They reported a total export sales volume that according to Eurostat data covered 48 % of total imports from India during the investigation period.
- (11) Subsequently, 13 additional companies submitted sampling forms and expressed their willingness to cooperate. The Commission contacted these companies asking them to provide more information on their exports to the Union. However, only 11 companies came forward and provided the requested information.
- (12) Following a recommendation from the Hearing Officer, the Commission decided to consider also these companies as cooperating exporting producers in the investigation and the companies were informed accordingly on 21 May 2015. As a consequence the total volume of exports by all cooperating exporting producers accounted for 60 % of the total imports from India (Eurostat data).
- (13) A sample consisting of four groups of exporting producers that represented the largest representative volume of exports that could reasonably be investigated within the time available was originally selected. This sample accounted for 31 % of the total volume of exports from India to the Union according to Eurostat data and 51 % of the total volume of the cooperating exporters.
- (14) Subsequently, one of the four sampled companies informed the Commission that it was not in the position to continue its cooperation as a sampled company. Accordingly, this company was removed from the sample. However, the remaining three companies still accounted for around 43 % of the total exports from India to the Union by the cooperating Indian exporting producers and around 26 % of total imports according to Eurostat data and the sample was therefore still considered representative.
- (15) The complainant claimed that the sample was not representative since the export types of the product concerned for two out of the three companies in the sample were not representative of the vast majority of Indian exports. Furthermore, the complainant argued that the sample of the remaining three companies only represents 13 % of the total Indian exports to the Union.
- (16) The complainant therefore requested revision of the sample or application of Article 18 of the basic Regulation should there be insufficient time to select a new sample.
- (17) The arguments of the complainant cannot be accepted. First, the sample represents in fact 26 % of the total Indian exports to the Union and not 13 %, which erroneously had been communicated to interested parties in the information document referred to in recital 26 below. Second, the criterion used for selecting the sample is the largest volume exported to the Union in accordance with Article 17 of the basic Regulation. The fact that

two of the sampled companies do not produce and export all product types does not render the sample non-representative since the sample overall covers all types of silico-manganese. Third, the complainant itself argued in the complaint that 'all qualities and sizes of silico-manganese are to be considered as a single product since they all share the same main chemical and physical characteristics and main uses' ⁽¹⁾. Fourth, the fact that one sampled company with relatively small export volumes ceased cooperation, was not likely to materially affect the outcome of the investigation or to constitute a material degree of non-cooperation from the sample.

- (18) It follows that the complainant's request to either select a new sample or to apply Article 18 of the basic Regulation should be rejected.
- (19) Moreover, during a hearing on 18 November 2015, the complainant argued that the exports of low quality silico-manganese to the Union should be excluded from the export volumes of the sampled exporting producer since such a low quality product cannot be used as such by European steel mills. The Commission recalls that low-quality silico-manganese is part of the product concerned and that a relevant volume was exported to the Union. Therefore, the request for exclusion cannot be accepted. In any event, even if it is accepted, the impact on the sample representativeness would be minor since the sample would still represent around one quarter of the total Indian exports to the Union.

1.4. Individual examination

- (20) Five exporting producers from India submitted questionnaire replies requesting to have their individual dumping margins determined.
- (21) The Commission considered that it was impracticable, in light of the circumstances of the investigation, to grant such requests.

1.5. Replies to the questionnaire

- (22) The Commission sent questionnaires to the three sampled exporting producers or groups of producers in India, to all known Union producers and to the importers and users that so requested.
- (23) Questionnaire replies were received from the three sampled exporting producers or groups of producers in India, two Union producers, two unrelated importers in the Union and five users in the Union.

1.6. Verification visits

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

(a) producers in the Union:

- Comilog Dunkerque snc, Dunkerque, France,
- OFZ sa, Istebné, Slovakia;

(b) exporting producers in India:

- Modern India Con-Cast Limited, Ferro Alloys and Minerals Division, Kolkata, India and Gayson & Company Private Limited, Kolkata, India,

⁽¹⁾ Page 7, Chapter 3 'Product subject to this proceeding', of the open version of the complaint.

- Tata Steel Limited, Kolkata, India and Tata Steel Asia (Hong Kong) Limited, Kowloon, Hong Kong,
 - Indsil Hydro Power and Manganese Ltd, Indsil Energy & Electrochemicals Ltd and Sree Mahalakshmi Smelters (P) Ltd, Coimbatore, India;
- (c) unrelated importers in the Union:
- Sineco S.p.A, Folio, Italy,
 - Fesil Sales, Alzingen, Luxembourg;
- (d) users in the Union:
- Aperam Sourcing SCA, Luxembourg,
 - ArcelorMittal Sourcing Soc en cpa, Luxembourg,
 - Salzgitter AG, Salzgitter, Germany.

1.7. Investigation period and period considered

- (25) The investigation of dumping and injury covered the period from 1 October 2013 to 30 September 2014 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the investigation period ('period considered').

2. NON-IMPOSITION OF PROVISIONAL MEASURES AND SUBSEQUENT PROCEDURE

- (26) The Commission decided not to impose provisional measures. All interested parties received an information document setting out the reasons for the non-imposition of provisional measures. Several interested parties submitted written comments on the findings spelled out in the information document. The parties who so requested were granted the opportunity to be heard. A hearing with the complainant took place in the presence of the Hearing Officer in trade proceedings on 8 December 2015.
- (27) Subsequently, the Commission informed all parties of the essential facts and considerations on the basis of which it intended not to impose a definitive anti-dumping duty on imports into the Union of silico-manganese originating in India. All parties were granted a period within which they could make comments on the final disclosure. A second hearing with the complainant took place in the presence of the Hearing Officer in trade proceedings on 20 January 2016. In the latter hearing, the complainant was accompanied by the Spanish Union producer FerroAtlantica, which was not represented by the complainant and had not cooperated during the proceeding, as set out below in Section 5.
- (28) The comments submitted by the interested parties were considered and taken into account where appropriate.

3. PRODUCT CONCERNED AND LIKE PRODUCT

3.1. Product concerned

- (29) The product concerned is silico-manganese (including ferro-silico-manganese) originating in India, currently falling within CN codes numbers ex 7202 30 00 and ex 8111 00 11 ('the product concerned').
- (30) Silico-manganese is a ferroalloy composed principally of manganese, silicon and iron and generally containing smaller proportions of other elements such as carbon, phosphorous, sulphur and boron. Silico-manganese is produced by melting manganese ore in electric furnaces and is used mainly as a source of manganese and silicon in the production of steel.

- (31) There are several different qualities of silico-manganese depending on the content of manganese, silicon and carbon and it is sold in stones of different sizes depending on the clients' requirements. All qualities and sizes constitute a single product though, although a premium is paid for a higher content of manganese or silicon and for a content of carbon below 0,1 %, which makes the silico-manganese suitable for the production of certain special stainless steel.
- (32) The higher or lower content of other elements such as phosphorous and boron does not affect the price, although the content of such elements above certain thresholds render the silico-manganese unsuitable for certain downstream productions.

3.2. Like product

- (33) 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 India;
 - (3) the product produced and sold in the Union by the Union industry.
- (34) The Commission therefore concluded in its information document that those products are like products within the meaning of Article 1(4) of the basic Regulation.

3.3. Claims regarding product scope

- (35) Some interested parties claimed that silico-manganese with a very low content of carbon (mostly between 0,05 % and 0,1 %, maximum 0,2 % — 'low-carbon' silico-manganese) was a different product than 'standard' silico-manganese which contains 10 times more carbon (maximum 2 %). They explain that although the two products have similar chemical elements, the technical characteristics are different and this has an impact on their use: low carbon silico-manganese is used for stainless and specialty steel whereas standard silico-manganese is used for carbon steel. Also, they state that the two types of silico-manganese are not interchangeable. While low-carbon silico-manganese could be used to produce standard steel, standard silico-manganese cannot be used to produce stainless and specialty steel. Furthermore, using low-carbon silico-manganese for manufacturing standard steel would not be reasonable as low-carbon silico-manganese is more expensive. Thus, those steel producers which purchase both types of silico-manganese use them for different productions. Moreover, they reminded that the US authorities excluded low-carbon silico-manganese from the scope of their investigation and considered that the fact that the Commission did not distinguish between the two types in a previous investigation did not mean that the Commission should follow the same reasoning in the present case. Finally, they suggest that in case of suspicion of duty circumvention (standard silico-manganese declared as low-carbon silico-manganese to avoid any anti-dumping duties) effective customs checks and tests could be carried out easily.
- (36) The Commission considered that silico-manganese should be regarded as a single product for the purpose of this investigation. Silico-manganese is a ferroalloy used predominantly in the production of steel. It is invariably made of the same chemical components, although sometimes in slightly variable proportions. Therefore, even if certain steel requires silico-manganese with limited carbon content that cannot be replaced with by standard silico-manganese, this does not render the two types of silico-manganese a different product. The different carbon content — as well as the different manganese content — of various types of silico-manganese is duly reflected in the 'product-control-number' (PCN) structure, which allows comparing the respective variety of types of the product. The US authorities excluded low-carbon silico-manganese from the product scope in their investigations because there were no producers of low-carbon silico-manganese in the United States. The Commission considered already in previous investigations that standard and low-carbon silico-manganese are basically the same product, also to avoid possible circumvention of duties via mis-declaration (low-carbon silico-manganese cannot be distinguished visually by the customs authorities, testing would be required). The fact that low-carbon silico-manganese is more expensive does not guarantee that the customs authorities could detect possible circumvention based on the invoice price, especially if the two parties in the transactions are related or agree on cross-compensations. As a consequence, this claim is rejected.

4. DUMPING

4.1. Normal value

- (37) The Commission first examined whether the total volume of domestic sales for each cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represents at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period.
- (38) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union and examined whether the domestic sales by each cooperating exporting producer for each product type were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union.
- (39) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales price for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (40) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (41) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the investigation period.
- (42) The normal value is based on the actual domestic price per product type of only the profitable domestic sales of the product types during the investigation period, if:
- (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (43) When there were no or insufficient sales of a product type of the like product in the ordinary course of trade or where a product type was not sold in representative quantities on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (44) Normal value was constructed by adding the following to the average cost of production of the like product of the cooperating exporting producer during the investigation period:
- the weighted average selling, general and administrative ('SG&A') expenses incurred by the cooperating exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period, and
 - the weighted average profit realised by the cooperating exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period.

- (45) For one sampled company the normal value is based on the actual domestic price per product type in accordance with the methodology described in recital 40 above. For the other two sampled companies, the normal value for some product types was constructed by using the methodology described in recital 44 above. For the other product types that were sold in the ordinary course of trade, the normal value was based on the actual domestic price per product type in accordance with the methodology described in recital 40 above.

4.2. Export price

- (46) The exporting producers exported to the Union either directly to independent customers or through related traders located outside the Union.
- (47) Therefore the export price was established on the basis of prices actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

4.3. Comparison

- (48) The Commission compared the normal value and the export price of the exporting producers on an ex-works basis.
- (49) 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.
- (50) In this respect, the Indian Government had two schemes in place to stimulate exports, i.e. the Duty Draw Back ('DDB') and the Focus Product Scheme ('FPS'). The DDB scheme provided a refund of 1,7 % on free-on-board (FOB) export value for the import duties and taxes on imported materials if such inputs were used for producing the final goods for exportation. The FPS is a 4 % benefit on FOB value awarded to certain products which are being exported, without any further conditions linking the exported and imported goods.
- (51) One company requested an adjustment for DDB based on Article 2(10)(b) of the basic Regulation. However, the company was not able to demonstrate the link between imported raw materials and exported final goods, as required by Article 2(10)(b). The Commission therefore did not accept this request.
- (52) Another company requested an adjustment for DDB as well as for FPS based on Article 2(10)(k) of the basic Regulation. Concerning the DDB, a claim cannot succeed under Article 2(10)(k) if there is a specific legal basis for it under Article 2(10)(b) of the basic Regulation and the conditions of the latter are not satisfied. As the company could not demonstrate any link between the imported inputs and the exported goods, the Commission rejected this claim.
- (53) Concerning the FPS, the supporting evidence provided by the company did not demonstrate that the customers on the domestic market pay consistently a different price due to the FPS scheme as required under Article 2(10)(k) of the basic Regulation. Rather, the evidence only showed that the amounts received from Indian authorities under the FPS scheme simply create a consistent difference in sales revenue between domestic and export sales. Therefore, the Commission found this claim to be unfounded.

4.4. Dumping margin

- (54) For the sampled exporting producers, the Commission compared the weighted average normal value of each type of the like product 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.

- (55) The weighted average dumping margin for the cooperating exporting producers not included in the sample was calculated in accordance with the provisions of Article 9(6) of the basic Regulation. This margin was established on the basis of the margins established for the sampled exporting producers.
- (56) The level of cooperation was considered low since the imports of the cooperating exporting producers constituted only 60 % of the total exports from India to the Union during the investigation period.
- (57) The Commission therefore calculated the country wide margin on the basis of an average of the highest dumped transactions of one sampled company.
- (58) The dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Dumping margin (%)
Tata Steel	3,4
Modern India	15,2
Indsil	3,4
Other cooperating producers (weighted average of the sample)	10,4
Country-wide (residual) duty	25,1

5. INJURY

5.1. Definition of the Union industry and Union production

- (59) The like product was manufactured by four producers in the Union during the investigation period. Based on the available information from the complaint, there are no other Union producers of the like product in the Union. Two Union producers that are the complainants, Comilog Dunkerque and OFZ, cooperated. Another Union producer (Italgisa, Italy) that supported the complaint ceased cooperating shortly after the initiation of the investigation. However, its production volume was marginal. The fourth Union producer FerroAtlantica did not cooperate but it did not oppose the investigation.
- (60) To protect the confidentiality of the data from the two cooperating Union producers, all values are expressed as ranges. In the IP the total Union production amounted to [213 000/282 000] tonnes. The two cooperating Union producers produced [85 000/113 000] tonnes, which represents around [35 %/47 %] of the total Union production.
- (61) Several interested parties commented on the definition of the Union industry. First, they considered that the non-inclusion of FerroAtlantica among the complainants put into question the Commission finding that the remaining producers could be considered as constituting a major proportion of the Union industry as required by Article 4.1 of the WTO anti-dumping agreement and by Article 4(1) of the basic Regulation. Second, they believed that if the analysis of the economic factors and indices having a bearing on the state of the Union industry had taken into account also FerroAtlantica and notably its profitability during the period considered, the ensuing injury picture would have been very different. Third, they claimed that the non-inclusion of FerroAtlantica among the complainants was a tactical choice, justified solely by the intention to distort the injury picture, as FerroAtlantica was an active complainant in previous anti-dumping investigations initiated by the Commission.

- (62) The Commission rejected those claims as follows: (i) FerroAtlantica was duly contacted by the Commission and a questionnaire was sent to it. This means that even if the company is not a complainant, it had an equal opportunity to come forward, express its views and cooperate by providing the Commission with the requested information. However, the company did not cooperate and remained silent. The Commission has no means of compelling the company to cooperate neither of preventing it from cooperating. Therefore, it would be unsustainable that the Commission excluded that company. On the contrary, available data relating to this company were provided in the complaint and were used in the injury examination as explained below in recital 88; (ii) the two Union producers cooperated and provided the necessary information. They represent around [35 %/47 %] of the total Union production. The Commission considered this percentage as sufficiently high to find that the two producers are a major proportion of the domestic production. A major proportion does not necessarily mean majority under Article 4(1) of the basic Regulation ⁽¹⁾, which is in line with the interpretation given to the similar concept under Article 4.1 of the WTO anti-dumping agreement ⁽²⁾; (iii) the analysis of the microeconomic indicators was based on the data of the two cooperating Union producers. Had the microeconomic data of FerroAtlantica been taken into account, the various economic indicators might have displayed different trends or not, but as the two cooperating Union producers represent a major proportion of the Union industry an analysis based on their data is legitimate.

5.2. Union consumption

- (63) The total Union consumption was established by adding to the domestic sales of all Union producers the total imports in the Union. The Union consumption developed as follows:

Table 1

Union consumption (in metric tonnes)

	2011	2012	2013	Investigation period
Total Union consumption	954 347	896 247	882 969	853 732
<i>Index</i>	100	94	93	89

Source: Questionnaire replies, estimation made by the complainants for the volume of sales of the non-cooperating Union producers and Eurostat data for imports (in the information document there was a clerical error in the volume of imports).

- (64) Union consumption decreased over the years, in line with the decrease in the Union production and Union consumption of steel.

5.3. Imports from India

- (65) The volume of the imports was established using Eurostat data and taking into account all import regimes including inward processing. The origin of a significant volume of imports is 'not specified for commercial or military reasons in the framework of trade with third countries'. With the assistance of the customs authorities of one Member State, the Commission was able to break down part of this volume by country of origin. Allocating these 'not specified' imports to their respective countries of origin, the overall trend of imports does not change significantly. However, to maintain the confidentiality of those imports, the imports figures are ranged.

⁽¹⁾ For example, in the Judgment of the Court of Justice of 8 September 2015 in case C-511/13 P Philips v Council the Court found that a portion of Union production very close to 50 % of the total production of the like product produced by the Union industry can be considered to constitute a major proportion of that production. The Court clarified that Article 4(1) of the Basic Regulation refers, indeed, to the concept of a 'major proportion' of the Union production, and not to the 'majority of the Union production' (paragraph 72).

⁽²⁾ For example, in its report of 22 April 2003, WT/DS/241/R Argentina — Definitive Anti-Dumping Duties on Poultry from Brazil, paragraph 7.344, the Panel accepted that the domestic industry representing 46 % of the total domestic production can be considered as a major proportion of the domestic industry.

- (66) Imports from India developed as follows:

Table 2

Import volume (in metric tonnes) and market share

	2011	2012	2013	Investigation period
Volume of imports from India	174 000-231 000	237 000-314 000	226 000-299 000	195 000-259 000
<i>Index</i>	100	136	130	112
Market share	18 %-24 %	26 %-35 %	26 %-34 %	23 %-30 %
<i>Index</i>	100	145	140	126

Source: Eurostat data combined with information on 'not specified' imports.

- (67) Imports from India represent around one fourth of total imports into the Union and have the biggest market share of total imports in the Union.
- (68) Imports from India increased considerably in 2012 compared to 2011 but decreased again in the following years to a level in the IP slightly higher than in 2011. The trend of imports from India was similar to the trends of production and sales of the Union Industry and was opposite to the trends on imports from other third countries (imports from India increased in 2012 whilst imports from other third countries decreased, and vice-versa) in 2013 and during the IP.
- (69) The complainant claimed that there has been a vast increase in market share from India from 2008 until 2013.
- (70) However, as set out in recital 25, the examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the IP. Therefore, any data prior to 2011 were not examined and could not be taken into account.
- (71) The weighted average price of imports into the Union from India developed as follows:

Table 3

Import prices (EUR/metric tonnes)

	2011	2012	2013	Investigation period
India	808-1 072	790-1 048	687-911	631-837
<i>Index</i>	100	98	85	78

Source: Eurostat data combined with information on 'not specified' imports.

- (72) The price of Indian imports dropped in line with the Union industry's sales price. Eurostat data also show that the Indian imports are the cheapest of the main exporting countries of silico-manganese.

5.4. Price undercutting

- (73) The Commission assessed the price undercutting during the investigation period by comparing:
- (a) the weighted average sales prices per product type of the cooperating Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - (b) the corresponding weighted average prices per product type of the imports from the sampled Indian exporting producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for post-importation costs.
- (74) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the cooperating Union producers' turnover during the investigation period.
- (75) To take account of the lower level of manganese in the silico-manganese sold by the sampled Indian exporting producers (if and when warranted), a quality adjustment was made. The adjustment was made by using the so-called 'pro-rata scaling', a formula widely used in the industry to benchmark the price of the product concerned against standard grade silico-manganese (65 % manganese and 16 % silicon).
- (76) One of the sampled Indian exporting producers sold low-carbon silico-manganese to the Union. Low-carbon silico-manganese is produced by the Union industry but not by the two cooperating Union producers. To ensure fair comparison between the Indian low-carbon and the Union standard silico-manganese, the Commission adjusted upwards the Union average selling price using the average market premium for low-carbon silico-manganese. By doing so, the Commission took into account the fact that a higher price is paid for low-carbon silico-manganese compared to the standard grade silico-manganese.
- (77) On this basis, it was found that one sampled Indian exporting producer was undercutting the Union industry prices by 6,5 % and the other two sampled Indian producers were not undercutting the Union prices.
- (78) For the non-cooperating exporting producers, limited undercutting was established on the basis of average import prices as per Eurostat data, with no adjustment for quality differences or different level of trade.
- (79) Several interested parties stated that a comparison between Union prices and Indian prices based on the average Eurostat price is misleading. Two interested parties proposed that the Commission should adjust the Indian average price assuming that the average manganese content of the Indian silico-manganese is 58 %. One party also suggested that the Ukrainian average price based on Eurostat data should be adjusted assuming that the average manganese content of the Ukrainian silico-manganese is 68 %. Those parties claimed that after such adjustments, the Indian average price of silico-manganese would not be lower than the prices charged by the Union producers or by producers in other third countries.
- (80) The Commission is aware of the fact that the Eurostat data included all grades/qualities of the product concerned and thus they did not allow for a proper comparison between the product types. In the absence of more precise data per product type, notably with regard to the non-cooperating Indian producers, the use of average prices in the injury analysis cannot be disregarded and the assessment it is made with due care in any event together with the rest of the injury indicators.
- (81) One interested party explained that the pro-rata adjustment based on the manganese content does not capture the entire price difference as the buyer of the lower quality product has to bear the costs of getting rid of the additional impurities. One interested argued that the product-control-number (PCN) structure used by the Commission did not distinguish between various types of silico-manganese with manganese content below 60 %, thus rendering the comparison for undercutting calculations inappropriate. Another interested party noted that by creating ranges of manganese content the results are inaccurate.
- (82) The Commission rejected those claims because the pro-rata adjustment is based on a generally accepted market practice, and therefore appropriate. Also, that interested party did not provide an alternative methodology. The

adjustment made on the manganese content of the sampled Indian exporting producers was based on the precise content as verified during the investigation. Therefore, it distinguishes between the various types even for the silico-manganese with manganese content below 60 %.

- (83) One interested party claimed that the silico-manganese manufactured by the Union industry is more expensive because it contains fewer impurities such as phosphorus and boron than the silico-manganese produced in India. This party provided information about requests made by customers to be supplied with silico-manganese containing less than a certain percentage of phosphorus and boron, alleging that consequently customers were willing to pay a premium for this.
- (84) However, the information submitted did not prove that the phosphorus or boron content have a price effect. It only proved that certain users could require — in order to produce certain special steel products — that the silico-manganese they purchase should have a phosphorus or boron content below a certain threshold. In the absence of clear evidence on a premium paid, this claim was rejected.
- (85) After final disclosure, the complainant argued that it is not unusual to find little undercutting in a commodity market and that the existence of undercutting is not a requirement per se to establish the existence of injury. Indeed, as set out in Section 5.5 below, the Commission based its findings on injury on a number of indicators, and the level of undercutting in this case has not been decisive for the establishment of injury.
- (86) The complainant claimed that the Commission applied a different method in the calculations of the dumping margin and the establishment of the undercutting in that it used the most dumped transactions for establishing the dumping margin but not for the undercutting.
- (87) The Commission fails to see why it should apply the same methodology for undercutting calculations and dumping calculations. The purpose of the calculations is entirely different; the calculation of the most dumped transactions served to calculate a dumping margin for the non-cooperating Indian exporting producers, whereas price undercutting calculations were not made to calculate any precise margins, but to examine the effect of the dumped imports on prices, as required by Article 3(3) of the basic Regulation. Therefore, this claim was rejected.

5.5. Economic situation of the Union industry

- (88) 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 two cooperating Union producers, the complainants in this case, representing a major proportion of the total Union production during the investigation period. Where available from the complaint, data relating to all Union producers were also examined for the following indicators: Union consumption, market share, production, production capacity, capacity utilisation, employment and productivity. As explained in recital 60 above, to protect the confidentiality of the data of the two cooperating Union producers, all values are expressed in ranges.
- (89) The injury indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, recovery from past dumping, average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.
- (90) One interested party criticised that some of FerroAtlantica's data were taken into account for the macroeconomic indicators (sales volume and market share, production, production capacity and capacity utilisation, employment and productivity) but not for the remaining microeconomic indicators. This claim is rejected because FerroAtlantica did not cooperate and therefore the Commission had no microeconomic data from that company at its disposal.

5.5.1. *Production, production capacity and capacity utilisation*

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

Table 4

Production, production capacity and capacity utilisation (metric tonnes)

	2011	2012	2013	Investigation period
Production Volume	231 000-307 000	280 000-372 000	227 000-301 000	213 000-282 000
<i>Index</i>	100	121	98	92
Production capacity	326 000-432 000	404 000-536 000	403 000-535 000	403 000-534 000
<i>Index</i>	100	124	124	124
Capacity utilisation	70 %-90 %	60 %-80 %	50 %-70 %	50 %-60 %
<i>Index</i>	100	98	79	74

Source: Questionnaire replies and estimation made by the complainants for the data of the non-cooperating companies.

- (92) The production volume in 2013 and during the IP was lower than at the beginning of the period considered. The year 2012 represents a peak in production. Due to the decision of a part of the Union industry production capacity for the Union industry as a whole increased in 2012 compared to 2011 and remained fairly the same afterwards. As a consequence, the capacity utilisation decreased significantly.

5.5.2. *Sales volume and market share*

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

Table 5

Sales volume (metric tonnes) and market share

	2011	2012	2013	Investigation period
Sales volume on the Union market	198 000-263 000	218 000-289 000	212 000-281 000	189 000-251 000
<i>Index</i>	100	110	107	96
Market share	21 %-28 %	24 %-32 %	24 %-32 %	22 %-29 %
<i>Index</i>	100	117	116	107

Source: Questionnaire replies and estimation made by the complainants for the data of the non-cooperating Union producers.

- (94) The sales volume increased in 2012 compared to 2011 and decreased in 2013. The sales volume during the IP was lower than in 2011. The year 2012 represented a peak in sales. However, since the decrease in sale was proportionally lower than the decrease in consumption, the market share has been increasing and was higher during the IP compared to the year 2011.

5.5.3. Growth

- (95) During the period considered, the Union industry did not record any growth but in a difficult context of decreasing consumption, it managed to maintain market share.

5.5.4. Employment and productivity

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

Table 6

Employment and productivity

	2011	2012	2013	Investigation period
Number of employees	339-449	403-535	342-453	295-392
<i>Index</i>	100	119	101	87
Productivity (metric tonne per employee)	629-834	640-848	612-811	663-879
<i>Index</i>	100	102	97	105

Source: Questionnaire replies and estimation made by the complainants for the data of the non-cooperating Union producers.

- (97) The number of employees increased in 2012 and decreased in the following period. The productivity, measured as unit of output per employee, fluctuated and during the IP it was higher than in 2011.

5.5.5. Magnitude of the dumping margin and recovery from past dumping

- (98) All dumping margins are above the de minimis level, and for one exporting producers they are significantly above that level. The impact of the magnitude of the actual margins of dumping on the Union industry was not negligible, given the volume and prices of imports from India.
- (99) Anti-dumping measures against imports of silico-manganese originating in China and Kazakhstan expired in 2012. There was no request for initiating an expiry review. There is no indication that the Union industry had not recovered from the effects of past dumping before the dumping from India started.

5.5.6. Prices and factors affecting prices

- (100) The weighted average unit sales price of the two cooperating Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 7

Sales price in the Union

	2011	2012	2013	Investigation period
Average unit sales price in the Union (EUR/metric tonnes)	800-1 100	800-1 000	700-900	600-900
<i>Index</i>	100	96	86	80
Unit cost of production	900-1 300	800-1 100	800-1 000	800-1 100
<i>Index</i>	100	87	83	85

Source: Questionnaire replies.

- (101) The average unit sales price of the two cooperating Union producers decreased year after year.
- (102) The costs of production decreased, mainly due to a reduction in the price of the two main production cost drivers: manganese ore and power.

5.5.7. Labour costs

- (103) The average labour costs of the two cooperating Union producers developed over the period considered as follows:

Table 8

Average labour cost per employee (EUR)

	2011	2012	2013	Investigation period
Average labour costs per employee	24 800-32 900	24 400-32 300	26 600-35 200	30 700-40 700
Index	100	98	107	124

Source: Questionnaire replies.

- (104) The average labour costs per employee is calculated dividing the total labour costs of the two cooperating Union producers in a given period by the total number of workforce employed in the same period. The total labour costs increased in 2012 and in 2013, but decreased to almost the level of 2011 during the IP. The number of employees decreased also over the years, more significantly (in relative terms) than the decrease in labour costs. As a consequence, the average labour cost per employee increased.

5.5.8. Inventories

- (105) Stock levels of the two cooperating Union producers developed over the period considered as follows:

Table 9

Inventories

	2011	2012	2013	Investigation period
Closing stock (metric tonnes)	8 000-10 700	13 300-17 600	15 900-21 100	10 900-14 500
Index	100	165	198	136
Closing stocks as a percentage of production	10 %	12 %	19 %	13 %
Index	100	124	189	130

Source: Questionnaire replies.

- (106) The level of inventories increased in 2012 and 2013 and went down during the IP but still above the level of 2011. The same applies to the ratio between inventory and production.

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

- (107) Profitability, cash flow, investments and return on investments of the two cooperating Union producers developed over the period considered as follows:

Table 10

Profitability, cash flow, investments and return on investments

	2011	2012	2013	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	- 10 % - - 8 %	- 3 % - - 1 %	- 6 % - - 4 %	- 8 % - - 6 %
<i>Index</i>	100	843	194	124
Cash flow (thousand EUR)	- 2 000 - - 2 700	- 4 300 - - 5 800	- 1 700 - - 2 300	- 4 300 - - 5 800
<i>Index</i>	100	46	115	45
Investments (thousand EUR)	27 000-36 000	24 000-32 000	23 000-30 000	24 000-32 000
<i>Index</i>	100	89	82	89
Return on investments	- 33 % - - 45 %	- 5 % - - 7 %	- 17 % - - 23 %	- 21 % - - 29 %
<i>Index</i>	100	664	198	157

Source: Questionnaire replies.

- (108) The Commission established the profitability of the two cooperating Union producers by expressing the pre-tax net profit of the sales of silico-manganese to unrelated customers in the Union as a percentage of the turnover of those sales. Profitability was negative throughout the period considered. The worst year was 2011. The situation started to improve in 2012 but deteriorated again in the following year and during the IP. During the IP, the situation improved somewhat in comparison with 2011.
- (109) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow is cyclical, it went down in 2012, up in 2013 and down again during the IP.
- (110) The level of investment decreased over the period considered.
- (111) The return on investments is the profit in percentage of the net book value of investments. Since the level of investment decreased, the return on investment (always negative since the two cooperating companies were loss-making) improved over the period considered.

5.6. Conclusion on injury

- (112) Factors such as the evolution of the production volume, the capacity utilisation as well as sales volume and price display a clear negative trend for the entire Union industry.

- (113) As regards the two cooperating Union producers, the indicators show that they have been loss-making throughout the period considered. Their sales price and volume of silico-manganese decreased constantly and this was not sufficiently compensated by the concomitant reduction in the cost of production. Other indicators such as cash flow, return on investment were negative as well throughout the period considered or followed a downward trend.
- (114) On the basis of the above findings with regard to the two cooperating Union producers, the Commission concluded that a major proportion of the Union industry suffered material injury within the meaning of Article 3(1) after an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, as set out in Article 3(5) of the basic Regulation.
- (115) Some interested parties submitted that even considering only the economic indicators of the two cooperating Union producers, their economic indicators do not show material injury. They underlined for instance that even if the sales volume of the cooperating Union producers decreased in absolute terms, it increased in terms of market share. They considered that this is a positive development in a context of shrinking demand for silico-manganese. They stressed in particular that even if the cooperating Union producers were loss-making throughout the period considered, their situation was improving from 2012 to the end of the IP. They considered this as an additional positive development.
- (116) The Commission agrees that not all economic factors and indices having a bearing on the state of the industry show negative trends. However, the fact remains that most of the economic and financial indicators show a negative situation for the two cooperating Union producers. Therefore, the Commission rejected this claim.
- (117) The complainant alleged that by referring to Article 3(5), the Commission recognised that the dumped imports have actually caused material injury.
- (118) However, this is not what the Commission concluded. The Commission first concluded that a major proportion of the Union industry suffered material injury, without referring to possible causes of this injury. Subsequently, as required by the Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from India caused material injury.
- (119) The reasoning of the complainant that, in case an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, as set out in Article 3(5) of the basic Regulation, leads to the conclusion that there is injury suffered by the Union industry, also means that the injury is caused by dumped imports, misinterprets the basic Regulation. As set out in Article 3(6) of the basic Regulation, one of the conditions to be met in order to impose an anti-dumping duty, is that it must be demonstrated that the dumped imports are causing injury. This requires a full causality analysis and is not mere assumption as the complainant suggests. Such analysis is made in Section 6 below.

6. CAUSATION

- (120) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from India caused material injury to the Union industry.

6.1. Effects of the dumped imports from India

- (121) The Commission did not observe a coincidence in time between the trend of the difficult economic situation of the two cooperating Union producers and the increase of volume of dumped imports from India. The volume of imports from India increased in 2012 compared to 2011, but decreased afterwards (see Table 11), both in absolute terms and relative to production and consumption in the Union. This displays a counter-trend compared to the situation of the two cooperating Union producers, which incurred the highest losses in 2011 (when the volume of imports from India was the lowest, both in absolute terms and relative to production and consumption), and the lowest losses in 2012 (when the volume of imports from India was the highest, again both in absolute terms and relative to production and consumption). Similarly, during the IP, the financial situation of the two cooperating Union producers deteriorated but the volume of imports from India decreased, both in absolute terms and relative to production and consumption, compared to 2013.

Table 11

Import and sales volume (in metric tonnes), market share and profitability

	2011	2012	2013	Investigation period
Union Industry's Sales volume on the Union market	198 000-263 000	218 000-289 000	212 000-281 000	189 000-251 000
<i>Index</i>	100	110	107	96
Volume of imports from India	174 000-231 000	237 000-314 000	226 000-299 000	195 000-259 000
<i>Index</i>	100	136	130	112
Market share of Union industry	21 %-28 %	24 %-32 %	24 %-32 %	22 %-29 %
<i>Index</i>	100	117	116	107
Market share of imports from India	18 %-24 %	26 %-35 %	26 %-34 %	23 %-30 %
<i>Index</i>	100	145	140	126
Profitability of sales in the Union to unrelated customers (% of sales turnover)	- 10 % - - 8 %	- 3 % - - 1 %	- 6 % - - 4 %	- 8 % - - 6 %
<i>Index</i>	100	843	194	124

Source: Eurostat data combined with information on 'not specified' imports, Questionnaire replies.

- (122) The complainant explained the counter-trend between volume of import and profitability of the two cooperating Union producers, as follows. Due to exceptional energy costs in one Member State in 2011, one Union producer had a higher loss in 2011 than in 2012 when the energy costs decreased. In the absence of such exceptional energy costs in 2011, the trends would show that the highest loss of the two cooperating Union producers occurred during the IP.
- (123) The Commission accepted that in 2011 one of the two cooperating Union producers was facing exceptional energy costs. However, even after adjusting the costs of production and profitability for that year, the counter-trend still remains the same. The highest loss of the two cooperating Union producers (occurring during the IP) coincides with a decrease in the volume of imports from India, both in absolute terms and relative to production and consumption in the Union.
- (124) In addition, the complainant argued that a year-on-year analysis (i.e. evolution of dumped imports versus deterioration of the performance on a yearly basis) was not accurate in a commodity market, and suggested that the analysis be based on trends between 2011 and the IP and proposed the following methodology. First, the complainant calculated what it considered to be the real consumption of silico-manganese in the Union as a percentage of the steel production in the Union (assuming that a constant amount of silico-manganese is required to produce a tonne of steel), and stated that the real consumption remained relatively stable throughout the period January 2011 to April 2013. Second, the complainant calculated the apparent consumption of silico-manganese in the Union as domestic production plus imports minus exports for the same period, and stated that the apparent consumption increased significantly due to the increase of imports from India. Third, the

complainant considered that the difference between real consumption and apparent consumption was the stock-piling of Indian imports from 2011 to April 2013. Finally, the complainant considered that the excess stock-piling was placed on the Union market as of April 2013 leading to oversupply with consequent downward pressure on prices, even if at the same time imports from India decreased.

- (125) The Commission calculated the Union consumption of silico-manganese as the sum of domestic sales plus imports. The complainant did not explain why this method cannot be considered accurate. The Union consumption showed a decreasing trend over the period considered, in line with a global trend of lower demand for silico-manganese. The Commission noted that both the sales of the two cooperating Union producers and imports from all third countries decreased over the period considered. However, imports from all third countries were affected more heavily by the reduction in consumption, whereas the two cooperating Union producers managed to maintain their market share. Also, among the imports from all third countries, Indian imports increased in 2012 and decreased subsequently whereas imports from other third countries decreased in 2012 and increased subsequently.
- (126) The Commission considered that the complainant's claim of a massive stock-piling effect of Indian imports was not sufficiently substantiated. No statistical data were provided specific to the Indian imports of silico-manganese and its consumption in time. Thus it was not demonstrated that the pressure exerted on Union sales volume and prices during the investigation period was due to the effect of Indian imports in the two preceding years.
- (127) The information provided by the complainant only led to the conclusion that the real consumption of silico-manganese was lower than the apparent consumption between March 2011 and March 2012 and that this building up of stocks would have been put on the market as of March 2012, the month after which real consumption seems to have been slightly higher than the apparent consumption. According to a graph provided by the complainant during the hearing of December 2015, an excess stock would have been absorbed between March 2012 and September 2013, and would not have had an effect during the investigation period (October 2013 until September 2014). In addition, the general information did not allow isolating Indian imports from other imports. Therefore, it is not clear what would have been the source of the alleged massive stock-piling: The source could have been the imports from India, but also imports from third countries or even the Union industry where substantial increases in inventories have been observed since 2011 (see Table 9). Moreover, given the evolution of the market for silico-manganese since 2011 (declining consumption in conjunction with declining prices, the shelf life of less than one year), there seems to be little commercial rationale for an alleged massive stock-piling accumulated in 2011 and before, being released on the Union market at the end of 2013 and during 2014 (during the investigation period). Therefore, the claim that a massive stockpiling of Indian imports should change the interpretation of the import data during the investigation period was rejected.

6.1.1. *Silico-manganese with a low content of manganese (50 % or less)*

- (128) In its information document, and in a separate request to all known importers, the Commission requested interested parties to provide information about imports of silico-manganese with a low content of manganese (50 % and below) as part of the product concerned, to assess the volume and average price of such imports. In addition, the purpose was to clarify the technical and economic feasibility of using low-quality silico-manganese (as such or after blending) and its impact on the Union market.
- (129) The Commission did not receive any comment from importers but received some feedback from other interested parties.
- (130) One Indian producer commented that silico-manganese with low manganese content is a lower quality product which is therefore sold at a lower price. However if its price is adjusted to take into account the lower manganese content, the adjusted price would be fully in line with the price of standard silico-manganese. This interested party added that the volume of imports of such sub-standard silico-manganese into the Union is low and thus cannot cause injury to the Union industry.
- (131) Another group of Indian producers submitted that low quality silico-manganese could be used directly in the electric arc furnaces or could be blended with higher quality silico-manganese to obtain a standard product, not exclusively silico-manganese with Fe content of 72 % (typically from Ukraine). They noted that the technical

feasibility study submitted by the complainant itself did not exclude the technical feasibility of the blending. They acknowledged that blending comes with an additional cost, but not at the level described by the complainant. They agreed that this type of silico-manganese is sold at a lower price exactly due to the low manganese content and thus a price comparison with standard silico-manganese should be done after a pro-rata adjustment which would show similar prices.

- (132) The complainant argued that low-quality silico-manganese is not used as such by the steel mills in the Union and that their customers would not take the risk of using a blend of various grades of silico-manganese for quality reasons. The complainant also claimed that this sub-standard product represented a temporary phenomenon which has not been the cause of injury for them.

6.1.2. *Effect of the dumped imports on prices*

- (133) With regard to the effect of the dumped imports on prices, the Commission noted that the average price of both the dumped imports of silico-manganese from India and the prices of the two cooperating Union producers was decreasing over the period considered. However, hardly any undercutting was found, as mentioned above in recitals 77 and following.

6.2. **Conclusion on causation**

- (134) The Commission concluded that there was no coincidence in time between the trend of the difficult economic situation of the two cooperating Union producers and the increase of volume of dumped imports from India. The investigation established the existence of counter-trends between the increase in volume of the dumped imports and the injury suffered by the two cooperating Union producers. In addition, the market share of the dumped imports increased in the period considered, but only from [18 %/24 %] to [23 %/30 %]. The market share did not show a continuously increasing trend, and prices did not, or hardly, undercut the prices of the Union industry.
- (135) In view of the lack of coincidence in time between the deterioration in the economic situation of the cooperating Union producers and the trends of volume and market share of the dumped imports of silico-manganese from India, the Commission concluded that the impact of the dumped imports on the situation of the Union industry cannot be classified as material in the sense of Article 3(6) of the basic Regulation. In these circumstances, it was not demonstrated that the volume and/or price levels of the Indian dumped imports were responsible for the injurious situation of the two cooperating producers.
- (136) As a causal link between the dumped imports and the injurious situation of the Union industry could not be established, there was no need to disclose any underselling calculations, as these are only relevant for the purpose of determining the level of measures. Therefore, the Commission rejected the claim of the complainant that the Commission failed to calculate and to disclose the level of underselling.

7. **OTHER FACTORS**

- (137) As set out in recital 135, the Commission could not establish a causal link between the injury suffered by the Union Industry and the dumped imports from India. Therefore, there was no need to draw conclusions with regard to the impact of other factors on the situation of the Union industry, as set out in Article 3(7) of the basic Regulation. Nevertheless, other factors were examined as well and, for the sake of completeness, are described in this section below.
- (138) The complainant claimed that the Commission committed a methodological error in assessing that possible injury from other factors can somehow excuse the fact that the dumped imports are causing material injury. The complainant also argued that the Commission has used factors like imports other than from India and the market situation of FerroAtlantica only to terminate the case.

- (139) As no causal link could be established, the consideration of the potential impact of other factors on the injury suffered by the Union Industry is no longer relevant. The Sections 7.1 to 7.4 below are limited to the description of the other factors without drawing conclusions on their potential impact on injury. In the absence of a causal link, the analysis of the 'other factors' has no bearing on the conclusions on dumping, injury and causation. Therefore, the Commission rejected these claims.

7.1. Imports from third countries

- (140) The volume of the imports from other third countries was established using Eurostat data and taking into account all import regimes including inward processing. The origin of a significant volume of imports is 'not specified for commercial or military reasons in the framework of trade with third countries'. With the assistance of the customs authorities of one Member State, the Commission was able to break down part of this volume by country of origin. Allocating these 'not specified' imports to their respective countries of origin, the overall trend of imports does not change significantly. However, to maintain the confidentiality of those imports, the imports figures are ranged as follows:

Table 12

Imports from third countries (metric tonnes)

Country		2011	2012	2013	Investigation period
Norway	Volume	144 000-191 000	188 000-250 000	138 000-185 000	147 000-195 000
	Index	100	131	96	102
	Market share	15 %-20 %	21 %-28 %	16 %-21 %	17 %-23 %
	Index	100	139	104	115
Ukraine	Volume	170 000-226 000	102 000-135 000	104 000-137 000	111 000-147 000
	Index	100	60	61	65
	Market share	18 %-24 %	11 %-15 %	12 %-16 %	13 %-17 %
	Index	100	64	66	73
South Africa	Volume	111 000-147 000	14 000-19 000	32 000-43 000	70 000-93 000
	Index	100	13	29	64
	Market share	12 %-15 %	2 %-2 %	4 %-5 %	8 %-11 %
	Index	100	14	32	71
Total of all third countries except India	Volume	510 000-670 000	370 000-490 000	370 000-500 000	400 000-530 000
	Index	100	73	74	79
	Market share	50 %-70 %	40 %-50 %	40 %-60 %	50 %-60 %
	Index	100	78	80	89
	Average price	903-1 197	829-1 100	778-1 032	733-971
	Index	100	92	86	81

Source: Eurostat data combined with information on 'not specified' imports.

- (141) Silico-manganese is imported into the Union from a significant number of other countries. Apart from India, there are three main exporting countries (by volume): Norway, South Africa, and Ukraine. The top four countries represent around 90 % of total imports into the Union and have a market share of around 70 %. Norway has a market share of around [17 %/23 %]. One Norwegian producer of silico-manganese is related to one of the Union producers (Comilog Dunkerque/Eramet).
- (142) The volume of imports to the Union from third countries other than India followed a counter-trend compared to imports from India. In particular, they decreased in 2012 and 2013 compared to 2011 but increased during the IP.
- (143) Based on Eurostat data, import prices from third countries were on average higher than import prices from India and showed a declining trend over the period considered. However, Eurostat data do not provide a breakdown by quality and grades and hence, do not allow a comparison of like with like.
- (144) The complainant explained that the reasons why imports of silico-manganese from Ukraine, South Africa and Norway decreased in 2012 were unrelated to the increased imports from India but were due to circumstances specific to each country.
- (145) The Commission took note of the explanations provided by the complainant about the increase or decrease of imports from certain third countries. However, the fact that the two cooperating Union producers maintained their market share show that third countries were competing among themselves for maintaining sales and market share in the Union, without affecting the sales volume and market share of the two cooperating Union producers.

7.2. Export performance of the Union industry

- (146) The volume of exports of the two Union producers developed over the period considered as follows:

Table 13

Export performance of the cooperating Union producers

	2011	2012	2013	Investigation period
Export volume (metric tonnes)	2 100-2 800	2 900-3 800	3 200-4 300	5 200-6 800
<i>Index</i>	100	136	151	243
Average price	800-1 100	800-1 100	700-900	700-900
<i>Index</i>	100	96	85	84

Source: Questionnaire replies.

- (147) The two cooperating Union producers more than doubled their sales outside the Union over the period considered, although the volumes are not particularly significant in absolute terms.
- (148) The average sales price to unrelated parties to third countries decreased in line with the decrease of the Union market price.

7.3. Evolution of steel production and oversupply

- (149) Several interested parties confirmed in their submissions that as one of the consequences of the economic downturn in the Union, the steel production decreased. Since silico-manganese is predominantly used for steel production, this had a direct and immediate impact on silico-manganese consumption.

- (150) Several interested parties confirmed in their submissions that the worldwide production of silico-manganese did not decrease accordingly to the decrease in consumption. They stated that the market price of silico-manganese is linked to the balance of supply and demand, as is the case for all commodities. As a consequence, the oversupply triggered a decrease in the price of silico-manganese. The Union industry as a whole increased its capacity from 2011 to 2012 thus contributing to this situation.

7.4. Intra-Union competition

- (151) The Spanish company FerroAtlantica did not cooperate with the investigation. According to the complaint, FerroAtlantica, as the main Union producer, has avoided significant injury caused by the Indian imports and was actually very profitable. FerroAtlantica is the biggest producer of silico-manganese in the Union, managed to maintain its market share throughout the period considered and is in direct competition with the two cooperating Union producers.
- (152) The complainant claimed that FerroAtlantica could not have contributed to the injury suffered by the two cooperating Union producers as it was not undercutting their prices and has not gained market share to their detriment. The complainant also claimed that FerroAtlantica was no longer immune from the injury caused by the Indian imports as its situation had started deteriorating since the beginning of 2015.
- (153) This claim relates to events after the IP which can normally not be taken into account under Article 6(1) of the basic Regulation. Moreover, the Commission has not identified any special consideration which would make its decision manifestly inappropriate if it was to set this claim aside. In particular, the claim was made at a very late stage of the investigation, more than 11 months after initiation, when it could no longer be verified. In any event, the Commission considers that the presence of the biggest Union producer on the market had an impact on the development of the sales volume, price and market share of the two cooperating Union producers in the IP.

8. UNION INTEREST

- (154) The complainant and two major steel producers submitted comments on the Union interest. Since the causal link between dumped imports from India and the injury suffered by the Union industry was not established, it is not necessary to examine the Union interest.

9. TERMINATION OF THE PROCEEDING

- (155) On the basis of the conclusions reached by the Commission on dumping, injury and causation, in accordance with Article 9 of the basic Regulation, the proceeding should be terminated without the imposition of measures.
- (156) All parties concerned were informed of the final findings and the intention to terminate the proceeding and were given the opportunity to comment. Their comments were considered but they have not altered the conclusions reached above.
- (157) The Committee established by Article 15(1) of Regulation (EC) No 1225/2009 did not deliver an opinion,

HAS ADOPTED THIS DECISION

Article 1

The anti-dumping proceeding concerning imports of silico-manganese originating in India is hereby terminated.

Article 2

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

Done at Brussels, 2 March 2016.

For the Commission
The President
Jean-Claude JUNCKER

