COMMISSION REGULATION (EC) No 3119/94

of 19 December 1994

imposing a provisional anti-dumping duty on imports of ferro-silico-manganese originating in Russia, Ukraine, Brazil and South Africa

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], as last amended by Regulation (EC) No 522/94 [2], and in particular Article 11 thereof,

After consultation within the Advisory Committee,

Whereas :

A. PROCEDURE

(1) In August 1993, the Commission announced, by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding concerning imports of ferro-silico-manganese originating in Russia, Ukraine, Georgia, Brazil and South Africa.

The proceeding was initiated as a result of a complaint lodged by Euroalliage — Liaison Committee of the Ferro-Alloy Industry — acting on behalf of allegedly all the Community producers of ferro-silico-manganese.

The complaint contained evidence of dumping of the product originating in the countries mentioned above, and of material injury resulting therefrom. This evidence was considered sufficient to justify opening a proceeding.

(2) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting countries and the complainants, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(3) Five Community producers replied to the Commission's questionnaire and made their views known in writing. These producers were found to account for 66 % of the Community production of ferro-silico-manganese, and were therefore representative of the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the Basic Regulation').

(4) A number of producers in Ukraine, Georgia, Brazil and South Africa, and three importers in the Community, one of which related to a South African producer, replied to the Commission's questionnaire and made their views known in writing.

(5) As regards Russia, the complaint had pointed to the existence of ferro-silico-manganese of Russian origin, based on Eurostat statistical data, but did not identify producers of this product in Russia. The Commission sent questionnaires to potential producers of ferro-silico-manganese in this country, i.e. ferro-alloy producers, and to traders known to be concerned. No producer and only one trader replied to the questionnaire, arguing that there was no production of ferro-silico-manganese in Russia. Representatives of the Russian authorities also submitted that Russia had no producton facilities for this product and should not therefore be included in the proceeding.

However, the Commission obtained evidence that significant quantities of ferro-silico-manganese of Russian origin were exported from Russia to the Community during the investigation period. Under these circumstances, and in order to avoid any potential discrimination or circumvention, Russia should not be excluded from the scope of the present investigation.

(6) All parties who so requested were granted a hearing.

(7) The Commission sought and verified the information it deemed to be necessary for the purpose of a preliminary determination of dumping and injury, and carried out investigations at the premises of the following :

(a) Complainant Community producers :

— Sadaci SA, Belgium,

— Dunkerque Electrometallurgie (DEM), France,

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 66, 10. 3. 1994, p. 10.
[3] OJ No C 210, 4. 8. 1993, p. 5.

— Fornileghe, SpA, Italy,

— Italghisa, SpA, Italy;

(b) Brazilian producers:

— Companhia Paulista de Ferro-Ligas, São Paulo,

— Sibra Electrosiderurgica Brasileira, Bahia;

(c) South African producers:

— Samancor Limited, Johannesbourg,

— Highveld Steel and Vanadium Corporation Limited, Witbank;

(d) Related importers:

— Samancor International Limited, United Kingdom;

(e) Unrelated importers:

— Sirce SpA, Italy,

— Société Anonyme des Minerais, Luxembourg.

(8) The investigation of dumping covered the period 1 April 1992 to 31 March 1993 (investigation period).

B. PRODUCT

(9) *Description of the product concerned*

The product under investigation is ferro-silico-manganese, falling within CN code 7202 30 00.

Ferro-silico-manganese is an alloy composed mainly of manganese, silicium, carbon, phosphorus and sulphur. It is available in different qualities according, in particular, to the content of carbon in the alloy, and in various granular sizes. The investigation has shown that all qualities have the same application, i.e. as a deoxidizer or as an alloy element in steel production, and are generally interchangeable, although particular types of steel may require specific qualities.

For the purpose of this investigation, all qualities were regarded as a single product. However, given that prices tend to vary according to the qualities, price comparisons were based on the grade most commonly sold, i.e. a product with 65 % manganese minimum and approximately 17 % silicon, in granular sizes between 10 to 200 mm (standard ferro-silico-manganese).

(10) *Like product*

The Commission established that the product exported by Brazil and South Africa is similar in its basic physical characteristics and in use both to the product intended for consumption in the said countries and to that produced by the Community industry. Accordingly, they were considered like products within the meaning of Article 2 (12) of the Basic Regulation.

Similarly, the Commission established, that the ferro-silico-manganese exported by Russia, Georgia and Ukraine is alike to that produced by the Community industry and, as regards Russia and Ukraine, to that produced and sold for consumption in Brazil, the country used as reference for such exports (see recital 12).

C. DUMPING

(11) No dumping calculation was made with regard to imports from Georgia given the conclusion that imports from this country during the investigation period were *'de minimis'* (see recital 34).

Normal value

(a) *Russia, Ukraine*

(12) Since both Russia and Ukraine are non-market economy countries, normal value for these countries was determined in conformity with Article 2 (5) of the Basic Regulation, i.e. on the basis of information obtained from a market economy country in which the product is manufactured.

(13) The complaint proposed Brazil as the reference country. The Commission considered that Brazil was an appropriate and not unreasonable choice for the following reasons:

— according to information available to the Commission, the ferro-silico-manganese produced in Brazil and in the countries concerned has similar physical characteristics and the same application,

— the conditions of access to raw materials in Brazil are generally comparable to those of the exporting countries concerned for which information is available, as in both cases the main raw materials used in the production of ferro-silico-manganese are claimed to be locally available,

— the sales of ferro-silico-manganese in Brazil appear to be subject to sufficient competition to allow for prices to be governed by market forces. Indeed, the Commission has received information on the existence of at least five producers in Brazil and imports from more than one source,

— the volumes of ferro-silico-manganese sold by the Brazilian producers in their domestic market during the investigation period were found to exceed the quantities exported to the Community by each of the countries concerned, and could therefore be considered representative.

The normal value for Russia and Ukraine was therefore determined on the basis of the normal value calculated for Brazil (see recital 14).

(b) *Brazil*

(14) The two Brazilian producers which cooperated with the Commission were found to be related, i.e. one was a subsidiary of the other. It was accordingly considered appropriate to calculate one normal value and one dumping margin for the group. Normal value for Brazil was therefore established on the basis of an average of the data submitted by both producers, as explained hereinafter.

(15) Domestic sales of ferro-silico-manganese in Brazil exceeded 5 % of the quantities imported into the Community and were therefore considered sufficiently representative in volume for constituting the basis for calculating the normal value.

(16) However, in view of the significant price variations that are a result of the hyper-inflation in Brazil and in order that a comparison with the export price could be made as nearly as possible at the same time, normal value was determined on a monthly basis.

(17) Almost all sales in Brazil were made to independent customers. The Commission examined whether these sales had been made in the ordinary course of trade by comparing, on a monthly basis, the weighted average price with the average unit cost of both producers.

For months in which the weighted average price exceeded the average unit cost, normal value was determined, in accordance with Article 2 (3) (a) of the Basic Regulation, on the basis of domestic sales, i.e. the weighted average price for the month.

In months where the weighted average domestic price did not permit recovery of all costs in the ordinary course of trade, normal value was based on a constructed value in conformity with Article 2 (3) (b) of the Basic Regulation, determined by adding manufacturing costs, a reasonable amount for selling, administrative and other general expenses and a margin of profit.

(18) In the absence of another valid criterion for the determination of the reasonable level of profit, the percentage taken was 5 % which, according to the information available to the Commission, constitutes the minimum necessary to maintain viability in this industry.

(c) *South Africa*

(19) Both South African producers sold on their domestic market, at profitable prices considered to be charged in the ordinary course of trade, more than 5 % of the quantities exported to the Community. These sales were therefore considered to be sufficiently representative as a basis for calculating the normale value.

(20) In its examination of whether the domestic sales of the South African producers had been made in the ordinary course of trade, the Commission excluded sales to related customers, where such sales existed. In the case of one South African producer, it excluded sales to a customer with whom this producer was found to have a compensatory arrangement and with regard to which the Commission was not satisfied that the prices involved were comparable to those involved in transactions between parties which had no such link. On the basis of the remaining sales, it established that the average domestic price of each producer was higher than the respective unit cost.

(21) Normal value for both South African producers was therefore established on the basis of the weighted average domestic price for ferro-silico-manganese sold on the domestic market at prices in the ordinary course of trade, in accordance with Article 2 (3) (a) of the Basic Regulation.

Export price

(a) *Russia*

(22) Given the absence of cooperation from Russian producers, the export prices was determined according to facts available in conformity with Article 7 (7) (b) of the Basic Regulation. In this context, the Commission considered that the best evidence available was the average monthly prices reported by Eurostat statistics for imports of ferro-silico-manganese of Russian origin during the investigation period.

(b) *Ukraine*

(23) The information on export sales submitted by the cooperating Ukranian producers was found not to be in usable form, in particular since it was not possible to establish, on the basis of the responses to the questionnaires, whether export sales had been made to the Community or other destinations. Furthermore, one importer in the Community related to an Ukrainian producer did not cooperate in the investigation, thus preventing access to information on costs and resale prices of this importer, which were necessary to construct the export price in conformity with Article 2 (8) (b) of the Basic Regulation.

(24) The Commission, however, received and verified information on export sales of Ukranian origin to two unrelated importers in the Community. These sales were found to account for 53 % of the total imports of ferro-silico-manganese of Ukranian origin to the Community during the investigation period. Under these circumstances, it was considered appropriate to base the export prices both on the information submitted by these importers and, for the remaining sales, on the best evidence available which in this case was considered to be the monthly average prices reported by Eurostat for imports of Ukranian origin during the investigation period. The use of these statistics is supported by the fact that they were generally in line with the prices reported by the importers and verified by the Commission.

The export prices were therefore determined partly on the basis of the prices actually paid or payable for the product sold for export to the Community and partly on facts available.

(c) *Brazil*

(25) All exports sales to the Community during the investigation period were made directly to independent importers.

The export prices were therefore determined on the basis of the prices actually paid or payable for the product sold for export to the Community in conformity with Article 2 (8) (a) of the Basic Regulation.

(d) *South Africa*

(26) Where sales to the Community were made directly to unrelated importers, the export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community, in conformity with Article 8 (8) (a) of the Basic Regulation.

Where exports were made to related importers in the Community, export prices were constructed in accordance with Article 2 (8) (b) of the Basic Regulation, on the basis of the resale prices to the first independent purchaser adjusted to take account of all costs between importation and resale and a profit margin of 3 %, which was provisionally considered to be reasonable on the basis of the information available to the Commission on the product sector concerned.

Comparison

(27) The normal value was compared with the export prices, where possible on a transaction-by-transaction basis. For the purpose of a fair comparison adjustments were made in conformity with Article 2 (9) and (10) of the Basic Regulation, in respect of differences affecting price comparability, such as differences in selling expenses for which satisfactory evidence had been submitted.

(28) In the case of exports from the Ukraine, an adjustment was made to take account of differences in physical characteristics (i.e. a high content in phosphorus and non-crushed formats) where the claim for the difference was substantiated.

(29) Comparisons were made at the ex works stage for Brazil and South Africa, and at fob level for Russia and Ukraine, which was considered to be the first appropriate equivalent stage of comparison given that costs in non-market economy countries cannot be taken into account in determining prices on the basis of which the comparison between export prices and normal value is made.

Dumping margins

(30) The comparison showed the existence of dumping, the dumping margins being equal to the amount by which the normal value established exceeded the price for export to the Community.

(31) The weighted average dumping margins for the countries and companies concerned, expressed as a percentage of the CIF-Community frontier prices, customs duty unpaid, are the following :

— Russia : 57,4 %,

— Ukraine : 52,8 %,

— Brazil :

Group formed by Companhia Paulista de Ferro-Ligas and Sibra Electrosiderurgica Brasileira : 40,6 %,

— South Africa :

— Highveld Steel and Vanadium Corporation Limited : 45,3 %,

— Samancor Limited : 57,8 %.

(32) For producers in Brazil and South Africa which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping was determined on the basis of facts available in accordance with Article 7 (7) (b) of the Basic Regulation. In this context, it was considered that the best evidence available was the facts established during the investigation. Since there was no reason to believe that the non-cooperating companies would be dumping any less than the highest level found, the dumping for non-cooperators was determined at that level.

D. INJURY

Cumulation of the dumped imports

(33) The Commission examined whether the effect of imports from the countries concerned on the Community industry should be analysed cumulatively on the basis of the following criteria : volume of imports during the investigation period, comparability of the products imported in terms of physical characteristics and interchangeability of end use and similarity of market behaviour.

(34) As regards Georgia, the information available to the Commission showed that the volume of imports of fero-silico-manganese originating in this country during the investigation period accounted for *de minimis* quantities (i.e. 0,9 % of Community consumption). In conformity with usual Commission practice and for the purpose of the provisional findings, these imports were considered not to be capable of contributing to the injury to the Community industry and were accordingly excluded from the injury assessment.

(35) As regards imports originating in Russia, Ukraine, Brazil and South Africa, it was found that the products imported from each of these countries competed with each other and with the like product produced by the Community industry, that volumes imported from each country during the period under consideration were significant and that price trends were similar. Under these circumstances, it was considered that imports from these countries should be analysed cumulatively.

Community consumption, volume and market share of the dumped imports

(36) Community consumption of ferro-silico-manganese increased virtually continuously during the period under consideration. In total, it went from 415 263 tonnes in 1989 to 504 043 tonnes in the investigation period, representing an increase of 21,4 % over the period.

(37) The total volume of imports of ferro-silico-manganese originating in Russia, Ukraine, Brazil and South Africa increased steadily and substantially from 64 358 tonnes in 1989 to 150 198 tonnes in the investigation period, i.e. an increase of 133,4 %.

— Based on evidence available to the Commission, i.e. Eurostat statistics, exports from Russia rose from some 66 tonnes in 1989 to approximately 16 871 tonnes in the investigation period. In the same period, exports from Ukraine went from approximately 198 tonnes to some 33 284 tonnes.

— Brazil increased its exports to the community from 11 239 tonnes in 1989 to 50 030 tonnes in the investigation period.

— As regards South Africa, exports fluctuated somewhat between 1989 and the investigation period. However, volumes were invariably significant and in only one year (1990) fell below 50 000 tonnes.

(38) In terms of market shares based on total apparent consumption, the market penetration of the dumped imports rose significantly from 1989 until the investigation period, i.e. from 15,4 to 29,7 %. The market shares of the individual countries concerned during the investigation period were as follows : Russia 3,3 %, Ukraine 6,6 %, Brazil 9,9 % and South Africa 9,9 %.

Prices of the dumped imports

(39) The Commission compared the prices of the Community industry with those of the exporters concerned in the Community market, during the investigation period. The prices considered were those to independent customers, adjusted where necessary to ex works Community industry level, in order to ensure comparison at the same level of trade.

(40) The comparison showed price undercutting margins of up to 16,3 %. This price undercutting rate during the investigation period must be assessed together with the fact that the Communiy producers had been compelled to reduce their prices by more than 40 % during the previous four years as a result of the downward pressure exerted by all the exporters concerned.

Situation of the Community industry

(a) *Production*

(41) Overall Community production of ferro-silico-manganese rose from 114 180 tonnes in 1989 to 118 332 tonnes in the investigation period, representing an increase of 3,6 %.

(b) *Capacity, capacity utilization*

(42) As regards capacity, it should be noted that the production facilities of ferro-silico-manganese are designed to produce more than one product and do so as a function both of demand in the market and of minimizing costs. As a consequence, it was difficult to determine capacity levels for the product concerned. However, based on an estimate of the capacity normally attributed by the Community producers to the production of ferro-silico-manganese, installed capacity remained unchanged between 1989 and the investigation period and therefore the utilization rate rose slightly from 59,6 to 61,8 %.

(c) *Sales volume of the Community industry*

(43) The volume of sales of the Community industry in the Community increased from 100 000 tonnes in 1989 to 115 432 tonnes in the investigation period. This increase, however, is considerably less than the 21,4 % increase in consumption during the period under consideration.

(d) *Market share*

(44) The development of sales volume, compared to that of apparent Community consumption, shows that the market share held by the Community producers decreased from 24,1 in 1989 to 22,9 % in the investigation period.

(e) *Stocks*

(45) No clear pattern could be determined as regards levels of stock of the Community producers between 1989 and the investigation period, except that stock increases and decreases for individual producers coincided with respective rises and falls in production.

(f) *Price evolution*

(46) The downward pressure on prices resulting from the dumped imports forced the Community industry to continuously reduce its prices between 1989 and the invesigation period, in an attempt to keep its market share. Prices, on an indexed basis were as follows: 100 in 1989, 73 in 1990, 67 in 1991, 61 in 1992 and 60 in the investigation period.

(g) *Profitability*

(47) A weighted average of the Community producers results, expressed as a percentage of turnover, showed a profit of 16,9 % in 1989 which turned into a loss of 14,9 % in 1990 followed by further and increasing losses of 26 % in 1991, 36,9 % in 1992 and 36,3 % in the investigation period.

(h) *Employment*

(48) Employment in the ferro-silico-manganese sector fell by 14,7 % between 1989 and the investigation period.

Conclusion on injury

(49) The examination of the facts on injury has shown that the Community industry has experienced a significant drop in market share at a time when Community consumption had risen by 21,4 %. The Community producers' financial results swung from satisfactory profits in 1989 to heavy losses of 36,3 % in the investigation period. Employment also showed a considerable decline.

(50) In light of the significance of these negative economic factors the Commission concludes that the Community industry has suffered material injury within the meaning of Article 4 (1) of the Basic Regulation.

E. CAUSE OF INJURY

(a) *Effect of the dumped imports*

(51) In its examination of whether the material injury suffered by the community industry had been caused by the effect of the dumped imports, the Commission found that the financial situation of the Community producers turned from satisfactorily positive to heavily negative during the same period of time, i.e. from 1989 to the investigation period, during which the volume of the dumped imports more than doubled.

Furthermore, price undercutting was widespread and practised by all the exporters concerned. Given the price sensitivity of the market for ferro-silico-manganese, this resulted in the Community producers having to adjust their prices to meet the downward trend exerted by all the exporters under investigation. As a consequence, the Community producers suffered a 40 % reduction in prices. Despite this, the Community industry was unable to increase its sales commensurate with the increase in demand and capacity utilization consequently remained at low levels. These factors resulted in a severe erosion of profits.

(52) One South African producer claimed that exports from South Africa, having remained relatively stable between 1989 and the investigation period with a consequent declining trend in market share could not have contributed to the injury sustained by the Community industry. The Commission found however, that the significant volumes of dumped imports from South Africa maintained during this period, together with a continuous decrease in prices at levels that undercut the prices of the European producers, by up to 13,4 % during the investigation period, contributed to the price erosion and financial losses suffered by the Community industry.

(b) *Other factors*

(53) The Commission examined whether the injury suffered by the Community industry could have been caused by factors other than the dumped imports. In particular, the Commission looked at the trend in consumption in the Community market and the evolution and impact of imports from non-member countries not included in this proceeding.

(54) Community consumption of ferro-silico-manganese showed an increasing trend between 1989 and the investigation period (see recital 36). The injury suffered by the Community industry cannot therefore be attributed to the development of demand.

(55) As regards imports from non-member countries not concerned by this proceeding, the Commission found that their market share, as a whole, fell from 47,5 % in 1989 to 36 % in the investigation period. Furthermore, with the exception of Norway, no exporting country held a market share in the Community of more than 2 % during the investigation period and the total market share of such countries declined from 6,1 % in 1989 to 5,2 % in the investigation period.

(56) The Commission examined in particular the trend in volumes and prices of Norwegian product, which comprised the single largest volume of imported ferro-silico-manganese in the Community. In this context, it was found that Norway's market share had declined from 41,4 % in 1989 to 30,8 % in the investigation period. This appears to be the result of Norway's decision to continue to sell at prices which exceeded those of the Community producers. This pricing policy should be contrasted with that of the Community producers, which, in attempting to keep their market share, followed the downward pressure exerted by the exporters under investigation, at the cost of increasingly high losses in their sales of ferro-silico-manganese in the Community. Under these circumstances, exports from Norway could not be considered to be responsible for the precarious situation of the Community industry.

(57) In light of the above, the Commission has concluded that although it could not be excluded that the above imports might have had a certain adverse effect on the Community industry, the dumped imports originating in Russia, Ukraine, Brazil and South Africa, because of their prices, their significant and increasing volumes and market share, and the resulting decrease in market share and continuing losses of the Community industry have, taken in isolation, caused material injury to this industry.

F. COMMUNITY INTEREST

(a) *General considerations*

(58) The purpose of anti-dumping duties is, in general, to eliminate unfair commercial practices which cause injury to the Community industry. The solution adopted should allow the re-establishment of open and fair competition on the Community market which, in itself, is clearly in the interest of the Community.

(59) In this context, it should be noted that although anti-dumping measures may have the effect of increasing the price levels of exports and thus influence their relative competitiveness, no adverse effect on the competitive situation on the Community market should be expected from the taking of measures. On the contrary, removing the unfair advantages gained by the dumping practices should prevent the further deterioration of the Community industry and of those exporters which do not resort to unfair pricing and thus guarantee the availability of a wide choice of suppliers.

(b) *Interests involved*

(60) The investigation showed that the Community industry is in a precarious situation, particularly noticeable from the heavy nd increasing losses suffered in the last four years and the decline in employment, as a result of the significant and rising quantity of dumped imports entering the Community. Unless a solution is found, it is to be forseen that, given the level of losses incurred, one or several producers will be forced to stop production in the short term, leading, in a relatively short time, to the virtual disappearance of this industry in the Community.

(61) The consumer industry, the steel producers, claimed that the imposition of anti-dumping measures would increase the costs of that industry which in itself is facing financial difficulties.

(62) While recognizing that the interests of the steel industry should also be taken into consideration, the Commission notes that ferro-silico-manganese accounts for a small percentage of the production cost of steel (approximately 1 % of the cost of a tonne of steel). Under these circumstances, it is the Commission's view that the impact that anti-dumping measures would have on the costs of steel producers cannot be considered sufficient to justify its refraining from taking action against unfair imports.

(63) Having carefully examined all the above aspects, the Commission considers, therefore, that it is in the Community interest to impose provisional anti-dumping measures on imports of ferro-silico-manganese originating in Russia, Ukraine, Brazil and South Africa.

G. DUTY

(64) For the purpose of establishing the level of the provisional duty, the Commission took account of the level of dumping found and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

(65) Since the injury resulted mostly from continuous reductions in prices and consequent financial losses, the removal of such injury required that the export prices be increased to an extent that would allow the Community industry to raise its prices to a profitable level.

(66) In order to determine the necessary price increase, the Commission compared the average import prices free-at-Community frontier, adjusted, where necessary to ex factory Community producer level, with the weighted average cost of production of the Community producers plus a profit of 5 % considered to be the minimum necessary to ensure the viability of this industry.

(67) In the case of Brazil, since one company was a subsidiary of the other, it was considered appropriate to calculate one injury threshold for the group.

(68) The comparison showed the following injury thresholds for each exporter/producer:

— Russia: 82,8 %,

— Ukraine: 70,7 %,

— Brazil:

Group formed by Companhia Paulista de Ferro-Ligas and Sibra Electrosiderurgica Brasileira: 70,9 %,

— South Africa:

— Highveld Steel and Vanadium Corporation Limited: 57,4 %,

— Samancor Limited: 55,6 %.

(69) Since in the case of the South African producer Samancor, the injury threshold found was lower than the respective dumping margin, the provisional duty to be imposed should correspond to the injury margin established, in conformity with Article 13 (3) of the Basic Regulation. In all other cases, the dumping margins found were lower than the corresponding injury thresholds and the duty to be imposed should therefore correspond to the dumping margins determined.

(70) As regards Georgia, it is considered appropriate not to impose provisional measures on imports originating in this country given the preliminary conclusion that these imports could not have caused injury to the Community industry.

(71) In the case of Brazilian and South African firms which failed to cooperate in the investigation or otherwise make themselves known, the duty should be established according to facts available in conformity with Article 7 (7) (b) of the Basic Regulation. In this respect, since there is no reason to believe that any duties lower than the highest duties considered necessary would be sufficient to remove the injury caused by these imports, and in order to avoid duty circumvention and not to reward non-cooperation, the Commission considers that the duty for non-cooperators should be the highest duty calculated for ferro-silico-manganese originating in Brazil and South Africa.

H. FINAL PROVISION

(72) In the interests of sound administration, a period should be fixed within which the parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of ferro-silico-manganese falling within CN code 7202 30 00 and originating in Russia, Ukraine, Brazil and South Africa.

2. The rate of the duty applicable to the net-free-at-Community-frontier price, not cleared through customs, shall be :

— 57,4 % for ferro-silico-manganese originating in Russia,

— 52,8 % for ferro-silico-manganese originating in Ukraine,

— 40,6 % for ferro-silico-manganese originating in Brazil,

— 55,6 % for ferro-silico-manganese originating in South Africa (Taric additional code 8818) with the exception of that produced by the company below, to which the following rate shall apply :

— 45,3 % Highveld Steel and Vanadium Corporation Limited, Witbank (Taric additional code 8819).

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

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2423/88, the parties concerned may make known their views and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Article 3

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

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 19 December 1994.

For the Commission

Leon BRITTAN

Member of the Commission