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COMMISSION IMPLEMENTING REGULATION (EU) No 360/2014

of 9 April 2014

imposing a definitive anti-dumping duty on imports of ferro-silicon originating in the People's Republic of China and Russia, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [1] ('the basic Regulation'), and in particular 11(2), (5) and (6) thereof,

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, following an anti-dumping investigation ('the original investigation'), imposed, by means of Regulation (EC) No 172/2008 [2], a definitive anti-dumping duty on imports of ferro-silicon ('FeSi') currently falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90 originating in the People's Republic of China ('the PRC'), Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia ('the definitive anti-dumping measures').

(2) The measures took the form of an ad valorem duty established at 31,2 % on imports from the PRC, with the exception of Erdos Xijin Kuangye Co. (15,6 %) and Lanzhou Good Land Ferroalloy Factory Co., (29,0 %), at 18,0 % on imports from Egypt, with the exception of The Egyptian Ferroalloys Co. (15,4 %), at 33,9 % on imports from Kazakhstan, at 5,4 % on imports from the former Yugoslav Republic of Macedonia and at 22,7 % on imports from Russia, with the exception of Bratsk Ferroalloy Plant (17,8 %).

(3) Council Implementing Regulation (EU) No 1297/2009 [3] repealed the anti-dumping duty imposed by Regulation (EC) No 172/2008 on imports of FeSi originating in the Former Yugoslav Republic of Macedonia.

(4) On 30 November 2009, the European Commission ('the Commission') received a request for a partial interim review ('the interim review') pursuant to Article 11(3) of the basic Regulation, lodged by an exporting producer from Russia, Joint Stock Company Chelyabinsk Electrometallurgical Integrated Plant and its related company Joint Stock Company Kuznetsk Ferroalloy Works (hereinafter jointly referred to as 'the Russian group'). The Council, by Regulation (EU) No 60/2012 [4] terminated the partial interim review on the grounds of insufficient evidence of a lasting nature of changed circumstances. In particular, the Russian group did not demonstrate that its pricing behaviour was of a lasting nature. Therefore, the dumping margin established for the Russian group in the original investigation was not amended. The undertaking offer made by the Russian group was rejected on the same grounds.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 55, 28.2.2008, p. 6.
[3] OJ L 351, 30.12.2009, p. 1.
[4] OJ L 22, 25.1.2012, p. 1.

2. Request for an expiry review

(5) Following the publication of a notice of impending expiry ([1]) of the definitive anti-dumping measures in force, the Commission received on 28 November 2012 a request for the initiation of an expiry review of those measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by Euroalliages ('the applicant') on behalf of producers representing more than 25 % of the total Union production of FeSi.

(6) The request concerned the following two countries: the PRC and Russia.

(7) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

3. Initiation of an expiry review

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced, on 28 February 2013, by a notice published in the *Official Journal of the European Union* ([2]) ('the notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. Investigation

4.1. *Review investigation period and period considered*

(9) The investigation of a continuation or recurrence of dumping covered the period from 1 January 2012 to 31 December 2012 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2009 to 31 December 2012 ('the period concerned').

4.2. *Parties concerned by the investigation*

(10) The Commission officially advised the applicants, the other known Union producers, the exporting producers in the PRC and in Russia, the unrelated importers, the users known to be concerned, and the representatives of the exporting countries, of the initiation of the expiry review. The 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.

(11) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(12) In view of the apparent large number of exporting producers in the PRC and of unrelated importers in the Union involved in the investigation, sampling was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above-mentioned parties were requested to make themselves known to the Commission within 15 days of the initiation of the review and to provide the Commission with the information requested in the notice of initiation.

(13) Given that only one exporting producer in the PRC provided the information requested in the notice of initiation and expressed its willingness to cooperate with the Commission, it was decided not to apply sampling in the case of the exporting producers in the PRC. After having received the questionnaire, the exporting producer decided not to cooperate further. Therefore, it is considered that no exporting producer in the PRC cooperated in the investigation.

([1]) OJ C 186, 26.6.2012, p. 8.
([2]) OJ C 58, 28.2.2013, p. 15.

(14) Regarding Russia, all known Russian producers were invited to cooperate in the investigation, namely Bratsk Ferroalloy Plant, Serov Ferroalloy Plant, NLMK and the Russian group. Only one Russian group cooperated with the Commission in the current review investigation.

(15) With regard to the unrelated importers, no reply to the questionnaire was received. Therefore, it is considered that no unrelated importer in the Union cooperated in the investigation.

(16) Replies to the questionnaires were received from six out of seven known Union producers of FeSi. In view of the relatively limited number of Union producers, no sampling was envisaged in the review investigation.

(17) Verification visits were carried out at the premises of the following companies:

(a) Union producers:

FERROATLANTICA Group:

Ferroatlantica S.L. — Madrid, Spain

Ferropem — Chambery, France

HUTA LAZISKA S.A. — Laziska Gorne, Poland

OFZ a.s. — Istebne, Slovakia

TDR LEGURE d.o.o. — Ruse, Slovenia

VARGON ALLOYS A.B. — Vargön, Sweden

(b) Union users:

Aperam SA — Luxembourg

Ugitech — Ugine, France

(c) Exporting producer in Russia:

The Russian group:

JSC Chelyabinsk Electrometallurgical Integrated Plant ('JSC CHEMK') — Chelyabinsk, Russia

JSC Kuznetsk Ferroalloy Works ('JSC KF') — Novokuznetsk, Russia

RFA International LP ('RFAI') — Mishawaka, USA

(d) Producers in the analogue country:

Elkem AS, Oslo, Norway

FESIL Rana Metall AS, Trondheim, Norway

Finnfjord AS, Finnsnes, Norway.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(18) The product concerned is ferro-silicon currently falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90, originating in the PRC and Russia.

(19) The production of FeSi takes place in electric arc furnaces by means of reducing quartz using carbon-bearing products. This process is energy-intensive. 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 above is considered as a high purity product. With a silicon content of more than 55 % and less than 70 %, it is a medium purity product, and with a silicon content of less than 55 % it is a low purity product. The product concerned is essentially used as a deoxidiser and as an alloying component in the iron and steel industry.

2. **Like product**

(20) The FeSi produced and sold in the Union by the Union industry and the FeSi produced and sold in Norway ('the analogue country') as the PRC is a non-market economy country and has not been investigated in the course of this investigation, and in Russia was found to have essentially the same physical and chemical characteristics and the same basic uses as the FeSi produced in the PRC and in Russia and sold for export to the Union. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

(21) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping from the two countries concerned.

IMPORTS FROM THE PRC

1. **Preliminary remarks**

(22) As stated in recital (13) above, no Chinese exporting producers cooperated with the investigation. Thus, in the absence of cooperation from exporting producers in the PRC, the overall analysis, including the dumping calculation, is based on facts available pursuant to Article 18 of the basic Regulation.

(23) Therefore, the likelihood of a continuation or recurrence of dumping was assessed by using the expiry review request, combined with other sources of information such as trade statistics on imports and exports (Eurostat and Chinese export data) and other information publicly available.

(24) The absence of cooperation affected the comparison of the normal value with the export price of the various product types. As explained in recital (30) below, it was considered appropriate to establish both the normal value and the export price on a global basis, namely based of one single product, in accordance with Article 18 of the basic Regulation.

(25) In accordance with Article 11(9) of the basic Regulation, the same methodology as that used to establish dumping in the original investigation was followed whenever it was found that circumstances had not changed.

2. **Dumping of imports during the RIP**

2.1. *Determination of the Normal Value*

(26) In the notice of initiation, the Commission invited all interested parties to comment on its proposal to use Norway as a market economy third country for the purpose of establishing normal value in respect of the PRC. Norway was used as an analogue country in the original investigation. In the absence of comments from any parties on this aspect, it was concluded that Norway should be selected again as an analogue country to establish the normal value for the PRC in accordance with Article 2(7)(a) of the basic Regulation.

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(27) In accordance with Article 2(2) of the basic Regulation it was first examined whether the total volume of domestic sales of the like product to independent customers made by the cooperating producers in Norway was representative in comparison with the total export volume from the PRC to the Union, namely whether the total volume of such domestic sales represented at least 5 % of the total volume of export sales of the product concerned to the Union. On that basis, it was found that the domestic sales in the analogue country were representative.

(28) It was also examined whether the domestic sales of the like product could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers on the domestic market which were profitable during the RIP.

(29) Normal value was thus based on the actual domestic price, which was calculated as a weighted average price of the profitable domestic sales made during the RIP.

2.2. *Determination of the export price*

(30) As stated in recital (24) above, the Chinese exporting producers did not cooperate in the investigation. Therefore, the export price was based on the best information available, in accordance with Article 18 of the basic Regulation.

(31) The volume and the import prices were first extracted from the Eurostat import database for the three CN codes listed in recital (18) above, namely with the distinction of the quality. Given that it was considered appropriate to establish the export price on an average basis, the data extracted for CN codes 7202 29 10 and 7202 29 10 90 was adjusted to the silicon content of CN code 7202 21 00. This method is the one proposed in the review request to estimate the total volume of imports on the basis of the quality FeSi75. The volume and import prices of these three CN codes were aggregated and weighted to reflect one average.

(32) Finally, this average import price at CIF level was adjusted by deducting in particular the transportation costs to arrive at the ex-works value. The sales price was thus established in accordance with Article 2(8) of the basic Regulation, on the basis of the price paid or payable reported in Eurostat import statistics.

2.3. *Comparison and adjustments*

(33) The comparison between the normal value and the export price was made on an ex-works basis. In order to ensure a fair comparison, account was also taken of differences which affect price comparability in accordance with Article 2(10) of the basic Regulation. In particular, adjustments were made to reflect customs exportation taxes, on the basis of data mentioned in the review request given the lack of cooperation from Chinese exporting producers.

2.4. *Dumping during the RIP*

(34) On the basis of above, the dumping margin expressed as a percentage of the free-at-Union-frontier price, before duty, was found to be 165 %.

(35) However, it has to be noted that the total import volume of the product concerned to the Union has drastically decreased after the imposition of the original measures and that the above-mentioned dumping margin was established on the basis of a limited volume of imports (namely less than 2 500 tonnes during the RIP).

(36) Therefore, for the completeness of the analysis, the pricing behaviour of the Chinese exporting producers on the three most important non-Union markets, namely Japan, South Korea and the United States of America ('the USA') was also examined.

(37) For that purpose, Chinese export figures were used to establish the price of Chinese exports to Japan, South Korea and the USA. The comparison with the normal value established above also showed the existence of dumping, varying between 86 % to 92 %, depending on the country of destination.

3. Development of imports should measures be repealed

3.1. *Production capacity of the PRC*

(38) The PRC is by far the world's largest FeSi producing country. The production capacity was estimated to be 10-11 million tonnes per year during the RIP. Therefore, the PRC's industry operated at an estimated 50 % of its production capacity. This means there is a current spare capacity of around 5,5 million tonnes per annum which represents almost seven times the total Union consumption. In spite of this current overcapacity and based on information provided by the applicant, it appears that capacity in the PRC is still expanding as larger and more efficient furnaces are currently built.

(39) There is no evidence to suggest that the level of consumption on the Chinese domestic market or third country markets would significantly increase and thus absorb increased production in case the spare capacity of the Chinese producers were to be used.

3.2. *Attractiveness of the Union market*

(40) After the imposition of definitive measures in February 2008, imports from the PRC decreased steadily and became marginal, representing less than 1 % of Union consumption during the RIP. After a peak of imports of around 330 400 tonnes in 2007, imports decreased to less than 2 500 tonnes in 2012. However, the EU market for FeSi remains attractive for Chinese exports, based on the observed price levels.

(41) As mentioned above, there is an important production overcapacity in the PRC suggesting a strong incentive to find alternative markets to absorb this excess in production capacity. However, due to several export restrictions imposed by the Chinese government (namely a 25 % export duty, a 17 % non-refundable VAT and export licences), overall Chinese exports have decreased from a peak in 2007 of 1,5 million to just 0,4 million tonnes in 2009. Nevertheless, as from 2010, a rebound was observed in overall exports and the volume of exports increased to 0,8 million tonnes and were estimated at 0,7 million tonnes in 2013. The most recent figures indicate a sustained level of exports, the volume of which is higher than the entire Union consumption.

(42) Despite those export restrictions, Chinese producers exported a significant volume of FeSi to worldwide markets not subject to any import restrictions (namely Japan, South Korea and the USA).

(43) At first sight, the Asian market could be an alternative for absorbing part of the Chinese excess production. However, according to information submitted by the applicant, the recent developments in that market may render it less attractive for Chinese exports.

(44) Indeed, he Asian market will be seriously impacted by the entry into production of two new ferrosilicon projects in Malaysia (Pertama Ferroalloys and Sarawak Ferroalloys plants). It is estimated that Malaysia's annual ferrosilicon output will increase by 420 000 tonnes as from 2014 and will be sold to neighbouring countries in Southeast Asia, especially Japan, which requires 600 000 tonnes of ferrosilicon per year. The output of the Malaysian production facilities will negatively impact Chinese exports to Southeast Asia. In addition, Japanese steel producers and South Korean steel mills already entered into agreements for purchasing significant volumes of ferrosilicon per annum from the new Malaysian producers, thereby making it harder for Chinese exports to enter the market.

(45) In its comments to the disclosure, the exporting producer claimed that Malaysian production was overstated. After verification, this comment was considered appropriated and therefore, Malaysia production was corrected to about 370 000 tonnes.

(46) Therefore, it is expected that the additional Malaysian production will increase competition on this already saturated market where the PRC and Russia today have a significant market share.

(47) The reduced presence of Chinese products on the Union market during the RIP is mainly explained by the exports restriction imposed by the Chinese government mentioned in recital (41) above.

(48) The prices in the EU market would also act as an attraction to absorb the excess capacity of the Chinese producers. Indeed, the average Union market price in 2012 was at least as high as the export prices of Chinese producers to their main countries of destination (Japan, South Korea and USA), further underlining the attractiveness of the Union market when sales to other destinations become more problematic.

(49) It can therefore be concluded that the European market, one of the largest worldwide, remains attractive to Chinese producers.

4. **Conclusion on the likelihood of a continuation of dumping**

(50) The available spare capacity in the PRC and the relatively attractive price level in the Union market lead to the conclusion that there is a risk of an increase in Chinese exports of the product concerned should the measures in force be allowed to lapse.

(51) Given the current and potential spare capacity existing in the PRC, the fact that the Union market is one of the largest market in the world, and the expected pressure on Chinese exports in Southeast Asia, it can be concluded that the PRC exporters are likely to increase their exports to the Union at dumped prices should the anti-dumping measures be repealed.

IMPORTS FROM RUSSIA

1. **Preliminary remarks**

(52) As stated in recital (14), only one group of producers cooperated with the proceeding. However, it was found that the Russian group represented a significant proportion of the total Russian production, i.e. approximately 78 % of Russia's total FeSi production and for most of the FeSi imports originating from Russia into the Union. Therefore, it was considered that the information provided by the Russian group, combined from other sources such as the request for the review and available trade statistics on imports (from Eurostat) had to be used in order to assess the likelihood of a continuation or recurrence of dumping.

(53) For the calculation of the dumping margin, the companies part of the Russian group JSC CHEMK and JSC KF are considered related within the meaning of Article 143 of the Customs Code ([1]), as in the original investigation. Therefore, a single dumping margin was calculated for the whole group by using the following methodology. The amount of dumping was calculated for each individual exporting producer before determining a weighted average dumping margin for the group as a whole. It should be noted that this methodology was different from the methodology applied in the original investigation, where the dumping calculation was done by aggregating all production and sales data of the producing entities. The different methodology was used in the terminated interim review. The change in circumstances that warranted the change in methodology was the change in the corporate structure of the group allowing the identification of the individual producers within the group in respect to sales and production.

2. **Dumping of imports during the RIP**

2.1. *Determination of the Normal Value*

(54) In accordance with Article 2(2) of the basic Regulation it was first examined whether the total volume of domestic sales of the like product to independent customers made by the cooperating exporting producers was representative in comparison with their total volume of export sales to the Union, namely whether the total volume of such sales represented at least 5 % of the total volume of export sales of the product concerned to the Union.

([1]) In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 (OJ L 253, 11.10.1993, p. 1) concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognized partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife, (ii) parent and child, (iii) brother and sister (whether by whole or half blood), (iv) grandparent and grandchild, (v) uncle or aunt and nephew or niece, (vi) parent-in-law and son-in-law or daughter-in-law, (vii) brother-in-law and sister-in-law. In this context 'person' means any natural or legal person.

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(55) It was also examined whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. This examination was made for product types, sold by an exporting producer on its domestic market, which was found to be directly comparable with a product type sold for export to the Union. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold by the exporting producer on the domestic market to independent customers represented at least 5 % of its total sales volume of the comparable product type exported to the Union.

(56) It was also examined whether the domestic sales of product types could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers on the domestic market which were profitable for each exported type of the product concerned during the RIP.

(57) For product types where more than 80 % by volume of sales on the domestic market of the product type were above cost and the weighted average sales price of that type was equal to or above the unit cost of production, normal value, by product type, was calculated as the weighted average of the actual domestic prices of all sales of the type in question, irrespective of whether those sales were profitable or not.

(58) Where the volume of profitable sales of this product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the unit cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average price of only the profitable domestic sales of that type made during the RIP.

(59) Wherever there were no domestic sales of a particular product type and for product types where the domestic sales were insufficient, the normal value was constructed in accordance with Article 2(3) of the basic Regulation.

(60) When constructing normal value pursuant to Article 2(3) of the basic Regulation, the amounts for selling, general and administrative costs and for profits have been based, pursuant to Article 2(6) of the basic Regulation, on the actual data pertaining to the production and sales, in the ordinary course of trade, of the like product, by the cooperating exporting producers or on facts available.

2.2. *Determination of the export price*

(61) During the RIP, the Russian group's export sales to the Union were made through RFAI, its associated company (the related importer) which performed all import functions in relation to the goods entering into free circulation in the Union, namely the functions of a related importer.

(62) Therefore, the export price was established in accordance with Article 2(9) of the basic Regulation, on the basis of prices at which the imported products were first resold to an independent buyer, adjusted for all costs, incurred between importation and resale, as well as a reasonable margin for SG&A and for profits. For this purpose, the actual SG&A percentage was used and in the absence of new information from independent importers concerning profits accruing, use was made of the profit rate applied in the original investigation, namely 6 %.

(63) The Russian group claimed that RFAI should be treated as part of the same single economic entity ('SEE') as both are controlled and managed by the same persons, and the companies act as a single economic entity. In consequence, when determining the export prices no deduction should be made for SG&A and profit of RFAI.

(64) Whether the association between the Russian group and RFAI took the form of a SEE or not, is irrelevant in the context of an Article 2(9) adjustment for the purposes of constructing the export price.

(65) Therefore, as the Russian group's export sales were made via an associated company (RFAI), the export price had to be adjusted by deducting a reasonable margin for SG&A costs and profit, as expressly provided under Article 2(9) of the basic Regulation. On this basis, the claim has to be rejected.

(66) The exporting producer repeated the claim about the existence of a SEE and that this prevented the adjustments for SG&A and profit under Article 2(9) of the basic Regulation. It also claimed that even if the adjustments were justified, the constructed export price should only include costs related to imports by RFAI, and exclude all SGA costs related to the exports of the SEE. Last, it stated that it disagrees with the finding of non-existence of a SEE in this case.

(67) The existence of a SEE is irrelevant in the context of the construction of the export price under Article 2(9) of the basic Regulation. As long as conditions stipulated in Articles 2(1) and 2(9) of the basic Regulation are met, the degree of control or integration is irrelevant for the assessment of the legality of the adjustments under Article 2(9) [1]. Article 2(9) of the basic Regulation requires the Commission to construct, in certain situations, an export price, and to adjust this constructed export price for a certain number of parameters, including where the parties 'appear to be associated'. The wording of Article 2(9) of the basic Regulation is clear in the sense that an 'adjustment shall be made' (underlining added by the Commission). The Commission verified that RFAI performed all the functions normally performed by an associated importer in the Union. Indeed, RFAI is closely involved in the international activity of the group (customer assistance, logistics and schedule of deliveries, purchasing of capital goods and key raw materials, etc.). Thereby the requisite condition for an adjustment pursuant to Article 2(9) of the basic Regulation was met, justifying the adjustments made. Hence, it is concluded that the adjustments made were required on the basis of Article 2(9) of the basic Regulation.

(68) The exporting producer asserted that it follows from the ruling in Nikopolsky/Interpipe [2] that if the exporter and the related trader constitute a SEE, an adjustment to the export price pursuant to Article 2(9) of the basic Regulation is not permitted. This claim is unfounded. Indeed, that judgment concerns an adjustment made pursuant to Article 2(10)(i) for nominal commissions received by a trader whose functions are similar to those of an agent working on a commission basis. That case law is therefore irrelevant to the present case, where the Swiss company RFAI performs all the functions normally performed by an related importer. The existence of a SEE does not have the same impact on the adjustments under Article 2(10) of the basic Regulation as in relation to claimed adjustments under Article 2(9) of that Regulation. Moreover, there is no discretion whether an adjustment for a reasonable margin for SG&A costs and profit can be claimed. Such an adjustment shall be made pursuant to Article 2(9) of the basic Regulation when parties are associated.

(69) Regarding the scope of the adjustment, the claim concerning partial deductions of SG&A and profit cannot be accepted, in the absence of relevant evidence submitted by the exporting producer. The adjustments under Article 2(9) of the basic Regulation are those inherent in the construction of an export price in the commonest cases of an association. If the global SG&A and profit were to be only partially adjusted, such modification would have to be based on the evidence provided by the exporting producer in relation to the costs, in particular, as to whether these costs constitute special expenses accrued in relation to any activity not directly related to the import of the product concerned between importation and subsequent resale.

(70) The Russian group also claimed that no deduction of the anti-dumping duty should be made in the calculation of the export price in accordance with Article 11(10) of the basic Regulation, since the duty is duly reflected in resale prices and the subsequent selling prices in the Union.

(71) The investigation has established in particular that the resale prices of the product concerned in the Union did not reflect the duty paid for 99 % of the transactions reported. Therefore, it can be concluded that the anti-dumping duty was not duly reflected in the Russian group's resale prices. As a result, this claim of the Russian group could not be accepted and amount of the anti-dumping duties has been deducted when constructing the export prices in accordance with Article 2(9) of the basic Regulation.

2.3. *Comparison and adjustments*

(72) The comparison between the normal value and the export price was made on an ex-works basis. In order to ensure a fair comparison, account was taken of differences which affect price comparability in accordance with Article 2(10) of the basic Regulation.

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[1] Case C-260/84, *Minebea Company Limited v Council of the European Communities*, paragraph 37.
[2] Case T-249/06, *Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT) v Council* [2009] ECR II-00383. The judgment was subsequently upheld by the Court of Justice on appeal in Joined Cases C-191/09 P and C-200/09 P.

(73) Adjustments were made for transport costs, insurance costs, terminal and handling costs, credit costs, and commissions, where applicable and justified, in accordance with Article 2(10) of the basic Regulation.

2.4. *Dumping during the RIP*

(74) According to Article 2(11) and (12) of the basic Regulation the weighted average normal value was compared with the weighted average export price per product type on an ex-works basis for each cooperating exporting producer which are part of the Russian Group.

(75) The exporting producer concerned made several claims regarding the calculation of the dumping margin.

(76) Firstly, concerning the adjustment of the cost of quartzite purchased by one producing company of the group from the other producing company of the group, the addition of a 5 % profit margin to the revised purchase price was contested. The argument used is that both companies are members of the same single economic entity.

(77) Although the SEE argument is irrelevant in the context of the quartzite cost adjustment, it is acknowledged that transactions between related parties can be made without realization of a profit. In the absence of quartzite sales to external parties, the existence of any profit could also not be demonstrated. As a consequence, the profit mark-up of the adjusted quartzite cost was omitted and the dumping determination revised accordingly.

(78) A second claim concerned the application by the Commission of the recommendations of the WTO Dispute Settlements Body in the Salmon dispute with Norway. In that case, it was recommended that when domestic sales of a particular product type were not representative, the SGA and profit realized on those transactions should nevertheless be used in the construction of the normal value. The exporting producer also claimed that applying the new methodology in an expiry review was not permitted since no substantial change of circumstances would allow for that.

(79) The Commission has explained the Salmon Panel methodology in a hearing to the exporting producer, who continued to see a breach of Articles 2(4) and 2)6) of the basic Regulation in the Panel's recommendation. It is however the Commission's duty to implement such rulings in the framework of its WTO obligations. Such a methodology affects all cases and not only investigations opened on the basis of article 5 of the basic Regulation.

(80) Based on a third claim, the Commission corrected for those instances where the cost of one exporting producer of the group was compared to certain sales of the other exporting producer.

(81) The Commission further confirms that the turnover was adjusted by the same allowances as the cost of production, such as transport costs, insurance and handling, for establishing the profitability test, and packaging costs for determining the dumping margins.

(82) In a fourth claim, the exporting producer considers that the anti-dumping duty in force was unduly deducted from the export price. In order to prove this point, it is stated that export sales prices were more than 100 % higher in the review investigation period than in the original investigation period, allegedly proving that the anti-dumping duty was incorporated in the export prices. Moreover, certain import duties and anti-dumping duties should not have been deducted because they were allegedly prepaid and referred to a future period. Finally, costs for an office in Japan and Swiss Federal and Cantonal income taxes should also not have been taken into account by the Commission.

(83) The evidence provided by the exporting producer is not conclusive in the context of proving that the anti-dumping duty was duly reflected in the export price in this case and for this product. Both resale prices and production costs have increased strongly since the original investigation. Therefore, the increase in export prices cannot be conclusively attributed to the alleged reflection of the duty. To illustrate the inconclusiveness of the submitted evidence, the Commission compared the export prices to the cost of goods, inclusive of the anti-dumping duty, during the review investigation period, and as a result 99 % of the export transactions do not have an export price high enough to cover the anti-dumping duty. Finally, even if the duty is not deducted, this would not be sufficient to eliminate the finding of substantial dumping and it would not affect the conclusion on the likelihood of a continuation of dumping either. Therefore, it would not have any impact on the outcome of the present expiry review investigation.

(84) The Commission observed that the prepayment of import duties and anti-dumping duties is impossible and that such duties are levied upon importation. Moreover, the group used a bonded warehouse, meaning that duties were only due when imports and sales were effectively made. Moreover, based on a comparison of the trial balance of 31 December 2012 and the audited accounts, it was clearly established that the auditors re-qualified the alleged prepaid anti-dumping duties into effectively paid anti-dumping duties as a cost in the profit and loss account.

(85) The costs of Japan office were not related to the product concerned and therefore did not influence the calculation made by the Commission. The claim was therefore rejected. Finally the Swiss taxes mentioned could only have been excluded if they would relate to corporate income tax, which on the basis of the reply to disclosure appears to be the case. The dumping calculation was therefore adjusted accordingly.

(86) The adjusted interest on a loan made by a group company in the British Virgin Islands to another group company was revised by the Commission in response to the claim that such loans can be made below market conditions and in essence would only make sense if the interest on the loan is lower than what can be obtained from a bank. The Commission further confirms that the profit margin for RFAI was applied to the net invoice value in the company's accounting currency, and was not based on CIF to which certain costs were added.

(87) Taking into account the above considerations, and revising the calculation based on the acceptance of the claims on the quartzite intragroup sales, the intragroup loan and the Swiss Federal and Cantonal income taxes, the dumping margin expressed as a percentage of the free-at-Union-frontier price, before duty, was revised and found to be 43 %.

(88) It has to be recalled that the interim review mentioned in recital (4) above, concluded that the Russian group imports were made at dumped prices during the period October 2009 to September 2010.

3. Development of imports should measures be repealed

(89) Further to the analysis of the existence of dumping during the RIP, the likelihood of a continuation or recurrence of dumping was also investigated.

3.1. *Production capacity of Russia*

(90) Russia is the world's second largest FeSi producer. According to the Metal Expert market research company, FeSi production capacity in Russia amounts to some 900 000 tonnes. This includes production by furnaces which can produce FeSi but also other types of ferro-alloys. Indeed, the production equipment of the two producers (i.e. JSC CHEMK and Serov Ferroalloy Plant) allows switching between FeSi and other types of ferroalloys in a short period of time. The equipment of the other Russian producers, however, (i.e. Bratsk Ferroalloy Plant, NLMK and JSC KF) allows only for the production of FeSi.

(91) Following disclosure, the sole cooperating exporting producer claimed that its own information was disregarded from the calculation of the production capacity of Russia. However, as mentioned in recital (52), the primary source of information used was the one provided by this Russian group. Metal Expert report was used to establish the production capacities of other Russian producers. This claim is, therefore not granted.

(92) Furthermore, this exporting producer claimed that JSC CHEMK production was wrongly assessed, as it claims to be virtually impossible, without significant additional costs and time delays, to switch from one ferroalloy production to the other. However, the evidences found during the on-spot verification in the premises of JSC CHEMK show that the JSC CHEMK furnaces can switch from one ferroalloy to another without the time delays described above. This claim is, therefore not granted.

(93) Actual production during the RIP was estimated to be in the region of 633 000 tonnes (basis FeSi75) with spare capacity available up to 267 000 tonnes. Using a conservative approach and taking into consideration the production capacity used for the production of the other ferro-alloys, the spare capacity for FeSi is at least 120 000 tonnes.

(94) The Russian group claimed that the estimation of the Russian spare capacity was wrongly established as the Commission did not consider that the Russian group was operating at 95-100 % capacity of its production capacity. However, as mentioned in the recital above, a conservative approach has been also followed by taking into consideration the actual spare capacity. The claim is, therefore, not granted.

(95) On the basis of the Metal Expert report, the high spare capacity is explained by a significant decrease by 50 % in the domestic demand between 2002 and 2009, and remained stable till 2012. The production capacity is thus largely in excess of demand on the domestic market. Russian producers therefore depend on exports.

3.2. *Attractiveness of the Union market*

(96) Despite the existence of the current measures, the EU market is still attractive to Russian exports. The level of imports observed during the RIP illustrates that Russian imports have to a certain extent been affected by the anti-dumping duties imposed, but were still markedly present during the RIP.

(97) One party claimed that the European Union market for FeSi, would be unattractive for a global supplier, such as the Russian group and that there is a steep overall decline of imports which has so far continued in 2012. It claimed that this trend would not be reversed in the future. An examination of trade data collected from Eurostat and in accordance with Article 14(6) of the basic regulation showed however that Russian imports were rather stable during the period 2010-2012.

(98) Furthermore, when comparing the export prices of the product concerned to the European Union with the prices charged for FeSi on third country markets, it emerges that the Russian group prices to the EU are higher, depending on the country of destination.

(99) Therefore, the allegation that the Union market is not attractive for Russian producers has to be rejected.

(100) One party claimed that the Russian market is becoming more and more attractive in view of several upcoming projects, such as the Olympic Winter Games in 2014, which should boost domestic demand for steel and therefore increase domestic consumption of FeSi. However, it should first be pointed out that this party did not provide any relevant data or estimation concerning the impact of these projects on the domestic consumption of FeSi. In any event, if such situation would indeed materialise, that effect should already have been visible during 2012 and 2013. However, the available data shows that the domestic consumption remained stable. Finally, the effect of these projects would in any case be of limited and temporary nature. Therefore, this argument is disregarded. One party alleged that the overcapacity in Russia is largely absorbed by exports to Asian markets and

the USA. Indeed, during the RIP Russian producers exported worldwide more than 73 % of their output. However, as mentioned in recital (93) above, there is still an important production overcapacity in Russia due to decreasing domestic consumption, suggesting a strong need to find alternative markets to compensate for the loss in domestic sales and to absorb the excess in production capacity.

(101) As mentioned in recital (44) above, competition will increase in Asian markets due to new facilities built in Malaysia which will begin production of about 420 000 tonnes in 2014. This situation will make Russian exports for the Asian market more difficult.

(102) As explained in recital (45), the production of Malaysia has been revised to 370 000 tonnes.

(103) Furthermore, in the USA, one of their main export markets, Russian exporters are already dealing with an anti-dumping investigation for which the petition alleged substantial dumping margins.

(104) Therefore, it has to be concluded that Russian exporting producers are largely depending on exports to third countries markets where more competition will take place. This will render the Union market even more attractive for them.

4. Conclusion on the likelihood of a continuation of dumping

(105) In view of the findings described above, it can be concluded that imports from Russia are still being dumped and that there is a strong likelihood of a continuation of dumping. Given the current and potential future spare capacity in Russia, the fact that the Union market is one of the largest market in the world, and the expected expansion of capacity in the Southeast Asian market, it can be concluded that the Russian exporters are likely to further increase their exports to the Union at dumped prices should the anti-dumping measures be allowed to lapse.

5. Conclusion

(106) In light of the above considerations it is concluded that there is a significant and real risk of a continuation of dumping with regard to FeSi originating in the PRC and Russia should the existing measures be allowed to lapse.

D. DEFINITION OF THE UNION INDUSTRY

(107) During the RIP, the like product was manufactured by seven known Union producers. They constitute the Union industry within the meaning of Article 4(1) of the basic Regulation and will hereafter be referred to as the 'Union industry'.

(108) As indicated in recital (16) above, six Union producers provided the requested information. The companies in question are estimated to represent around 90 % of the total Union production and their situation is considered representative for the Union industry.

E. SITUATION ON THE UNION MARKET

1. Union consumption

(109) Union consumption was established on the basis of the unrelated and related sales volumes of the Union industry on the Union market, an estimate for the non-cooperating producer (on the basis of the request for a review) and import data from Eurostat, at CN code level.

(110) During the period considered Union consumption increased by 40 %. However, it should be taken into account that the starting year of the period considered (2009) was an extremely bad year due to the negative effects of the economic crisis. Despite partial recovery after 2009, Union consumption still did not reach the levels recorded during the original investigation when in each year the consumption was above 850 thousand tonnes.

Table 1

Consumption

	2009	2010	2011	RIP
Consumption (tonnes)	544 093	799 233	841 796	760 128
Index (2009 = 100)	*100*	*147*	*155*	*140*

Source: Questionnaire replies, expiry review request, Eurostat.

2. **Volume, Prices and market share of imports from the countries concerned.**

(111) The volumes and market shares of imports from the PRC and Russia were analysed on the basis of Eurostat and the data collected in accordance with Article 14(6) of the basic Regulation. Given that the volumes from the PRC are very low, the imports from the countries concerned have not been assessed cumulatively.

(a) ***Volume and market share of the imports concerned***

(112) During the period considered the dumped imports into the Union were found to have developed in terms of volumes and market shares as follows:

Table 2

Volume and market shares of the imports concerned

	2009	2010	2011	RIP
PRC				
Volume of imports (tonnes)	8 105	13 828	5 125	2 516
Index (2009 = 100)	*100*	*171*	*63*	*31*
Market share (%)	1,5	1,7	0,6	0,3
Index (2009 = 100)	*100*	*116*	*41*	*22*
Russia				
Volume of imports (tonnes)	74 678	53 671	29 338	40 725
Index (2009 = 100)	*100*	*72*	*39*	*55*
Market share (%)	13,7	6,7	3,5	5,4
Index (2009 = 100)	*100*	*49*	*25*	*39*

	2009	2010	2011	RIP
Total countries concerned				
Volume of imports (tonnes)	82 783	67 499	34 463	43 241
Index (2009 = 100)	*100*	*82*	*42*	*52*
Market share (%)	15,2	8,4	4,1	5,7
Index (2009 = 100)	*100*	*56*	*27*	*37*

Source: Eurostat

(113) Imports volumes from the countries concerned decreased considerably by 48 % over the period considered. Their market share also decreased from 15,2 % in 2009 to 5,7 % in the RIP. As a result of this trend Chinese exports almost ceased to exist on the Union market. Russian exporting producers however still hold substantial market share, making Russia the fourth biggest exporter to the Union.

(b) ***Price of imports and price undercutting***

(114) The table below shows the average price of the dumped imports. During the period considered average import price from the PRC decreased by 38 %. The average import price from Russia increased by 31 % over this period but it still remained below the sales prices of the Union industry.

Table 3

Average price of dumped imports

	2009	2010	2011	RIP
PRC				
Average price (EUR/tonne)	991	1 088	873	611
Index (2009 = 100)	*100*	*110*	*88*	*62*
Russia				
Average price (EUR/tonne)	716	776	889	999
Index (2009 = 100)	*100*	*108*	*124*	*140*
Total countries concerned				
Average price (EUR/tonne)	742	840	887	976
Index (2009 = 100)	*100*	*113*	*119*	*131*

Source: Eurostat

(115) In order to determine the price undercutting during the RIP, 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-work level, were compared to the corresponding weighted average prices per product type of the dumped imports from the cooperating Russian producers to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for custom duties.

(116) Since no Chinese exporting producer cooperated in the review investigation, the price undercutting for Chinese export was determined by the comparison of the Union producers' weighted average prices to the unrelated customers on the Union market, on ex-works basis with the average export prices of the Chinese exports on the CIF basis obtained from the Eurostat, with appropriate adjustments for customs duties.

(117) The result of the comparison, when expressed as a percentage of the cooperating Union producers' turnover during the RIP, showed a weighted average undercutting margin on the Union market of ranging from 6 to 39 % for Russia and 46 % for the PRC.

3. Imports from other third countries not subject to measures

Table 4

Imports from other third countries

	2009	2010	2011	RIP
Brazil				
Volume of imports (tonnes)	37 303	90 324	72 769	58 548
Index (2009 = 100)	*100*	*242*	*195*	*157*
Price EUR/tonne	974	1 136	1 352	1 173
Index (2009 = 100)	*100*	*117*	*139*	*120*
Market share (%)	6,9	11,3	8,6	7,7
Index (2009 = 100)	*100*	*165*	*126*	*112*
Iceland				
Volume of imports (tonnes)	101 036	103 043	91 462	101 275
Index (2009 = 100)	*100*	*102*	*91*	*100*
Price EUR/tonne	985	1 027	1 251	1 118
Index (2009 = 100)	*100*	*104*	*127*	*114*
Market share (%)	18,6	12,9	10,9	13,3
Index (2009 = 100)	*100*	*69*	*59*	*72*
Norway				
Volume of imports (tonnes)	122 707	193 121	224 372	224 542
Index (2009 = 100)	*100*	*157*	*183*	*183*
Price EUR/tonne	1 019	1 142	1 287	1 286
Index (2009 = 100)	*100*	*112*	*126*	*126*
Market share (%)	22,6	24,2	26,7	29,5
Index (2009 = 100)	*100*	*107*	*118*	*131*
Other third countries				
Volume of imports (tonnes)	119 274	160 690	211 670	120 966
Index (2009 = 100)	*100*	*135*	*177*	*101*
Price EUR/tonne	917	1 054	1 190	1 067
Index (2009 = 100)	*100*	*115*	*130*	*116*
Market share (%)	21,9	20,1	25,1	15,9
Index (2009 = 100)	*100*	*92*	*115*	*73*

	2009	2010	2011	RIP
Total third countries				
Volume of imports (tonnes)	380 320	547 178	600 273	505 331
Index (2009 = 100)	*100*	*144*	*158*	*133*
Price EUR/tonne	974	1 093	1 255	1 187
Index (2009 = 100)	*100*	*112*	*129*	*122*
Market share (%)	69,9	68,5	71,3	66,5
Index (2009 = 100)	*100*	*98*	*102*	*95*

Source: Eurostat

(118) Import volumes from third countries into the Union market increased by 33 % during the period considered which followed the increasing trend in consumption. Market share of the third countries imports remained relatively stable in the period considered circling around 70 % of the Union consumption, with a slight decline in the RIP. However, the geographical structure of the imports was more changeable with a noticeable increase of imported volumes and market shares of Brazil and Norway which countries seem to have benefited mainly from the increase of the consumption.

(119) Average prices of imports from the third countries increased by 22 % over the period considered and they stay far above the level of prices of imports from the PRC and Russia.

4. Economic situation of the Union industry

(120) In accordance with Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Union industry.

(121) For the purpose of the injury analysis, the economic situation of the Union industry is assessed on the basis of such indicators as production, production capacity, capacity utilization, sales volume, market share and growth, employment, productivity, magnitude of actual dumping margin and recovery from past dumping, average unit prices, unit cost, profitability, cash flow, investments, return on investments and ability to raise capital, stocks and labour costs.

(a) *Production, production capacity and capacity utilisation*

(122) The Union industry's production increased significantly during the period considered. This increase was the most pronounced between 2009 and 2011 when production increased by 178 %. It remained stable afterwards in the RIP. It is recalled that the starting year of the period considered was exceptional due to the economic crisis, hence it was characterized by unusually low level of production. Indeed, notwithstanding a significant recovery after 2009, it should be recalled that the Union industry's production still did not reach the starting level of the original investigation (year 2003), during which production was reported above 270 thousand tonnes.

Table 5

Total Union industry' production

	2009	2010	2011	RIP
Production (tonnes)	81 147	192 495	225 376	224 540
Index (2009 = 100)	*100*	*237*	*278*	*277*

Source: Questionnaire replies and review request

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(123) Production capacity remained relatively stable during the period considered with a slight increase in the RIP. As production increased significantly in the period 2009-2011, capacity utilisation showed an overall increase of 179 %. This trend changed in the RIP where capacity utilization decreased. This negative change however resulted not from the decrease in actual production but from increase in the capacity itself.

Table 6

Production capacity and capacity utilisation

	2009	2010	2011	RIP
Production capacity (tonnes)	301 456	301 456	299 914	324 884
Index (2009 = 100)	*100*	*100*	*99*	*108*
Capacity utilisation (%)	27	64	75	69
Index (2009 = 100)	*100*	*237*	*279*	*257*

Source: Questionnaire replies and review request

(b) ***Sales volume, market share and growth***

(124) The sales volume of the Union industry on the Union market to unrelated customers (established on a basis of sales to both related and unrelated customers in the Union) followed the trend of consumption in the years from 2009 to 2011. Further sudden jump in RIP results from shift of the Union industry's sales from related to unrelated customers in the Union which was noted in this year. This was due to a change in the corporate structure in one Union producer.

Table 7

Union industry's sales to unrelated customers

	2009	2010	2011	RIP
Volume (tonnes)	60 257	113 048	122 860	191 525
Index (2009 = 100)	*100*	*188*	*204*	*318*

Source: Questionnaire replies and review request

(125) As sales volumes on the Union market followed the trend of consumption, the Union industry's market share after an initial jump in 2010 remained relatively stable in the period considered with a slightly increasing trend.

Table 8

Union industry's market share

	2009	2010	2011	RIP
Union industry market share (%)	14	21	22	25
Index (2009 = 100)	*100*	*155*	*165*	*187*

Source: Questionnaire replies, Eurostat

(126) As indicated in recital (111) above, the Union consumption was growing by 40 % between 2009 and RIP. The Union industry managed to benefit from this growth by increasing its sales volumes and market share during the same period.

(c) ***Employment and productivity***

(127) Employment of the Union industry related to the product concerned increased by almost 50 % in the period considered. This increase in the number of employees was at the same time accompanied with even higher increase of productivity, measured as output (tonne) per person employed per year, which accounted for 86 % in the same period.

Table 9

Employment and productivity

	2009	2010	2011	RIP
Number of employees	701	869	1064	1042
Index (2009 = 100)	*100*	*124*	*152*	*149*
Productivity (unit/employee)	116	222	212	216
Index (2009 = 100)	*100*	*191*	*183*	*186*

Source: Questionnaire replies, review request.

(d) ***Magnitude of actual dumping margin and recovery from past dumping***

(128) As indicated in recitals (37) and (87) above the dumping margins of imports from the countries concerned remain high. Analysis of the injury indicators brought evidence that the industry is recovering from the past dumping practices. However, the recovery is recent and a certain decline in some injury indicators such as profitability, cash flow and return on investment was observed in the Union market during the RIP. Furthermore, it should be noted that this positive development takes place under the protection of the current anti-dumping measures. Should the measures be repealed the impact of the actual dumping margins on the Union industry be significant.

(e) ***Average unit selling prices on the Union market and unit costs of production***

(129) The average sales prices of the cooperating Union producers to unrelated customers in the Union increased by 25 % in the years 2009-2011 and then decreased again in the RIP. These moves of prices reflect in general changes of costs of raw materials and energy during the same period. A similar trend i.e. increase in the period of 2009-2011 and decrease in the RIP, can be observed in the selling prices of imports from third countries which hold the major part of the Union market.

Table 10

Selling prices and costs

	2009	2010	2011	RIP
Average unit selling price in the Union to unrelated customers (EUR/tonne)	1 136	1 282	1 421	1 151
Index (2009 = 100)	*100*	*113*	*125*	*101*
Unit cost of production (EUR/tonne)	1 094	1 031	1 228	1 063
Index (2009 = 100)	*100*	*94*	*112*	*97*

Source: Questionnaire replies

(f) ***Profitability, cash flow, investments, return on investments and ability to raise capital***

(130) During the period considered the Union producers' cash flow, investments, return on investments and their ability to raise capital developed as follows:

Table 11

Profitability, cash flow, investment, return on investment

	2009	2010	2011	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	2,3	27,0	18,3	7,4
Cash flow (EUR)	4 554 714	44 888 689	39 959 668	19 353 017
Investments (EUR)	26 599 036	20 962 570	25 274 658	27 076 802
Index (2009 = 100)	*100*	*79*	*95*	*102*
Return on investments (%)	− 62,6	159,2	58,3	24,8

Source: Questionnaire replies

(131) The profitability of the cooperating Union producers was established by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the relevant turnover. In 2009, the profit margin was very low, and also negative for some Union producers; however, it started to recover in 2010, in line with an increase in consumption and sales. It should be noted, however, that in the RIP the profit margin is decreasing despite the fact that sales volumes of the cooperating Union industry (also considering the changes in the corporate structure) remained stable. This raises concerns regarding the future evolution of the profit margins of the EU industry.

(132) Cash flow, which is the ability of the industry to self-finance its activities and which was calculated on the basis of operations, was positive in all the period considered. However, this indicator only improved in 2010; afterwards, in in the two following years, it deteriorated considerably. The investigation also showed that the deterioration in the cash flow was more pronounced for the smaller Union producers. This raises concerns as to the ability of the EU industry to carry on the necessary self-financing of its activities in the current economic context.

(133) The evolution of profitability and cash flow during the period considered affected the ability of the cooperating Union producers to invest in their activities. As a result, the level of investment remains relatively high and stable during the period considered. Return on investment, expressed as the profit in percentage of the net book value of the investments, only became positive after 2009. However, following the trend in profitability and cash flow, this indicator also reached its peak in 2010 and has constantly decreased in the years 2011-2012.

(134) In the light of the above, it can be concluded that, although the financial performance of the cooperating Union producers remained sound through most of the period considered, it started deteriorating towards the end of that period, in particular, during the RIP. As shown by Table 11, the profitability of EU sales dropped significantly and the cash flow generated by the Union industry was lower than the value of investments, thus indicating that the industry had to recur to external financing in the RIP.

(135) At the same time, concerns on the ability to raise capital were reported. This factor might constitute a critical element of fragility of the Union industry should the measures be let to expire. In the present economic situation, it is likely that the Union industry would have problems to find the financial means to face the return of dumped imports from the countries concerned and again could be plunged into serious injury in a very short time-frame. This is a particular concern for the SME's which are part of the Union industry.

(g) ***Stocks***

(136) Although the level of closing stocks of the cooperating Union producers increased by 32 % between 2009 and the RIP, it decreased in proportion to the production levels and is not considered by the producers as abnormally high.

Table 12

Closing stock

	2009	2010	2011	RIP
Closing stock (tonnes)	23 946	21 214	26 117	31 504
Index (2009 = 100)	*100*	*89*	*109*	*132*

Source: Questionnaire replies

(h) ***Labour costs***

(137) Whilst the number of people employed by the cooperating Union producers increased by almost 50 % in the period considered, their average wages remained stable in this period.

Table 13

Labour costs

	2009	2010	2011	RIP
Average labour costs per employee (EUR)	29 705	30 296	28 991	29 837
Index (2009 = 100)	*100*	*102*	*98*	*100*

Source: Questionnaire replies

CONCLUSION ON THE SITUATION OF THE UNION INDUSTRY

(138) The investigation showed that the imports of low-priced dumped products from the countries concerned decreased on the Union market after the imposition of the original measures in 2008. This allowed the Union industry to achieve high level of production, increase its sales volume, market share and profitability and to improve its overall financial situation.

(139) It is therefore concluded that the Union industry did not suffer material injury during the RIP. However, given the decline in consumption and the deterioration in certain financial indicators during the RIP such as profitability, cash flow and return on investment the situation of the Union industry is still vulnerable.

F. LIKELIHOOD OF RECURRENCE OF INJURY

1. **Preliminary remarks**

(140) To assess the likelihood of recurrence of injury if the measures were allowed to lapse, the potential impact of the Chinese and Russian imports on the Union market and the Union industry was analysed in accordance with Article 11(2) of the basic Regulation.

(141) The analysis focused on the consumption trend of the Union market, spare capacity, trade flows and attractiveness of the Union market, and pricing behaviour of the countries concerned.

2. Consumption in the Union

(142) The consumption of the product concerned in the Union has decreased by 10 % in the RIP compared to the previous year. This, at the same time, is a reduction of more than 25 % compared with pre-crisis level of 2007. The fall in the consumption of the product concerned is driven by declining steel production in the Union and a further decline in the next years can be expected. This will be challenging for the Union industry which will be confronted with a highly competitive environment. It is thus considered that the presence of low-priced dumped imports from the PRC and Russia cannot be tolerated. It will exercise a downward pressure on the prices in the market and will distort competition and as a consequence will cause substantial material injury to the Union producers.

3. Spare capacity, trade flows and attractiveness of the Union market, and pricing behaviour of the countries concerned

(a) *The PRC*

(143) It has to be noted that total capacity of the production of the product concerned in the PRC is estimated at 10-11 million tonnes which is higher than the global consumption of FeSi. At the same time overall capacity utilization reaches around 50 %.

(144) Chinese worldwide export of FeSi was relatively stable during the period considered, at a level of 0,8 million tonnes. This level of exports is mainly a result of export restrictions as described in recital (41). However, the Union has no control over these mechanisms and the export restrictions can be removed by the Chinese government at any moment, leaving the Union market under the serious threat of flooding by the export of the product concerned from China.

(145) Even if the export restrictions remain untacked, it should be emphasized that the current volumes of Chinese worldwide exports are higher than total consumption in the Union.

(146) It can be reasonably expected, as a consequence to the attractiveness of the EU market described in recitals (40-49) above, that should the measures be repealed at least part of the current Chinese export would be redirected to the Union market, especially that very soon it will meet additional competition on its traditional Asian markets due to the development of additional capacity of production in Malaysia as explained in recital (44) above.

(147) Expiry of the anti-dumping duties combined with tougher competition in Asia will definitely make Union market an attractive target for the Chinese exporters. In this context it is recalled that before imposition of the measures China was a major exporter to the Union market.

(148) Finally, the current level of the Chinese export prices, the magnitude of dumping margin found, and the existence of significant price undercutting confirm that in the absence of the anti-dumping measures unfair competition by the Chinese export will recur leading to material injury to the Union industry.

(b) *Russia*

(149) During the review investigation it was established that the production of the product concerned in Russia in the RIP amounted to 633 thousand tonnes while the capacity of production is estimated to 900 thousand tonnes. This leaves around 267 thousand tonnes of spare capacity, which is itself enough to supply one third of the Union's demand.

(150) With regard to Russian export of the product concerned it should be noted that Russia is currently exporting 73 % of its production. Besides the Union, its other traditional export markets are US, Japan and South Korea. In view of the increased competition on the Asian markets, as described in recital (44) above, there are strong indications that most of these trade flows will be re-directed to the Union should the anti-dumping measures be repealed. This effect might be further accentuated should the currently running US anti-dumping investigation on imports from Russia (as a result of the investigation initiated in July 2013) lead to the imposition of measures.

(151) On this point, one exporting producer from Russia has claimed that the imposition of the duties in the US on ferro-silicon originating from Russia is unlikely. Some unofficial findings from the ongoing investigation were provided in order to support this claim. However, the producer does not provide any documental evidence supporting its claims and given that the US anti-dumping investigation has been initiated and is still ongoing, imposition of measures cannot be ruled out.

(152) Expiry of the anti-dumping duties combined with tougher competition in their main export markets will make Union market an attractive target for the Russian exporters. In this context it is recalled that before imposition of the measures Russia was a major exporter to the Union market and it is still present there despite five years of the measures.

(153) Finally, it should be underlined that the Russian threat in terms of volumes is supplemented by its pricing policy on its export markets. Both the original investigation and the current expiry review have shown that Russian dumping practice seems to be structural: its export price is systematically below that of the Russian domestic market. Moreover, the current investigation confirms that prices of Russian imports are still undercutting the sales prices of the Union producers.

4. Conclusion

(154) In view of the findings of the investigation, namely the spare capacity available in the countries concerned, the continuation of dumping and the limited ability of the Chinese and Russian exporters to sell in other main third countries markets which increases the attractiveness of the Union market, it is considered that the repeal of the measures would weaken the position of the Union industry in their core market and the injury suffered would recur due to likely Chinese and Russian imports at dumped prices.

(155) There are no reasons to believe that the improvement of the performance of the Union industry due to the measures in force would remain or strengthen if the measures were repealed. On the contrary, there are favourable conditions for a likely shift of the imports from the countries concerned to the Union market at dumped prices and in considerable volumes and that would likely undermine the positive developments in the Union market reached over the period considered. The likely dumped imports would be able to exercise pressure on the Union industry's sales prices and make it lose market share and as a consequence would negatively impact the Union industry's financial performance which is still vulnerable.

(156) On this point, we have received a comment from a Russian exporting producer, which argues that the recurrence of injury cannot be based on the simple possibility of recurrence of injury, but rather on the likelihood of it. However, the investigation has shown a series of factual elements, including the fact that dumping practices from Russian producers have not ceased to exist, and the existence of spare capacity in Russia. Moreover, it is a fact that the Union consumption is lower in the RIP than before the original investigation. Finally, on the global level, more output of the product is expected, especially on the Asian market. These elements considered together lead to a reasonable certainty that, on the basis of the facts available, should the measures be left to expire, the Union industry would again suffer injury from dumped imports.

G. UNION INTEREST

1. Introduction

(157) In accordance with Article 21 of the basic Regulation, it was examined whether the maintenance of the existing measures would be against the Union interest as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, of importers and of users. The interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

(158) As this investigation is a review of the existing measures, it allowed for assessment of any undue negative impact of the existing anti-dumping measures on the interested parties.

2. **Interest of the Union industry**

(159) It was concluded in recital (154) above that the Union industry would be likely to experience a serious deterioration of its situation in case the anti-dumping measures were allowed to lapse. Therefore, the continuation of measures would benefit the Union industry because the Union producers should be able to maintain their sales volumes, market share, profitability and overall positive economic situation. By contrast, the discontinuation of the measures would seriously threaten the viability of the Union industry because there are reasons to expect a shift of the Chinese and Russian imports to the Union market at dumped prices and in considerable volumes that would cause recurrence of injury.

3. **Interest of users**

(160) In the current review, the Commission received cooperation from ten users in the Union (foundries and steel producers). Four of the responses consisted of general comments while only six contained complete questionnaire replies. On the basis of these data it was established that the cost of the product concerned has on average impact of about 1 % over the total cost of production of the users, and it does not reach 2 % for any of the cooperating users. Thus, although some of the users were loss making during 2011 and RIP, this cannot be attributed to the existence of the anti-dumping duties on imports of FeSi.

(161) It should be considered that the market share of China and Russia during the original investigation was about 40 % of the Union market, and the duties for these two countries range from 15,6 % to 31,2 %. Therefore, the potential impact of the expiry of the duties could be estimated as a cost saving on average not higher than 0,1 % (calculated on the basis of market share of 40 % for the countries under measures and an average ad valorem duty of 20 %). For this reason, it is unlikely that the expiry of the duty would have an effect on the return to profitability of the users which have suffered losses during the last two years of the period considered. Furthermore, due to the nature of the product as well as the several sources of supplies available on the market users can easily switch suppliers.

4. **Interest of importers**

(162) All known importers were informed about the initiation of the review. No importer of the product concerned replied to the sampling questionnaire attached to the notice of initiation. The investigation revealed that importers can easily buy from different sources that are currently available on the market, in particular from the Union industry and major third countries' exporters selling at non-dumped prices. Also, in absence of interest from importers, it was concluded that it would not be against their interest to maintain measures.

5. **Conclusion**

(163) In view of the above, it is concluded that there are no compelling reasons of Union interest against the maintenance of the current anti-dumping measures.

H. ANTI-DUMPING MEASURES

(164) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.

(165) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of ferro-silicon originating in the PRC and Russia, imposed by Council Regulation (EC) No 172/2008 should be maintained.

(166) In order to minimise the risk of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures, which only apply to companies for which an individual duty rate is introduced, include the following: the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other producers,

(167) The Committee established by Article 15(1) of the basic Regulation did not deliver an opinion.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ferro-silicon, currently falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90 and originating in the People's Republic of China and Russia.

2. The rate of the definitive anti-dumping duty applicable to the, net free-at-Union-frontier price, before duty, of the products described in paragraph 1, and manufactured by the companies listed below shall be as follows:

Country	Company	Anti-Dumping Duty Rate (%)	TARIC Additional Code
The People's Republic of China	Erdos Xijin Kuangye Co. Ltd, Qipanjing Industry Park	15,6	A829
	Lanzhou Good Land Ferroalloy Factory Co., Ltd, Xicha Villa	29,0	A830
	All other companies	31,2	A999
Russia	Bratsk Ferroalloy Plant, Bratsk	17,8	A835
	All other companies	22,7	A999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

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

Article 2

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

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

Done at Brussels, 9 April 2014.

For the Commission

The President

José Manuel BARROSO

L 107/38 EN Official Journal of the European Union 10.4.2014

ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

(1) The name and function of the official of the entity issuing the commercial invoice.

(2) The following declaration:

'I, the undersigned, certify that the (volume) of ferro-silicon sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'

Date and signature