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Proposal for a

COUNCIL REGULATION

imposing a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China, as extended to imports of silicon consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009

EXPLANATORY MEMORANDUM

1. Context of the proposal

Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community¹ ('the basic Regulation') in the proceeding concerning the review of the measures applicable to imports of silicon originating in the People's Republic of China.

General context

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

Existing provisions in the area of the proposal

In July 1990, the Council, by Regulation (EC) No 2200/90², imposed a definitive ad-valorem anti-dumping duty on imports of silicon originating in China. The measures were renewed twice - by Council Regulations (EC) No 2496/97³ and 398/2004⁴. In January 2007, by Council Regulation (EC) No 42/2007⁵, measures were extended to imports of silicon consigned from the Republic of Korea whether declared as originating in the Republic of Korea or not.

Consistency with other policies and objectives of the Union

Not applicable.

2. Consultation of interested parties and impact assessment

Consultation of interested parties

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

This proposal is the result of the implementation of the basic Regulation.

¹ OJ L 343, 22.12.2009, p. 51.

² OJ L 198, 28.7.1990, p. 57.

³ OJ L 345, 16.12.2009, p. 1.

⁴ OJ L 66, 4.3.2004, p. 15.

⁵ OJ L 13, 19.1.2007, p. 1.

The basic Regulation does not provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. Legal elements of the proposal

Summary of the proposed action

The attached proposal for a Council Regulation is based on the findings of the investigation on the lasting nature of a lower level of dumping and the likelihood of continuation of dumping as well as the likelihood of recurrence of injury to the Union industry.

It is therefore proposed that the Council adopt the attached proposal for a Regulation in order to extend the measures currently in force at a lower level for a period of five years.

Legal basis

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

Subsidiarity principle

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle because the form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

Choice of instruments

Proposed instrument: Council Regulation.

Other means would not be adequate because the basic Regulation does not provide for alternative options.

4. Budgetary implication

The proposal has no implication for the Union budget.

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imposing a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China, as extended to imports of silicon consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁶ ('the basic Regulation') and in particular Articles 9 and 11(2) and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) In March 2004, following an expiry review, the Council, by Regulation (EC) No 398/2004⁷, imposed a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China ('PRC'). The rate of the definitive duty applicable to the net free-at-Union frontier price, before duty, was 49%. The original measures had been imposed by Regulation (EC) No 2200/90⁸.
- (2) In January 2007, by Council Regulation (EC) No 42/2007⁹ the definitive anti-dumping duty was extended to imports of silicon consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not.

2. Request for an expiry review and a partial interim review

- (3) Following the publication, in October 2008, of a notice of impending expiry of the anti-dumping measures applicable to imports of silicon originating in the PRC¹⁰, the

⁶ OJ L 343, 22.12.2009, p. 51.

⁷ OJ L66, 4.3.2004, p. 15.

⁸ OJ L198, 28.7.1990, p. 57.

⁹ OJ L13, 19.1.2007, p. 1.

Commission received on 1 December 2008 a request for a review pursuant to Article 11(2) of the basic Regulation. In addition, the Commission received on 18 December 2008 a request for a partial interim review pursuant to Article 11(3) of the basic Regulation.

- (4) The expiry review request was lodged by Euroalliages (Liaison Committee of the Ferro-Alloy Industry) on behalf of the producers in the Union representing a major proportion, in this case 100% of the total Union production of silicon. The request was based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping and recurrence of injury to the Union industry.
- (5) The partial interim review request was lodged by EUSMET (European Users of Silicon Metal) and is limited in scope to the examination of dumping. The request was based on prima facie evidence that the circumstances on the basis of which the measures were established had changed and that the new circumstances were of a lasting nature.
- (6) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review and an interim review pursuant to Article 11(2) and 11(3) respectively of the basic Regulation, the Commission published a notice of initiation of these reviews in the Official Journal of the European Union¹¹ ('notice of initiation').

3. Investigation

- (7) The Commission officially advised the applicant Union producers, the exporting producers in the PRC, importers/traders, users in the Union known to be concerned and their associations as well as the authorities of the PRC of the initiation of the reviews.
- (8) In view of the apparent large number of Chinese exporting producers listed in the requests sampling was envisaged in the notice of initiation for the determination of dumping and the likelihood of recurrence or continuation dumping, in accordance with Article 17 of the basic Regulation.
- (9) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period 1 January 2008 to 31 December 2008.
- (10) The Commission received replies from 11 companies or company groups in the PRC. However, after examination of the information submitted by these companies it became apparent that only a low number of replies were made by companies that exported own-produced silicon to the European Union. It was therefore decided that sampling was not necessary in respect of Chinese exporting producers.

¹⁰ OJ C254, 7.10.2008, p. 9.

¹¹ OJ C51, 4.3.2009, p. 17.

- (11) All the above mentioned companies or company groups in the PRC also stated their intention to request individual examination in application of Article 17(3) of the basic Regulation.
- (12) The Commission sent market economy treatment ('MET') or individual treatment ('IT') claim forms to the Chinese exporting producers known to be concerned. Claims for MET, or for IT in case the investigation would establish that the exporting producers do not meet the conditions for MET, were received from three Chinese exporters. However, one of these exporters withdrew its claim subsequently, while the other two were found not to be exporting own-produced silicon to the European Union during the IP. The claims of these two companies were therefore not assessed.
- (13) In addition, six other Chinese companies or company groups submitted claim forms for IT. However, in the course of the investigation three companies ceased co-operation. Of the three remaining company groups, one sold the product concerned to an unrelated trader. The investigation could not establish with certainty whether the Union market was the final destination of the sales. As this company group can therefore not be regarded as an exporting producer, the claim for individual treatment had to be rejected. As indicated in recital (30), for one company where co-operation was insufficient within the meaning of Article 18 of the basic Regulation, findings were based on facts available. The IT claim of the remaining company was found admissible.
- (14) Finally, out of the two remaining companies requesting to be in the sample and claiming individual examination, only one submitted a questionnaire reply within the deadlines set in the notice of initiation. This company did however not export the product concerned to the Union market.
- (15) The Commission sent questionnaires to all parties known to be concerned and to those who requested a questionnaire within the time limit set out in the notice of initiation.
- (16) The Commission also gave interested parties 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.
- (17) Replies to the questionnaire were received from the applicant Union producers, twelve users, two associations of users, six exporters/producers in China and three producers in the analogue country.
- (18) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and for the determination of the Union interest. Verification visits were carried out at the premises of the following companies:
 - *Applicant Union producers:*
 - Ferroatlantica SL, Madrid, Spain
 - Ferropem SAS, Chambery, France
 - RW Silicium GmbH, Pocking, Germany

– *Exporting producers in the PRC:*

-Jinneng Group

-Datong Jinneng Industrial Silicon Co., Datong

-Shanghai Jinneng International Trade Co., Ltd, Shanghai

- Chongqing Trust-Glory New Metal Group

-Sichuan Dechang County Guo Yan Silicon Co. Ltd, Dechang

-Chongqing Trust-Glory New Metal Co., Ltd, Chongqing

- Bluestar Group

-Bluestar Silicon Materials Co., Ltd, Lanzhou

-China Bluestar International Chemical Co., Ltd, Beijing

- Jingyu Sunny Silicon Co., Ltd, Jingyu

- Mudanjiang Group

- Mudanjiang Shunda Chemical Co., Ltd, Mudanjiang

- Dongning Xinshun Guangfu Material Co., Ltd, Dongning

- DC/JYKN group

- Dalian DC Silicon Co., Ltd, Dalian- Sichuan Jinyang Kangning Silicon Co. Ltd, Leshan

– *Producers in the analogue country (Brazil):*

- Globe Metais Industria e Comercio S.A., Breu Branco

- Companhia Brasileira Carbureto de Calcio, Santos Dumont

- Rima Industrial S/A, Belo Horizonte

– *Users:*

– *Aluminium industry*

- Trimet Aluminium AG, Essen, Germany

- Raffmetal S.p.A., Brescia, Italy

- Vedani Carlo Metalli S.p.A., Milan, Italy

– *Chemical industry*

- Momentive Performance Materials GmbH, Leverkusen, Germany

- Wacker Chemie AG, Munich, Germany
- Dow Corning Ltd, Cardiff, United Kingdom

4. Review investigation period and period considered

- (19) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 January 2008 to 31 December 2008 ('RIP' or 'Review Investigation Period').
- (20) The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2005 up to the end of the RIP ('period considered').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. The product concerned

- (21) The product concerned is the same as that in the previous investigations, i.e. silicon metal originating in the PRC, currently falling within CN code 2804 69 00 (silicon content less than 99.99% by weight). Purely by reason of the current classification set out in the Combined Nomenclature, it should read "silicon". Silicon with a higher purity, that is containing by weight not less than 99.99% of silicon, used mostly in the electronic semi-conductor industry, falls under a different CN code and is not covered by this proceeding.
- (22) Silicon is produced in electric submerged arc furnaces with carbothermic reduction of quartz (silica) in the presence of various types of carbon reductants. It is marketed in the form of lumps, grains, granules or powder according to internationally accepted technical specifications as regards its purity.
- (23) Silicon is used primarily by two industries, the chemical industry for the production of methylchlorosilanes or trichlorosilanes and tetrachlorosilicon and the aluminium industry for the production of aluminium alloys, primary and secondary smelters, intended for the production of casting alloys for different industries, in particular the automotive and building industries.

2. Like product

- (24) As in the previous expiry reviews, this investigation has shown that silicon produced in the PRC and exported to the Union, the silicon produced and sold on the domestic market of the analogue country (Brazil) and that manufactured and sold in the Union by the applicant Union producers have the same basic physical and chemical characteristics and the same basic uses.
- (25) It was therefore concluded that these products must be considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Market Economy Treatment

(26) As mentioned above in recital (12), in the course of the investigation, the three companies claiming MET either did not export own-produced silicon to the European Union or dropped their MET claim. MET was therefore not granted to any company.

2. Individual treatment ('IT')

(27) As a general rule, pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation and therefore qualify to be granted IT.

(28) Briefly, and for ease of reference only, these criteria are set out in a summarised form below:

a) In the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;

b) Export prices and quantities, and conditions and terms of sales are freely determined;

c) the majority of the shares belong to private persons, and it must be demonstrated that the company is sufficiently independent from State interference

d) Exchange rate conversions are carried out at the market rate.

e) State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

(29) It is first noted that the company mentioned in recital (12) above that first claimed MET but then withdrew its MET claim also withdrew its claim for IT. This claim was therefore not examined further.

(30) Of the six companies or company groups which claimed only IT, three ceased cooperation and one did not supply the necessary information within the time limits set and therefore significantly impeded the investigation within the meaning of Article 18 of the basic Regulation. They were therefore regarded as non-cooperating and findings with regard to them were based on the facts available in accordance with Article 18(1) of the basic Regulation.

(31) The four companies or company groups concerned were notified of the likely application of facts available and the reasons thereof and given an opportunity to provide further explanations in accordance with Article 18(4) of the basic Regulation. However, no new evidence or information was received from any of the four companies that could have repaired the deficiencies of the replies submitted or changed the conclusion that Article 18 of the basic Regulation should be applied to these companies.

(32) Of the two remaining company groups, and as indicated in recital (13), one company group cannot be regarded as an exporting producer of the product concerned and its claim for individual treatment was therefore not assessed.

(33) The remaining exporter was found to fulfil all criteria set in Article 9(5) of the basic Regulation.

(34) From the above, it is concluded that IT should be granted to the Jinneng Group.

3. Normal value

3.1. Analogue country

(35) According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET has to be established on the basis of the prices or constructed value in an analogue country. Although Norway was used as an analogue country in the original investigation and in the following expiry reviews, the current investigation revealed that circumstances with regard to the Norwegian market had since changed significantly. Thus, domestic production in Norway decreased by around 20% between 2005 and 2008 and imports of silicon in Norway represented 97% of the domestic consumption. During the IP, there was only one domestic producer supplying the domestic market.

(36) Therefore, Brazil as suggested by both applicants was envisaged as an appropriate market economy third country in the notice of initiation. Indeed, the investigation revealed that Brazil is the second largest world producer of silicon after the PRC and that the Brazilian market is highly competitive with 7 silicon producers present, producing several different grades of silicon. Brazil was also considered as an open market with significant import volumes mostly from the PRC. Although invited to do so, none of the interested parties commented on the choice of Brazil.

(37) Considering the above, on the basis of the information available at the time of selection, it was concluded that Brazil was the most appropriate analogue country.

3.2. Determination of normal value in the analogue country

(38) Three producers in Brazil co-operated by submitting information concerning cost and sales of silicon on the Brazilian domestic market. Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET was established on the basis of verified information received from these producers as set out below.

(39) It was examined whether each type of the product concerned sold in representative quantities on the Brazilian domestic market could be considered as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each product type the proportion of profitable sales to independent customers on the domestic market during the investigation period.

(40) Where the sales volume of a 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 that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.

(41) Where the volume of profitable sales of a 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 cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only.

(42) Depending on the product type, normal value was established based on weighted average sales prices of all sales or weighted average sales prices of profitable sales only, on the domestic market of the analogue country based on the verified data of three producers in that country.

4. Export price

IT company

(43) All export sales to the European Union by the sole exporting producer granted IT were made through a related trader located in the PRC and subsequently resold to unrelated customers in the Union. In this case the export price was established on the basis of Article 2(8) of the basic Regulation.

(44) The Union industry claimed that export prices were not freely determined within the meaning of Article 9(5)(b) of the basic Regulation. In particular it was claimed that price "negotiations" were ongoing between the Chinese customs authorities and the exporters in view of the determination of a "reasonable" price level. However, the evidence submitted in this respect did not relate to silicon and it was also considered that these alleged "negotiations" did not have an impact on the price charged to the final customer, which was the result of free negotiation between the parties. This claim had therefore to be rejected.

(45) The Union industry further claimed that the company to which IT was granted was State-owned, received input subsidies and had significant trading activities which would permit circumvention of the measures. However, the investigation revealed that the exporter in question was no longer State-owned during the RIP and therefore there was no State interference in its trading activities such as to permit circumvention of the measures. As far as input subsidies are concerned, the claim was found to be unsubstantiated. These claims had therefore to be rejected.

5. Comparison

(46) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Claimed adjustments were made in respect of transport, physical characteristics, inspection costs, handling and packing where applicable and justified. An adjustment was also made under Article 2(10)(i) given that the related trader was found to have functions of an agent working on a commission basis.

(47) The investigation revealed that export duties were levied on export sales of silicon during the IP. As the duties had an effect on price comparability, it was considered appropriate to adjust the export price in accordance with Article 2(10)(k) of the basic Regulation for other factors affecting price comparability.

(48) It is noted that normal value and export price were compared at the same level of indirect taxation, i.e. VAT included.

(49) It was claimed that the fact that the VAT paid on purchases of raw material of silicon was refundable should be reflected in the calculation of the normal value. However,

the VAT paid on such purchases was found to be deductible regardless of the export VAT refund regime of the exported goods and regardless of the destination of the goods. The fact that the VAT paid on purchases of raw material of silicon was refundable is thus a neutral factor which has no impact on the comparability of export price and normal value. Therefore, this claim had to be rejected.

- (50) It was also claimed that the methodology used to take account of indirect taxation was different from the one used in other cases and that the VAT on export sales should have been deducted from the export price. It is noted that Article 2(10)(b) of the basic Regulation provides that an adjustment for indirect taxation may only be made to the normal value and in the circumstances described in the above-mentioned Article, which are not present in the current case. The claim was therefore rejected.

6. Dumping margin

6.1. For the IT company

- (51) The dumping margin for the sole exporting producer to whom IT was granted was established by comparing the weighted average ex-works export prices, by PCN to the respective normal value of the analogue country as established above.

- (52) The dumping margin for the sole exporting producer granted IT, expressed as a percentage of the CIF import price at the Union border, duty unpaid, is 16.3%.

6.2. For all other exporters/producers

- (53) In order to calculate the countrywide dumping margin applicable to all other non-cooperating exporters/producers in the PRC, the level of cooperation was first established. The degree of cooperation was low, i.e. less than 1% of total imports from the PRC. Therefore the dumping margin for the non-cooperating companies was established by comparing the average import value of silicon from China as recorded in Eurostat duly adjusted after excluding sales made by the IT company with the respective normal value of the analogue country as established above.

- (54) One party claimed that the level of cooperation was not correctly assessed as one cooperating exporter had exported significant quantities of silicon to the Union. In those circumstances, it was claimed that the information from this exporter should have been used to calculate the countrywide dumping margin as was done in the review mentioned in recital (1) above. These claims had to be rejected on the grounds that the prices this company charged to its related company in the Union were found not to be made at arm's length.

- (55) Alternatively, it was argued that data provided by the cooperating importers should have been used to determine the countrywide dumping margin. As mentioned above in recital (54), a large part of the quantities imported by these cooperating parties were not made at arm's length and therefore the prices were considered unreliable. The remaining imports were considered insufficiently representative in terms of quantities as to base the countywide duty upon. This argument was therefore rejected.

- (56) Following the disclosure, comments received with regard to the product mix of the normal value were taken into account in establishing the countrywide dumping

margin. The comparison was thus made using the information submitted by the cooperating importers as regards product types.

- (57) On this basis the countrywide dumping margin amounts to 19.0% of the CIF Union frontier price, duty unpaid.

D. LASTING NATURE OF THE CHANGED CIRCUMSTANCES AND LIKELIHOOD OF CONTINUATION OF DUMPING

1. Lasting nature of the changed circumstances

- (58) In accordance with Article 11(3) of the basic Regulation, it was examined whether the changed circumstances regarding dumping could reasonably be considered to be of a lasting nature.
- (59) In order to examine whether the level of the dumping margin found during the RIP is of a lasting nature the development of export prices and normal value has been considered.
- (60) It is first noted that the dumping margin found in the last review¹²; i.e. 12.5%, is closer to the level found in the current proceeding than to the existing level of measures.
- (61) As far as post RIP export prices are concerned, Eurostat data show that they have decreased by around 15% over the first nine months of 2009.
- (62) As far as normal value is concerned, the investigation revealed that normal value had decreased in similar proportions over the same period. As a consequence, the dumping margin for exports of silicon over the first nine months of 2009 would be of a similar level as the one found in the RIP.
- (63) The above demonstrates that Chinese export prices are closer to world prices than when measures were originally imposed¹³.
- (64) On the above basis, it was concluded that the level of dumping found during the RIP is of a lasting nature.

2. Likelihood of continuation of dumping at the levels found in the interim review

- (65) In accordance with Article 11(2) of the basic Regulation, it was examined whether it was likely that dumping at the level found in the interim review would continue should measures be repealed.
- (66) With regard to the likelihood of continuation of dumping the development of production and production capacity was examined as well as the likely development of export sales to the European Union and to other third country markets.

3. Production capacity, production volume and consumption in the PRC

¹² OJ L66, 4.3.2004, p. 15.

¹³ OJ L 345, 16.12.1997, p. 1.

- (67) Total production capacity of silicon in the PRC had to be estimated. While statistics¹⁴ provided by the parties concerned indicated a total capacity of 2.2 million tonnes in 2008, the investigation revealed that this figure was clearly overestimated because it did not take into account a significant number of furnace closures (due to e.g. the restructuring of the silicon industry, the economic crisis and the earthquake in Sichuan province in 2008) and also did not take into account the unstable energy supply in some regions leading factually to a lower capacity than the one recorded in the available statistics. After appropriate adjustments, the actual production capacity was therefore estimated to be around 1.5 million tonnes which corresponded to an increase of at least 25% in comparison to the capacity in 2002 (the investigation period of the previous expiry review mentioned in recital (1) above) where it was estimated between 600 000 tonnes and 1.2 million tonnes¹⁵.
- (68) EUSMET claimed that it had submitted a detailed calculation of the production capacity in China using an operating rate of 40%. Its capacity estimate amounted to 1.16 million tonnes. This claim was however found to be unsubstantiated since in particular no supporting document was provided concerning the operating rate used. The operating rate used by the Commission stems from verified data provided by the main cooperating producers in the PRC and was therefore considered the most reliable information available in this respect. This claim had therefore to be rejected.
- (69) The same party also argued that furnaces equal to or below a certain capacity threshold would be shut down as a result of a government decision which would reduce even further the total capacity in China. However, the investigation revealed that the government policy in question did not apply to the whole of China. EUSMET did not provide any evidence showing the number of furnaces concerned and the impact on the total capacity. The investigation also did not bring to light any significant reduction of capacity on this basis. Therefore, this claim had to be rejected.
- (70) EUSMET further alleged that production capacity would be close to the PRC sales volume in 2008; i.e. 960 000 tonnes without, however, substantiating this statement with any evidence. In addition, various factors had an impact on sales volume (such as production for stock, supply of raw materials and logistical problems due to the Olympic Games) and therefore it was considered that sales volume cannot be considered to be equal to the production capacity. This argument had therefore to be rejected.
- (71) As far as production volume of silicon is concerned, on the basis of the information available, the investigation revealed that production volume increased significantly by 79% from 535 000 tonnes in 2002 to 960 000 tonnes in the RIP. Spare capacities were therefore conservatively estimated to be around 540 000 tonnes in the RIP which is close to the total EU consumption during the RIP and which represented almost double the Chinese domestic consumption of silicon during the same period (see recital (72) below).
- (72) The investigation revealed at the same time that the Chinese consumption, which represented around 280 000 tonnes in the RIP, is likely to increase in the coming years

¹⁴ CRU March 2009.

¹⁵ OJ L 66, 4.3.2004, p. 15.

as indicated below in recital (73). The increase in consumption has to be seen as a combination of factors and policy measures in the silicon industry and its downstream industry. The downstream industry in the PRC is growing and several investments have been made and are planned in the near future to satisfy the growing need for downstream products. In addition, the Chinese authorities have introduced import restrictions for several sources (e.g. Germany, United Kingdom, Japan and USA) with regard to an important downstream product (siloxane) which was sourced in significant quantities from these countries.

- (73) While it is difficult to estimate the precise impact of the policy measures including the restructuring of the silicon industry, several interested parties indicated that demand in the PRC would reach around 580 000 tonnes by the end of 2011. This estimate was considered to be reasonable.
- (74) Nevertheless, even if considering the above mentioned forecast of the domestic demand and even if Chinese exports to other markets would reach their high levels of 2008 (see recital (79) below) overcapacity would still be significant (around 240 000 tonnes in 2011). It is also noted that given the ongoing restructuring process not only demand is likely to increase in the PRC but also production capacities and volumes.
- (75) In regard to the likely increase in production capacity in the PRC, EUSMET provided information on several planned silicon production plants and alleged that most of these plants will not materialize. Their allegation was merely based on comments provided by its members and was not substantiated. It also claimed that if Chinese production capacity is likely to increase, it would be mainly on account of a project planned by one Union producer that would add 100 000 MT/year to the production capacity of the PRC. The information provided by EUSMET was not substantiated and therefore its claim was rejected.
- (76) In this regard EUSMET claimed that Chinese domestic consumption had far outpaced the increase in production and would continue to increase. Therefore, the production volume in the PRC cannot meet adequately the demand on the Chinese domestic market. As stated above, it is undisputed that Chinese domestic demand is likely to increase in the future. However, as also outlined above, the findings of the investigation did not confirm the allegations made by EUSMET. EUSMET neither quantified the increase in demand nor the future production volumes in China nor did it provide any other information or evidence in support of its claim which had therefore to be disregarded.
4. Volume and price of imports from the PRC to the EU and other third country markets
- (77) During the period considered, Chinese exports to the EU increased by 113% despite the measures in force. As far as prices are concerned and despite an increasing trend during the RIP, they were, throughout the period considered, below the Union industry's sales prices in the EU. As indicated in recital (54) and (62) silicon export prices to the EU were also at significantly dumped levels both during and after the RIP.
- (78) The price level in the EU was still at higher levels than in other third country markets. This explains partly the high interest of the Chinese exporters in the Union market

despite the anti-dumping measures in force. In this context, it is also noted that Chinese exporters were circumventing the anti-dumping measures in force by transshipment via the Republic of Korea¹⁶ which further reinforces the conclusion that the Chinese exporters have a high interest in the Union market.

5. Volume and prices of Chinese exports to third countries

- (79) Chinese exports to other third country markets were significant in volume, exceeding the volumes exported to the European Union. However, it should also be noted that the FOB prices to third countries were on average between 4% and 14% lower than the export price to the EU in 2008 and the first nine months of 2009¹⁷ respectively.
- (80) EUSMET claimed that the Commission's finding of higher average Chinese export prices to the Union did not take account of the product mix in other markets. It is noted that EUSMET did not submit any evidence in support of this claim. It did not provide any information or explanation to what extent the product mix of exports to other third countries would indeed be different. The evidence provided concerning price differences between product types related furthermore to the EU market only and to a period largely before the RIP, i.e. 2001/02. Therefore, it could not be considered as a sufficiently accurate basis to determine price differences between product types during and after the RIP. In any event, the information available relating to the RIP did not alter the conclusions in recital (79) above. This claim was therefore rejected.
- (81) With the exception of the USA, which is protected by high anti-dumping duties (139.49%) against silicon originating in the PRC, Chinese exports had free access to other major third country markets.
- (82) EUSMET submitted that the Asian market would be the main destination for Chinese silicon and that the growth in the Japanese and Korean markets would be significant. It is not contested that Asia is the main destination for Chinese silicon. However, even though consumption may increase in the coming years in the Japanese and South Korean markets, this consumption increase is not expected to be such as to be able to absorb the significant Chinese overcapacities. In addition, the investigation has shown that the Japanese market, which is the main export market for China, is saturated with Chinese silicon.
- (83) EUSMET alleged that, if measures were allowed to lapse, supply patterns for the chemical users would not be affected. However, the investigation did not confirm this allegation since various users (chemical and aluminium applications) stated that they would indeed source increased quantities from China would the measures be allowed to lapse. Therefore, this argument was rejected.
- (84) Considering the above, it is expected that Chinese spare capacities will be shipped to the Union market should measures be allowed to lapse.
- (85) Given that imports into the EU during the RIP were dumped, it is very likely that dumping will also continue should the measures be allowed to lapse. This is borne out by the development after the RIP where imports of silicon from the PRC continued to be at price levels below the ones during the RIP (see recital (131) below).

¹⁶ OJ L 13, 19.1.2007, p. 1.

¹⁷ Source: Chinese export statistics.

6. Conclusion

- (86) The investigation showed that export volumes of the product concerned to the EU increased significantly over the period considered and that the level of dumping found for these imports was significant in the RIP.
- (87) In view of the spare capacities available in the PRC during the RIP and despite the increasing domestic demand, there is a strong likelihood that large quantities of silicon will be exported to the EU at dumped prices should measures be allowed to lapse. Indeed, domestic demand in the PRC will not be able to absorb the spare capacities and the EU market is the only significant market where overcapacities could be exported. The EU market is indeed an attractive market for Chinese exports since prices charged to EU customers are on average higher than those charged to third country customers. The interest of Chinese exporters in the EU market is also confirmed by circumvention practices in the past.
- (88) It is therefore concluded that there is a likelihood of continuation of dumping.

E. DEFINITION OF THE UNION INDUSTRY

- (89) The three complainant Union producers replied to the questionnaires and cooperated fully in the investigation. The complainants' production constitutes the total Union production within the meaning of Article 4(1) of the basic Regulation.

F. SITUATION OF THE UNION MARKET

1. Preliminary remark

- (90) Specific data relating to the Union industry and consumption had to be indexed, in accordance with Article 19 of the basic Regulation, as the Union industry comprises only three producers, two of which belong to the same group. Eurostat data had to be adjusted to take account of the data for which confidential treatment was requested by Member States regarding their imports of silicon, and for this reason also had to be indexed.

2. Union consumption

Table 1: Union consumption (based on sales volume)

	2005	2006	2007	RIP
Index	100	115	118	121
Y/Y trend		15%	3%	3%

Source: Verified questionnaire replies of the Union industry and adjusted Eurostat statistics

- (91) Union consumption was based on the combined volume of sales by the Union industry in the Union and the volume of imports from third countries, based on adjusted Eurostat data.

(92) On this basis and as shown in Table 1 above, Union consumption increased significantly during the period considered, i.e. by 21%.

3. Volume, market share and prices of imports from the PRC

Table 2: Imports from the PRC in volume, market share and import price

Indices	2005	2006	2007	RIP
Imports volume	100	183	168	213
Market share	100	159	143	176
CIF Import price Eur/tonnes	100	106	120	188

Source: Adjusted Eurostat statistics

(93) During the period considered the import volumes from the PRC increased by 113% while the consumption in the Union increased by 21%. The figures include imports of silicon from the Republic of Korea, as in 2007 measures were extended to that country following an anti-circumvention proceeding. Despite the anti-dumping measures in place the Chinese market share increased by seventy six percentage points during the period considered and it is well above the 3.9% market share held in 2002, the RIP of the previous investigation. However, the vast majority, i.e. around 90% of the quantities imported from the PRC, were placed under the Inward Processing Regime with suspended payment of duties.

(94) Average import prices from the PRC increased by 88% over the period considered. However the higher increase in prices occurred between 2007 and the RIP.

(95) The Union industry's average ex-works price was compared with the Chinese CIF average import prices at the Union frontier. These prices were derived from adjusted Eurostat figures and included post-importation costs, customs and anti-dumping duties. The comparison showed that Chinese import prices did not undercut the Union industry's sales price during the RIP. The Chinese average import prices included also the sales of Chinese silicon destined for Inward Processing. It should be noted that prices of silicon destined for Inward Processing, which represented the vast majority of Chinese imports, were found, on average, to be 15% higher during the RIP than prices of silicon for free circulation.

(96) Based on the above it was found that if measures had not been in place Chinese import prices for quantities destined for free circulation would have undercut those of the Union industry by 12%.

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

Table 3: Imports from other third countries (volume)

Indices	2005	2006	2007	RIP
Norway	100	114	100	113

Brazil	100	113	123	93
Russia	100	39	114	116
Bosnia Herzegovina	100	202	165	174
Other third countries	100	110	101	118
Total	100	112	112	110
Market share	100	97	95	91

Source: Eurostat

Table 4: Imports from other third countries (average prices)

Indices	2005	2006	2007	RIP
Norway	100	93	101	128
Brazil	100	98	108	149
Russia	100	130	116	170
Bosnia Herzegovina	100	102	116	163
Other third countries	100	112	116	119
Total	100	100	108	145

Source: Eurostat

- (97) Whilst the total import volumes of silicon from third countries other than the PRC and the Republic of Korea increased by 10% during the period considered, the market share of these imports fell by nine percentage points in the RIP. The major exporters to the Union were Brazil, Norway and Russia, while Bosnia Herzegovina was a new source of supply.
- (98) Prices of imports from these countries increased by 45% over the period considered. They were on average 15% above the Chinese prices except in the RIP when they were 5% lower.

5. Economic situation of the Union industry

5.1. Production, production capacity and capacity utilisation

Table 5: Union production, production capacity and capacity utilisation

Index	2005	2006	2007	RIP
Production	100	94	108	107

Y/Y trend		-6%	14%	0%
Production capacity	100	102	112	114
Y/Y trend		2%	11%	2%
Capacity utilisation	100	92	96	94
Y/Y trend		-8%	3%	-2%

Source: Verified questionnaire replies of the Union industry

- (99) The Union industry's production increased by 7% during the period considered. The production capacity of the Union industry showed an overall increase of 14% in the period considered as a result of investments. However capacity utilisation decreased by 6% during the period considered. This development has to be seen against the background of the significant increase in Union consumption by 21% during the same period.

5.2. Inventories

Table 6: Inventories

	2005	2006	2007	RIP
Index	100	91	82	82
Y/Y trend		-9%	-9%	0%

Source: Verified questionnaire replies of the Union industry

- (100) Stocks decreased by 18% during the period considered. This was due to high demand, in particular during 2007 and the RIP which were exceptionally favourable periods in the economic cycle. Stocks in 2005 represented around 27% of the Union industry's EU sales volume while they fell to 19% of EU sales volume during the RIP.

5.3. Sales, market share and prices

Table 7: Sales volumes and values

	2005	2006	2007	RIP
Sales in volume (index)	100	103	116	118
Y/Y trend		3%	13%	2%
Sales in value (index)	100	105	132	178
Y/Y trend		5%	27%	45%

Source: verified questionnaire replies of the Union industry

Table 8: Union industry's market share

	2005	2006	2007	RIP
Index	100	89	98	98
Y/Y trend		-11%	9%	-1%

Source: Verified questionnaire replies of the Union industry, adjusted Eurostat statistics

Table 9: Union industry unit sales prices

	2005	2006	2007	RIP
Index	100	102	114	150
Y/Y trend		2%	12%	37%

Source: Verified questionnaire replies of the Union industry

- (101) The Union industry sales volume increased by 18% during the period considered. At the same time, sales value increased by 78%, with major increases occurring in 2007 and the RIP, as a result of the increased demand on the silicon market. However, the market share of the Union industry decreased by two percentage points in the RIP. The decrease in the Union industry's market share as well as the decrease in its capacity utilisation over the period considered as mentioned in recital (99) above showed that the Union industry did not manage to fully take advantage of the increased demand and consumption in the silicon market, in terms of market share in particular.
- (102) Unit selling prices of the Union industry increased substantially in 2007 and in the RIP as during these two years there was a strong demand in the silicon market which led to exceptionally high prices. Over the period considered average prices of the Union industry increased by 50%. The substantial increase in selling prices combined with a lower increase in costs of production played a major role in the significant improvement of the financial situation of the Union industry.

5.4. Factors affecting Union prices

- (103) The high demand throughout the period considered led to a significant increase in prices. Price levels of imports from third countries, including the PRC, followed the same increasing trend as the Union industry's prices.
- (104) During the period considered average unit costs of production increased by 21% while the corresponding increase in the average unit selling price was 50%.

5.5. Employment, productivity and wages

Table 10: Employment

	2005	2006	2007	RIP
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Index	100	93	91	100
Y/Y trend		-7%	-2%	9%

Source: Verified questionnaire replies of the Union industry

Table 11: Productivity

	2005	2006	2007	RIP
Index	100	101	119	108
Y/Y trend		1%	18%	-11%

Source: Verified questionnaire replies of the Union industry

Table 12: Wages (EUR/employee)

	2005	2006	2007	RIP
Index	100	94	107	117
Y/Y trend	-	-6%	13%	10%

Source: Verified questionnaire replies of the Union industry

- (105) Employment remained stable overall during the period considered, while average wages increased by 17%. Productivity increased by 8% during the same period as a result of the increase in production volume.

5.6. Profitability

Table 13: Profitability

	2005	2006	2007	RIP
Index	100	161	389	671
Y/Y trend	-	61%	228%	282%

Source: Verified questionnaire replies of the Union industry

- (106) The profitability of the Union industry increased almost six fold from 2005 to the RIP reaching a high level during the RIP. These increased profits in 2007 and the RIP resulted from increased selling prices due to a strong demand in the silicon market as a result of the prevailing, exceptionally favourable, economic conditions. This was despite a 21% increase in the costs of production over the period.

5.7. Investments, return on investments and ability to raise capital

Table 14: Investments and return on investments

	2005	2006	2007	RIP
Index	100	135	310	717
Y/Y trend		35%	174%	408%
ROI	7%	14%	47%	96%

Source: Verified questionnaire replies of the Union industry

- (107) Investments increased significantly during the period considered, i.e. by six times, corresponding to around 30% of the profits obtained. The Union industry demonstrated its commitment to the Union silicon market as the investments related to increases in production capacity, either by installing new machinery or by the upgrading of existing machinery. Additionally, they invested in the metallurgical process of the high purity silicon for use in the solar energy industries. This new product has very good prospects in the future.
- (108) The investigation also showed that the return on investments, i.e. pre-tax net profit of the product expressed as a percentage of the net book value of fixed assets allocated to the product, increased notably during the period considered. The investigation did not bring to light any evidence that the Union industry had any major problems in raising capital.

5.8. Cash flow

Table 15: Cash flow

	2005	2006	2007	RIP
Index	100	114	348	672
Y/Y trend		14%	233%	325%

Source: Verified questionnaire replies of the Union industry

- (109) Cash flow followed a similar positive trend to profitability, increasing significantly during the period considered.

5.9. Growth

- (110) During the period considered the Union industry did not manage to fully take advantage of the significant growth in consumption while producing at 80% of its capacity and lost two percentage points of its market share. Despite the measures in force, the Chinese imports mainly took over the increase in consumption with the vast quantities placed under the Inward Processing Regime.

5.10. Magnitude of the dumping margin

- (111) During the RIP, despite the measures in force substantial dumping continued albeit at lower levels than those established in the original investigation, based both on the data

obtained from the sole cooperating exporting producer granted IT and the calculations based on facts available.

5.11. Recovery from the effects of past dumping

(112) The Union industry, in a positive economic context, managed to recover from past dumping, in particular in terms of sales volume, sales prices and profitability. It is recalled, however that dumping margins remained significant.

5.12. Export activity of the Union industry

Table 16: Export volume of the Union industry

	2005	2006	2007	RIP
Index	100	72	168	27
Y/Y trend	-	-28%	96%	-141%

Source: Verified questionnaire replies of the Union industry

(113) Union industry exports of silicon fell by more than half over the period considered, mainly in the RIP. Whilst in comparative terms this fall might appear dramatic, in absolute terms it is less significant, as the Union industry is not export oriented. The Union producers are strongly committed to the Union market. It should be noted, however, that some of the Union producers have related companies outside the Union producing and selling for these markets, thus decreasing the need for export from the Union.

5.13. Conclusion on the situation of the Union industry

(114) The anti-dumping measures had a clear positive impact on the situation of the Union industry. During the period considered, all main injury indicators, such as production, productivity, stocks, sales volume, sales prices, investments, profitability and cash flow, showed positive developments. The profit achieved in the RIP reflects the fact that this was during an exceptionally favourable period in the economic cycle.

(115) As far as the market share of the Union industry is concerned, the slight decreasing trend could be considered as pointing to injury in the sense that, despite available production capacity, the Union industry did not manage to take advantage of the increased consumption.

(116) In conclusion, in view of the positive development of the indicators pertaining to the Union industry, it is considered that the Union industry did not suffer material injury during the period concerned. It was therefore examined whether there was a likelihood of recurrence of injury should measures be allowed to lapse.

G. LIKELIHOOD OF RECURRENCE OF INJURY

1. Summary of the analysis of the likelihood of the continuation of dumping and the recurrence of injurious dumping

- (117) It is recalled that despite the measures in force, Chinese imports increased substantially and took over the major part of the market share lost by the imports from third countries. The exporting producers in the PRC continued to dump at significant levels. Based on this, there is no reason to believe that the Chinese will not continue to dump. In addition, during the RIP, if measures had not been in place Chinese import prices for quantities destined for free circulation would have undercut those of the Union industry by 12%.
- (118) It is also noted that in 2007, following an anti-circumvention proceeding, the measures were extended to imports of silicon consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not. The extension of measures had a positive effect as imports of silicon from the Republic of Korea fell sharply.
- (119) The investigation showed that the Chinese producers had significant spare capacities during the RIP i.e. around 540 000 tonnes. Despite the expected increase in demand in the PRC overcapacity is, as explained in recital (74), expected to persist in the coming years.
- (120) As mentioned earlier, the Union market is a major outlet for the PRC, since the other major export market, the USA, has high anti-dumping measures in place against the PRC which is therefore practically inaccessible to Chinese exports.
- (121) Chinese import prices were found to be lower than the third country import prices by 15% on average and only in the RIP were higher by 5%. In view of the Chinese exporting producers' interest for the Union market, it is expected, if measures were repealed, that a huge volume of exports at prices below those of the third countries would be directed to the Union market, with a strong overall depressing effect on prices.
- (122) EUSMET claimed that the 56% market share held by third country imports compared to the relatively low market share held by the Chinese imports would have had a more decisive impact on Union producers' market share in the RIP particularly since the third country imports were 5% lower priced than the Chinese. In this regard, it was found that, despite the prices of third country imports being 5% lower in the RIP than those of imports from the PRC, the market share of the former imports fell by 4% between 2007 and the RIP compared to a gain in market share of imports from the PRC of 34% (see Tables 2 and 3 above). Over the same period, the market share of the Union industry was stable. In these circumstances, it cannot be concluded that third country imports had a decisive impact on the market share of the Union industry in the RIP.
- (123) It was claimed that the Commission did not take into consideration the likely increase of the cost of production, based namely on higher electricity cost, shortage of power supply, increased investment cost, high inflation, increase in raw material prices and international transportation costs, when evaluating the likely development of Chinese export prices. Even if electricity costs would increase in China this is not the sole significant cost element. Furthermore, no indication was provided concerning the extent of such increase and its precise impact on the total cost and resulting sales prices. As far as the other elements are concerned, they are either purely speculative and/or were not sufficiently substantiated or quantified as to draw any meaningful conclusions thereon. It should also be noted that it is erroneous to assume that export

prices are necessarily based on the level of the cost of production, since various other factors may also have an impact on the price level such as government policies or questions of supply and demand.

(124) It was also found that in third country markets where anti-dumping duties are not in force, Chinese export prices during the RIP were at levels lower than those to the Union.

(125) It was therefore concluded that there was a continuation of dumping and a likelihood of an increased volume of dumped imports exerting a downward pressure on prices in the Union, at least in the short term, if measures were repealed. Based on the above, there is no reason to believe that PRC prices will increase. Consequently, there is a likelihood of recurrence of injury as this would negatively affect the Union industry's profitability as well as its financial recovery observed during the RIP.

2. Impact of the dumped imports on the Union industry – indications and likely development during the post RIP period

(126) During a period of increasing consumption, the market share of the Union industry and the market share of imports from third countries decreased, while the market share of the Chinese imports increased significantly. In view of these mixed indicators (i.e. overall recovery by the Union industry, but loss of market share) and the fact that the RIP was an exceptionally favourable period in the economic cycle, the post-RIP developments were examined in order to get a clearer picture of likely future trends. It should also be recalled that the likelihood of recurrence of injury caused by downward pressure on prices may also be accentuated by the evolution of the global economy and its effects on demand and consumption.

(127) Based on adjusted Eurostat data and the information provided by the Union industry on the development of sales volumes and prices in the Union for the period from January 2009 to September 2009, a clear and continuous downward trend in the Union industry's sales volume on the Union market could be observed. Sales volume amounted to 52% of the quantity sold in the corresponding nine months of 2008 although average selling prices remained at the same level as in 2008 due to long-term contracts and production cuts.

(128) As far as the Union industry's profitability was concerned the negative development was significant. Profit levels shrank continuously and fell to low levels and even below the 6.5% target profit set during the original investigation.

(129) It is noted that due to the global economic crisis, demand in the Union decreased significantly. This had a negative impact on sales volumes and profitability on the Union market. The financial position of the Union industry deteriorated, making the Union industry more vulnerable. Under these circumstances the Union industry would not be in a position to overcome the negative impact of increased dumped imports from the PRC. This situation is likely to deteriorate further due to the pressure of such imports.

(130) Chinese imports decreased both in terms of volumes and prices with the former being more substantial. In terms of prices Chinese imports prices decreased more than the Union industry prices (8% over 2% respectively). No undercutting or underselling was

found for the post RIP period. However, if measures had not been in place Chinese import prices would have undercut those of the Union industry by 3% and there would have been an underselling of 11%. In addition, it was found that if measures were lifted, import prices for quantities destined for the free market would have undercut those of the Union industry by 22% and the underselling would have been up to 38%.

- (131) It was also found that Chinese export prices in third country markets not protected by anti-dumping duties were at much lower levels than those to the Union compared with those found during the RIP, as mentioned in recital (123) above. This shows that in times of economic downturn the downward pressure on prices increases.
- (132) On the basis of the above, and given the clear downward trend of the Union industry's financial situation, it was concluded that a recurrence of injury was likely should measures be allowed to lapse.

3. Conclusions on the likelihood of recurrence of injury

- (133) It is considered that if measures were repealed, there would be a likelihood of a significant increase in dumped imports from the PRC to the Union, with downward pressure on prices. Such a situation would not only endanger the substantial investments made by the Union industry to develop and upgrade its production but also the development of a new production for solar silicon which is a future market. Furthermore, the likelihood of the recurrence of injury is magnified by the recent economic downturn.

H. UNION INTEREST

1. Preliminary remark

- (134) In accordance with Article 21 of the basic Regulation it was examined whether the continuation of the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, importers/traders and users of the product concerned.
- (135) It is recalled that in the previous reviews the adoption of measures was not considered to be against the Union interest. Furthermore, as the present investigation is an expiry review, it requires analysis of a situation in which anti-dumping measures have already been in place and the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (136) On this basis it was examined whether there were compelling reasons which would lead to the conclusion that it was not in the Union interest to maintain measures in this particular case, despite the above conclusions on the likelihood of continuation of dumping and the likelihood of recurrence of injury.

2. Interests of the Union industry

- (137) It is recalled that the high profit margins achieved in 2007 and the RIP were the result of the increase in selling prices. This factor was not expected to continue in the coming years.

- (138) The Union industry has proven to be a viable and competitive industry, able to adapt to the changing conditions of the market. This was confirmed in particular by the positive development of all main injury indicators during the period considered. The continuation of measures since the last expiry review had contributed to the restoration of the financial situation of the Union industry and in particular of the price levels on the Union market.
- (139) During the period considered the Union industry demonstrated its commitment to the Union silicon market and improved its efficiency significantly. The Union industry made substantial investments in increasing not only its production capacity but also in developing research and technology in the metallurgical process for the production of high purity silicon for the solar energy industries.
- (140) The solar silicon market is a new market with excellent future prospects due to the expected increase in the use of solar energy in the coming years. It is therefore vital for the Union industry to participate in this new market. In this respect, two of the Union producers have plans to construct two new plants for solar silicon in the Union to cover part of the Union market's needs. It should be noted that the investments made in this new niche market are highly dependent on the existence of the traditional production of silicon in the EU which is the main raw material used in the production of solar silicon.
- (141) Moreover, one of the Union producers has announced its plans to invest in new facilities in the PRC to cover the expected increased needs of the Chinese market for both traditional silicon and solar silicon.
- (142) As mentioned above, if measures were allowed to lapse the risk of recurrence of injury is very likely and would endanger the recent investments made by the Union industry. It is therefore in the interests of the Union industry that measures against the dumped imports from the PRC be maintained.

3. Interests of unrelated importers/traders

- (143) The Commission sent questionnaires to all known unrelated importers/traders. Replies were received from two unrelated importers which were also users of the product concerned. These companies' comments are dealt with under the section on interests of users below. One importer/trader made itself known but did not reply to the questionnaire.
- (144) In view of the fact that, aside from sourcing from the PRC, the importers also have access to a supply of silicon from both Union producers and third country sources free of anti-dumping duties, such as Norway and Brazil, which have more than 56% of the Union market share, it is considered that competition on the Union market is ensured.
- (145) On the basis of the above and given the lack of co-operation by any trader or any indication to the contrary, it was concluded that the current measures in force had no substantial negative effect on their financial situation and that the continuation of the measures would not affect the importers.

4. Interests of users

- (146) It is recalled that EUSMET, an association of users in the chemical sector, lodged the current interim review limited to dumping. The Commission sent questionnaires to all known unrelated users and their associations. Twelve users co-operated in the investigation, some of them being the main importers of Chinese silicon placed under the Inward Processing Regime. Additionally one other user association co-operated by submitting comments.
- (147) The main industrial users of silicon in the Union are the chemical and aluminium industries which represent 60% and 40% of Union consumption respectively.
- (148) For the chemical industry silicon is the main raw material for the production of both silicones used in a plethora of applications, in particular in the automotive and construction industries and polysilicon used in the electronics and solar energy industries. The proportion of silicon in the cost of production of the various types of silicones and polysilicon varied from 2 to 35% depending on the production process of each type of downstream product. On average, however, the proportion of silicon in the total cost of production of silicones ranged between 11 and 21% while for polysilicons it ranged between 2 and 10%. With an anti-dumping duty of 19%, the impact on the cost of production of those chemical users that source all of their silicon from the PRC is estimated to be between 2 and 4%. For other chemical users the impact will be lower.
- (149) Some of the chemical companies co-operating in the investigation were the major importers of Chinese silicon placed under the Inward Processing Regime and thus free of anti-dumping duties. However, they argued that they could not absorb the duty or pass it on to their customers and that the Inward Processing Regime did not remove the burden created by the measures in force as they had to devote significant resources in burdensome customs and other administrative procedures. Moreover, they considered that they were driven to invest in new facilities in the PRC in order to be close to the source of cheap raw materials and become more competitive on the Asian market.
- (150) For the aluminium industry silicon is also an important raw material for the production of casting alloys by the aluminium refiners. These alloys are used mainly by the automotive and construction industries. The proportion of silicon in their cost of production varied from 8 to 10% depending on the quality of scrap they used which already contained silicon. Most of the aluminium refiners co-operating in the investigation purchased silicon from other third countries not subject to anti-dumping duties due to the fact that their products are destined mainly for the Union market and they cannot, therefore, make use of the Inward Processing Regime. With an anti-dumping duty of 19%, the impact on the cost of production of the aluminium users that source all their silicon from the PRC is estimated to be around 2%. For other aluminium users the impact will be lower. The investigation showed that aluminium refiners' profitability was not particularly high and thus, increases in silicon prices have a negative impact on their profits due to their limited margin.
- (151) The chemical industry had around 14 000 employees and the aluminium industry 6 000. During the period considered employment in the chemical industry increased by 8% while in the aluminium industry it remained stable.

- (152) All users strongly opposed the continuation of measures on the grounds that measures had been in force for too long, that they artificially increased the price levels of silicon in the Union market irrespective of origin and that the Union industry had not suffered injury during the RIP. However, in view of the extremely high market share held by the Chinese exporters for silicon destined for inward processing and the competition for silicon destined for free circulation, this statement is not substantiated. Whilst it was indeed found that for the most part the Union industry did not suffer injury, the question of the likelihood of recurrence of injury also has to be considered in an expiry review. As stated above (see recital (133) in particular), such likelihood was found in this case.
- (153) EUSMET has alleged there was a shortage of silicon in the RIP on the Union market as demonstrated by its claim that orders of some of its members had not been met by third countries' producers. However, this claim was not substantiated. In assessing available capacity on the market, EUSMET only took account of the Union producers' capacity without taking into account imports from third countries including China placed under the Inward Processing Regime. In conclusion, therefore, it is maintained that there was no shortage and that the demand on the market could be met on the basis of the sales of the Union industry and the volume of imports.
- (154) EUSMET claimed also that the Union industry deliberately limits production through seasonal shutdowns and therefore limits sales on the Union market in order to control sales prices. One Union producer has resorted to production shutdowns but during these periods, they had sufficient stock to supply their customers according to their long term contracts in place. Another Union producer had some production cuts but only in the post-RIP and these were not repeated. Therefore, EUSMET claim that shutdowns were intended to control prices was considered to be unfounded.
- (155) Users, understandably, want to have free access to cheap raw materials in order to be more competitive. They consider freedom of sourcing essential since unrestricted access to silicon will in their view, become more important in the future due to the expected increase in demand for silicon by 2013, largely linked to the solar-related projects. EUSMET argued that with the expected increased demand in the Union silicon market in the years to 2013, the alleged shortage will increase. Nevertheless, the figures provided on which the assumptions have been based, show that the Union consumption even in 2013 will be at lower level than the one existing during the period considered. There is therefore no reason why the future silicon demand could not be met. In addition, freedom of sourcing cannot by itself justify the acceptance of dumping practices. Competition on the Union market requires a level playing field for all operators.
- (156) The chemical users also pointed out that the Union industry would remain an important source of supply as a guarantee for short-term availability of the product concerned, reliability of supply and a higher quality product than the Chinese one.
- (157) Nevertheless, the investigation showed that the measures in force did not have any significant negative effects on their business. In particular some users in the chemical industry considerably increased their imports of silicon from the PRC during the period concerned and most of them were in a healthy financial situation. In summary, it was considered that, as in the previous expiry reviews, the continuation of the

measures would not have a significantly negative effect on the industrial users, bearing also in mind that the level of the measures proposed would be significantly reduced.

5. Conclusion on Union interest

- (158) Given the above, it is concluded that there are no compelling reasons against the prolongation of the anti-dumping measures.

H. ANTI-DUMPING MEASURES

- (159) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the measures be maintained but at lower levels. They were also granted a period to submit comments and claims subsequent to disclosure. Relevant representations submitted were analysed but have not led to the alteration of the essential facts and considerations on the basis of which it was decided to maintain the anti-dumping measures.
- (160) As a result of the interim review pursuant to Article 11(3) of the basic Regulation and in accordance with Article 9(4) of the basic Regulation, an anti-dumping duty should be imposed on imports of the product concerned originating in PRC at the level of the lesser of the injury margin on which the measures in force are based and the dumping margins found in the current review.
- (161) Consequently, measures will be set at the level of the dumping margins found; i.e. 16.3% for the sole company group granted IT and to 21.0% for all other companies.
- (162) On this basis, the measures extended by Council Regulation (EC) No 42/2007¹⁸ to imports of silicon consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, following an investigation in accordance with Article 13 of the basic Regulation should be maintained but at the levels set out in recital (161) above.
- (163) Exporters in the Republic of Korea which intend to lodge a request for an exemption from the extended anti-dumping duty pursuant to Article 13(4) of the basic Regulation will be required to complete a questionnaire in order to enable the Commission to determine whether an exemption may be warranted. Such exemption may be granted after the assessment of the market situation of the product concerned, production capacity and capacity utilisation, procurement and sales and the likelihood of continuation of practices for which there is insufficient due cause or economic justification and the evidence of dumping. The Commission would normally also carry out an on-the-spot verification visit. The request would have to be addressed to the Commission, with all relevant information, in particular any modification in the company's activities linked to production and export sales of the product under consideration,

¹⁸ OJ L13, 19.1.2007, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

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

Company	Duty rate	TARIC additional code
Datong Jinneng Industrial Silicon Co., Pingwang Industry Garden, Datong, Shanxi	16.3%	A971
All other companies	19.0%	A999

- (3) The extension of the definitive anti-dumping duty applicable to imports from 'all other companies' in the People's Republic of China (i.e. 19.0%) to imports of the product described in paragraph 1 consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not is hereby maintained. The TARIC code for imports consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not is (TARIC code 2804 69 00 10).
- (4) Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

- (5) Requests for exemption from the duty extended mentioned in Article 1(3) of the current regulation shall be made in writing in one of the official languages of the Union and must be signed by a person authorised to represent the applicant.
- (6) The request must be sent to the following address:

European Commission

Directorate-General for Trade

Directorate B

Office: N-105 04/17

1049 Brussels

Belgium

Fax (32-2) 295 65 05

- (7) In accordance with Article 13(4) of Regulation (EC) No 1225/2009, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies, which do not circumvent the anti-dumping measures imposed by the current regulation, from the extended duty mentioned in Article 1(3).

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union* and shall be in force for a period of five years.

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

Done at Brussels, [...]

For the Council
The President
[...]