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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2413/95

of 6 October 1995

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 23 thereof, which laid down that 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 [2] shall continue to apply to proceedings in relation to which an investigation pending on 1 September 1994 had not been concluded by the date of entry into force of Regulation (EC) No 3283/94,

Having regard to Regulation (EEC) No 2423/88 (hereinafter referred to as the 'basic Regulation'), and in particular Article 12 thereof,

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

Whereas :

A. PROVISIONAL MEASURES

(1) By Regulation (EC) No 3119/94 [3] (hereinafter referred to as the 'provisional duty Regulation'), the Commission imposed provisional anti-dumping duties on imports into the Community of ferro-silico-manganese (FeSiMn) falling within CN code 7202 30 00 and originating in Russia, Ukraine, Brazil and South Africa.

By Regulation (EC) No 866/95 [4], the Council extended the validity of these duties for a period of two months.

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping duties,

— the Comité de Liaison des Industries de Ferro-Alliages ('Euroalliages' ; complainant),

— two South African producers, Highveld Steel and Vanadium Corporation Limited and Samancor Limited,

— the Ukrainian authorities and two Ukrainian producers, Nikopol Ferro Alloy Plant and Zaporozhye Ferro Alloy Plant,

— two Brazilian producers, Companhia Paulista de Ferro Ligas and Sibra Eletrosiderurgica Brasileira SA,

— the British Iron and Steel Producers Association (Bispa),

— an unrelated importer in Luxembourg, SA des Minerais,

— an importer in the United Kingdom, Victoria Alloys (UK) Limited,

made their views known in writing. Parties who so requested were granted a hearing by the Commission.

(3) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(4) Upon request, the parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the collection of amounts secured by way of a provisional duty. The parties were also granted a reasonable period within which to make representations subsequent to the disclosures.

[1] OJ No L 349, 31. 12. 1994, p 1. Regulation as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).
[2] OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).
[3] OJ No L 330, 21. 12. 1994, p. 15.
[4] OJ No L 89, 21. 4. 1995, p. 1.

(5) The parties' comments were considered, and the Commission altered its conclusions where deemed appropriate.

C. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT

(6) As no comments have been presented by any party regarding the product under consideration and the like product after the imposition of provisional anti-dumping measures, the findings set out in recitals (9) and (10) of the provisional duty Regulation are hereby confirmed.

D. DUMPING

1. NORMAL VALUE

Russia, Ukraine

(7) In the absence of any new arguments, the findings laid down in recitals (12) and (13) of the provisional duty Regulation are confirmed.

Brazil

(8) The Commission had, for the purpose of the provisional findings, calculated one normal value and, consequently, one dumping margin for the two Brazilian producers which cooperated in the proceeding because they were found to be related, i.e. one was the subsidiary of the other.

(9) IThe Brazilian producers requested the determination of individual normal values and accordingly individual dumping margins. They argued that the approach adopted by the Commission did not conform with Article 13 (2) of the basic Regulation which stipulates that anti-dumping duties should be imposed on an individual basis for each cooperating exporter. It was further argued that this treatment is also contrary to Article 2 (3) (c) of that Regulation, according to which normal value should be based on prices or costs of another exporter only if an exporter does not produce nor sell the product in the country of origin. The said producers also claimed that they operate separately in the market place and pointed out that they keep separate records and accounting systems. Finally, they argued that the determination of only one dumping margin would unduly penalize one of them because its dumping margin is significantly lower than that of the other. On these grounds, the Brazilian exporters have requested the determination of individual dumping margins.

(10) It is the general practice of the Community institutions to calculate one dumping margin for producers where one is a subsidiary of, and therefore subject to control by, another on the basis of an average of the data submitted by both producers. Calculating individual dumping margins would create the likelihood of circumvention of anti-dumping measures (thus rendering them ineffective) by enabling the related producers to channel their exports to the Community through the affiliate with the lowest dumping margin. Such an approach is contrary neither to Article 2 (3) (c) of the basic Regulation, since the exporting entity produces and sells on the Brazilian domestic market, nor to Article 13 (2) which requires the name of the supplier to be mentioned in the Regulation imposing duties only if this is practical. In the case in question, since only two Brazilian producers cooperated and one was a subsidiary of the other, one dumping margin was established which was also considered appropriate for non-cooperating producers.

(11) In conclusion, the methodology used for calculating normal value in respect of the two cooperating Brazilian producers, as set out in recitals (14) to (18) of the provisional duty Regulation, is confirmed.

South Africa

(12) The Commission determined normal value on the basis of sales prices on the South African domestic market charged in the ordinary course of trade and in respect of representative quantities in accordance with Article 2 (3) (a) of the basic Regulation.

(13) One South African producer alleged that certain sales on the South African market were made to customers with which there was, indirectly through one of its shareholders and an affiliate of the latter, a shareholder relationship. This producer claimed that these customers should therefore be considered as being related, to the effect that the sales should be disregarded for the determination of normal value. This exporter claimed that the remaining domestic sales in the investigation period constitute less than 5 % of the volume of exports to the European Union. In consequence, this exporter submitted that the Commission should construct normal value on the basis of costs of manufacture, SG&A expenses and a reasonable amount for profit.

(14) This submission has to be rejected. The Commission found that the sales prices and costs involved for transactions to the customers in question were in line with those for transactions to clients which, according to this exporter, were entirely unrelated and did not find any indication which would suggest that the relationship had any impact on the prices of such sales transactions to the extent that they should be considered as not being in the ordinary course of trade. Furthermore, the South African producer did not provide any information to support this allegation.

Therefore, the findings set out in recitals (19) to (21) of the provisional duty Regulation are confirmed.

2. EXPORT PRICES

Russia

(15) In the absence of any new arguments, the findings laid down in recital (22) of the provisional duty Regulation are confirmed.

Ukraine

(16) For the purpose of its preliminary determination, the Commission determined export prices for FeSiMn originating in Ukraine partly on the basis of verified prices paid or payable by two unrelated importers cooperating in the investigation and partly on data obtained from Eurostat. Eurostat was considered the best evidence available in accordance with Article 7 (7) (b) of the basic Regulation for the remaining export sales not accounted for by the two importers in question.

(17) One of the two Ukrainian producers cooperating claimed that, in the framework of the preliminary determination, it had been deprived by the Commission of its basic legal rights, since export prices (and adjustments to the export prices, see recital (24) below) were partially based on confidential information, namely data obtained from the two unrelated importers cooperating in the proceeding which were not made available to it for verification purposes.

(18) In its investigation, the Commission found, as set out in recital (23) of the provisional duty Regulation, that the information on export sales submitted by the other cooperating Ukrainian producer was unusable ; in particular, because it was not possible, from the information submitted in the questionnaire, to establish whether or not the export sales reported were destined for the Community. Moreover, the Ukrainian producer concerned, though submitting data which indicated that the products were destined for the Community, stated that it could not guarantee that the exported quantities were actually imported into the European Union. Added to this, the total quantity of exports to the Community, as reported in the responses to the questionnaires of the two Ukrainian producers in question, amounted to more than three times the tonnages which were reported in Eurostat as being of Ukrainian origin. For these reasons, the data submitted by the Ukrainian exporters were deemed misleading and have been disregarded for the definitive determination of the export prices in accordance with Article 7 (7) (b) of the basic Regulation.

(19) Export prices were definitively determined on the basis of data obtained from Eurostat. The Eurostat data were considered more appropriate for determining the export prices for FeSiMn originating in Ukraine because they covered all imports into the Community during the investigation period. This was not the case for the information obtained from the two cooperating importers which represented 53 % of such imports. Nevertheless, the prices reported by these importers, and verified by the Commission, generally corresponded with the prices obtained from Eurostat. Furthermore, it should be noted that, with regard to imports from non-market economies, such as Ukraine, the Community institutions normally establish one dumping margin for all exports to the Community and do not calculate a specific margin for individual exporters. Therefore, disregarding the price information of the two Ukrainian exporters does not result in a disadvantage for them, given the fact that their export transaction prices are encompassed in the Eurostat data. In addition, the Eurostat data are publicly available enabling the Ukrainian exporter concerned to defend itself by verifying the correctness of the Community institutions' findings.

Brazil

(20) In the absence of any new arguments, the findings laid down in recital (25) of the provisional duty Regulation are confirmed.

South Africa

(21) One South African producer claimed certain amendments to costs and profit calculated by the Commission in the context of the reconstruction of export prices pursuant to Article 2 (8) (b) of the basic Regulation. This claim, which was duly substantiated, has been accepted, and the appropriate amendments have been made.

Comparison

Russia

(22) The amendments to adjustments for comparison purposes concerning Brazil outlined in recitals (27) to (31) below were also made for the determination of normal value for Russia, since Brazil was chosen as reference country.

In the absence of any other new arguments, the findings laid down in recitals (27) and (29) of the provisional duty Regulation are hereby confirmed.

Ukraine

(23) In its preliminary determination, the Commission found that the information submitted by the two cooperating Ukrainian producers with regard to claims for adjustments for differences in physical characteristics and selling expenses were either not supported by tangible evidence (claims for adjustments for higher phosphorous content and crushing and screening) or did not correspond to the verified information submitted by the two unrelated importers cooperating in the investigation (credit costs and commissions). The Commission considered, therefore, that the information submitted by the Ukrainian producers was misleading and based its findings on the data received from the cooperating importers which were verified and considered to be the best evidence available in accordance with Article 7 (7) (b) of the basic Regulation.

(24) One of the two cooperating Ukrainian producers claimed that, in the framework of the preliminary determination, it had been deprived by the Commission of its basic legal rights, since the determination of adjustments to the export prices was based on confidential information, namely data obtained from the two unrelated importers cooperating in the proceeding which were not made available to it for verification purposes.

(25) It should be pointed out that, since no new evidence was submitted following the imposition of provisional duties, the adjustments for comparison purposes, as requested by the producer concerned, provisionally calculated and based on confidential information, have been maintained for the definitive determination. It was considered reasonable to base such adjustments on verified information obtained from another source rather than eject outright the claims from the exporters concerned on the grounds that they were not properly substantiated. The allegation that the exporter in question has been deprived of its basic legal rights is therefore unfounded.

(26) Those amendments for adjustments made for Brazil, for the reasons given under recitals (27) to (31) below, were also applied for Ukraine.

Brazil

(27) The Commission had, for the purpose of the provisional findings, established normal value on a monthly basis. In months where the weighted average domestic prices did not permit the 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.

(28) After disclosure of the provisional findings, the two Brazilian producers claimed, on the basis of supporting documentation, adjustments to the constructed normal value for certain direct selling expenses and for direct credit costs.

(29) This claim has been accepted in part. The adjustments requested for certain direct selling expenses, in accordance with the provisions of Article 2 (9) and (10) of the basic Regulation have been incorporated in the definitive calculations leading to a decrease in the constructed normal values by 2,2 %.

(30) However, the claim concerning credit expenses has to be rejected. The producers concerned have, for the purpose of constructing normal value, not quantified such expenses nor isolated them from the total financing costs incurred. In the light of this, the Commission allocated total financing costs over domestic and export sales on the basis of total marketable tonnage produced. This methodology is therefore confirmed for the definitive determination.

(31) For the purpose of definitive findings, normal value was established on the basis of the methods used in the provisional dumping determination, after taking into account the abovementioned adjustments.

South Africa

(32) One South African producer claimed, on the basis of supporting evidence, a reassessment of the selling costs incurred in the Community. This claim has been accepted and appropriate adjustments for comparison purposes have been made.

Dumping margins

(33) In the light of the conclusions set out above in respect of the determination of normal value and export price, and the comparison between the two, the definitive examination of the facts showed the existence of dumping in respect of imports of the product concerned originating in Russia, Ukraine, Brazil and South Africa.

(34) The weighted average dumping margins for the countries and companies involved expressed as a percentage of the cif at Community frontier prices, customs duty unpaid, are the following:

- Russia: 54,2 %,
- Ukraine: 43,9 %,
- Brazil: 36,1 %,
- South Africa:
  - Highveld Steel and Vanadium Corporation Limited: 45,3 %,
  - Samancor Limited: 48,3 %.

(35) With regard to the dumping margin for producers in Brazil and South Africa which did not cooperate in this proceeding, the findings set out in recital (32) of the provisional duty Regulation are, in absence of any new arguments, hereby confirmed.

E. INJURY

1. CUMULATION OF THE DUMPED IMPORTS

(36) As regards Georgia, the findings set out in recital (34) of the provisional duty Regulation in respect of *de minimis* import volumes are, in the absence of any new arguments, hereby confirmed.

(37) Two South African producers and one association of the user industry questioned the Commission's decision to cumulate imports from South Africa with imports from Ukraine, Russia and Brazil. It was claimed that while import volumes and market shares increased significantly for Ukraine, Russia and Brazil in the period 1989 to the investigation period, there was a decrease for South Africa. Furthermore, it was pointed out that in a past case the Commission had decided not to cumulate import volumes which showed diametrically opposed progressions (Tungsten Carbide case, OJ No L 83, 30. 3. 1990, p. 36). It was also claimed that the trends of the import volumes from each of the exporting countries concerned should be similar before cumulating because, it was alleged, the Commission in previous cases had considered increases in import volumes and therefore import trends as one of the conditions for cumulation. Moreover, it was claimed that the export prices of the South African producers were higher than those of Ukraine, Russia and Brazil.

Finally, it was argued that the quality of the South African product was such that it did not compete with those from the other countries concerned, in particular, because South Africa was the only country out of the countries concerned that was granted ISO 9002 accreditation.

(38) After consideration of the abovementioned arguments and claims concerning import volumes, market shares, export prices and quality of the imported product, it is confirmed that imports from South Africa should be cumulated with those of the other exporting countries concerned for the following reasons:

- although the volume of imports from South Africa decreased from 1989 to the investigation period by 5,4 %, imports remained considerable. More specifically import volumes were, apart from 1990 (47 227 tonnes), always above 50 000 tonnes and market shares ranged from 12,7 % in 1989 to 9,9 % in the investigation period. Contrary to what was established in the Tungsten Carbide case, import trends from South Africa did not show diametrically opposed progressions. In fact, South African import volumes were, over the period 1989 to the investigation period, relatively stable, rather than declining significantly,
- price trends were similar, i.e. prices for all exporting countries under investigation, including South Africa, decreased significantly in the period 1989 to the investigation period, and
- it was found that the products imported from the countries under investigation competed with each other and with those of the Community industry. The 'ISO 9002' accreditation does not mean that a producer so accredited produces FeSiMn different from those of other producers. It indicates that a producer has adopted an internationally recognized quality control system which offers certain guarantees for purchasers. Furthermore, it has been established that several Community producers have 'ISO 9002' accreditation and, in any event, producers without this accreditation are, in general, able to produce FeSiMn which is of identical or, at least, similar quality to those with accreditation.

(39) One South African producer further argued that for the purpose of examining trends the Commission should have considered not only the period 1989 to the investigation period but also 1988 because this would demonstrate more clearly a decreasing trend in import volumes from South Africa. Furthermore, this exporter argued that, given that the notice of

initiation of the proceeding was published on 4 August 1993, the Commission should have chosen an investigation period closer to this opening date rather than the period 1 April 1992 to 31 March 1993. Again, the exporter alleged that this would have shown more clearly a decreasing trend of imports of the product originating in South Africa.

(40) It is common practice for the Community institutions to examine trends of import volumes, market shares and prices etc. over a period of several years, normally four years including the investigation period. This practice was followed in the present case, a period covering the investigation period (1 April 1992 to 31 March 1993) and the four calendar years 1989 to 1992 being chosen. This period was considered appropriate for giving an objective view of the development of the market situation for all parties concerned. The inclusion of information for the year 1988 would not result in any different conclusions about the trends of import volumes, etc., for cumulation purposes.

(41) With regard to the selection of the investigation period, it should be noted that the Commission, in general, aims at setting the investigation period close to the date of the initiation of the proceeding. However, other considerations sometimes have to be taken into account in order to ensure that, for example, the submission, verification and evaluation of data can be carried out promptly and efficiently, e.g.: by establishing correspondence between the investigation period and calendar years or financial quarters or semesters. However, if a party concerned considers that the investigation period chosen by the Commission is not appropriate, it has to submit its objections at the earliest opportunity, which, in this case, would have been after reception of the questionnaire and not, as was the case here, only after the disclosure of the provisional findings. In fact, the exporter in question responded to the questionnaire on the basis of the investigation period indicated, which corresponds to its financial year, without raising any objection, nor were any objections to the investigation period raised, during the on-spot verification of the data submitted.

2. MATERIAL INJURY

(42) Several exporters have alleged that the Community industry did not suffer from material injury. They have pointed out that financial losses suffered by the Community producers were the only identifiable indicator of injury, whereas the Community production and sales of FeSiMn increased, production capacity remained constant and capacity utilization increased. It was claimed, furthermore, that the decline in employment was not an appropriate indicator of injury, because it resulted in an increase in productivity.

(43) The Commission's findings with regard to production, sales, market share and financial results make clear that the Community producers, in order to limit the damage being caused by the dumped imports, pursued the strategy of reacting to the downward pressure on sales prices caused by these imports by following the price trend in order to maintain their market share. Although this aim was not completely fulfilled (the market share fell from 1989 to the investigation period by 1,2 %), production and sales volume increased and capacity utilization remained more or less stable. In consequence, however, the Community industry has incurred heavy financial losses which have put its existence at risk. The erosion in the financial situation of the Community industry constitutes a clear indicator of material injury.

(44) One exporter argued that the Community industry's profit rate in 1989 (16,9 % on turnover) is, compared to the financial results of nine metal-related manufacturing US industries for the period 1987 to 1992 (allegedly ranging between 7,9 % profit and 8,5 % loss), so extraordinarily high that it was likely to be based on unreliable financial reports from the Community producers. The losses incurred by the Community industry in the years 1990 to the investigation period were also questioned by this exporter, as was the reliability of the cost allocation methods applied by the Community producers. Both arguments were, however, not further substantiated.

(45) It is considered that the comparison between the financial results of a specific industry (here : the FeSiMn industry) and a variety of different industries does not compare like with like and does not, in general, provide a basis for drawing a fair picture about the financial situation of the European Union FeSiMn industry. Secondly, the investigation has not given any reason to assume that the financial results, based on audited accounts, were incorrect. It was, furthermore, established that the allocation methods applied by the Community producers were appropriate.

(46) One exporter claimed that the loss in market share suffered by the Community industry had only occurred for particular qualities, i.e. so-called medium carbon and low carbon FeSiMn, whereas the market share for standard FeSiMn, on which the Commission has based the price comparisons both for provisional and definitive determinations, had increased by 0,5 %.

(47) In this respect, it must be pointed out that the market share data submitted in this context are incorrect because the market shares for the respective product qualities are expressed as a percentage of the total consumption on the Community market for all quality types taken together and not separately on the consumption for the respective qualities. The data submitted gives, therefore, an incorrect picture of the trend of market shares for the different qualities mentioned above.

(48) In conclusion, it is definitively determined that the Community industry has suffered material injury, given its deteriorating financial situation characterized by increasing losses over the years 1989 to the investigation period.

F. CAUSATION

1. EFFECT OF THE DUMPED IMPORTS

(49) The Commission, at recital (57) of the provisional duty Regulation, reached a preliminary determination that imports originating in Russia, Ukraine, Brazil and South Africa had, taken together, caused material injury to the Community industry.

2. OTHER FACTORS

Raw material prices and general demand from the steel industry

(50) One exporter claimed that the significant increase in manganese supply over several years, demonstrated by publications of the United States Bureau of Mines, causing a fall in manganese ore prices by 5 to 10 % per annum between 1989 and 1993, together with, in the same period, the decrease in demand from the steel industry caused the price decline on the world markets, and therefore also accounted for the fall in prices on the Community market for FeSiMn.

(51) In this respect, it is considered that decreasing prices for manganese ore, which accounts only for 10 to 15 % of the total cost of manufacture of FeSiMn, cannot explain the more substantial price decreases for the end product over the period in question. Secondly, it has been established that the total consumption of, and therefore the demand for, FeSiMn in the Community had increased in the period 1989 to the investigation period by around 21 %.

Norway

(52) Producers from Brazil, South Africa and Ukraine as well as one association of the user industry considered that the injury caused to the Community industry resulted from imports of ferro-silico-manganese of Norwegian origin and not from imports from the exporting countries concerned. More specifically, it was argued that the Community industry suffered its most significant decrease in profitability from 1989 (profit : 16,9 %) to 1990 (loss : 14,9 %), a period where imports from the exporting countries concerned increased by 8 000 tonnes only. In the same period (1989-1990), it was claimed that Community producers' prices on the Community market fell by 27 %, Norwegian prices fell by 21 % but the prices of the product from the exporting countries concerned declined by only 17 %. Furthermore, it was pointed out that in 1990 Norwegian prices on the market of one Member State decreased by as much as 24 %.

(53) It should be noted in this context that with regard to imports of FeSiMn from Norway, the market share decreased from 41,4 % in 1989 to 30,8 % in the investigation period and that the average import prices on the Community market for ferro-silico-manganese of Norwegian origin (according to Eurostat) in the investigation period and the calendar years 1989-1992 were always higher than the prices of the other exporting countries and the Community industry. This situation was also reflected in 1989/90, when imports from Norway decreased from 171 887 tonnes (market share : 41,4 %) to 139 928 tonnes (market share : 34,4 %). Although the average Norwegian prices (according to Eurostat) declined by 21 %, they were still around 17 % (or more than ECU 80) higher than the weighted average prices of the exporters under consideration and 6 % higher than the price of the Community producers.

(54) Under these circumstances, it is considered that imports from Norway were unlikely to be responsible for the injury suffered by the Community producers. Therefore, these arguments and claims have to be rejected.

Competitiveness of Community producers

(55) The two Brazilian producers which cooperated in the proceeding claimed that the injury suffered by the Community industry was caused by its lack of competitiveness. They argued that, even in 1990 when, allegedly, Community prices were around 12 % above world level, the Community producers reported the first financial losses. The argument was acompanied by a price comparison for ferro-silico-manganese between the European Union and the USA for the years 1989 to 1992. They suggested, moreover, that the alleged inefficiency would also be indicated by the Community producers' low labour productivity, defined as average output per employee, when compared to non European Union ferro-silico-manganese producers, and submitted an estimate based on data in the complaint, on statistical data in the USA and 'interviews'.

(56) In response to this contention, it should be noted that the price comparison between the European Union and the USA does not take account of the result of the anti-dumping proceeding carried out by the US authorities. This proceeding led to the conclusion that the US market was also influenced by injuriously dumped imports from several countries. It appears likely, therefore, that the market

prices in the USA were distorted by unfair practices.

(57) With regard to the Community industry's alleged low productivity, it is pointed out that even if certain exporters enjoy competitive advantages which are not enjoyed by Community producers, leading to higher production costs for the latter, this would not be a justification for refraining from the adoption of remedial measures in cases where injury caused through the effects of dumping has been established. What is relevant in these circumstances is to ensure that any injury caused by a lack of competitiveness has not been attributed to the dumped imports. This has been done in this case, the anti-dumping measures are limited to the dumping margin and not to the higher injury elimination margin.

Conclusion

(58) As no other arguments concerning the causation of the injury sustained by the Community industry were submitted after the imposition of the provisional anti-dumping measure and in the light of the above considerations, it is hereby concluded that, even if other factors have contributed to the injury suffered by the Community industry, the high volume, low-priced dumped imports of FeSiMn originating in Russia, Ukraine, Brazil and South Africa have, taken in isolation, caused material injury to the Community industry, particularly in the form of heavy financial losses.

G. COMMUNITY INTEREST

Steel industry

(59) One association of the user industry and an unrelated importer have submitted that the Commission should take into account the interests of the Community steel producers as users of FeSiMn and have pointed out that the imposition of anti-dumping duties on imports of FeSiMn would increase the production costs of the steel manufacturers and damage their international competitiveness. The same association has claimed that one company has estimated that FeSiMn represents 6 % of its conversion costs for steel.

(60) The Commission has established during the proceeding that FeSiMn generally only accounts for 1 % of the total production costs of steel. The abovementioned submission does not indicate the impact of the cost of FeSiMn on the total steel production costs, since the conversion costs constitute only a part of the total production costs. In addition, the submission does not make clear whether this argument is based on the situation of the steel industry as a whole, or only particular branches of it (e.g.: so called mini-mills).

Anti-dumping duties and competition

(61) Several exporters claim that the imposition of anti-dumping duties would eliminate the exporters concerned from the Community market but would not raise the European Union market prices to a level such that the Community industry would become profitable again. Thus, they argue only the Norwegian exporters would benefit and would be in a position to reinforce their allegedly 'dominant position'. One exporter concerned has alleged that anti-dumping duties would only serve to support the largest Norwegian exporter which, it was alleged, already has a 'dominant position' on the Community market because it holds 6 % of the shares in Comilog, a Gabon based company which has large shareholdings in a number of Community producers.

(62) With respect to these arguments, it should be stressed, firstly, that it is fundamentally in the general interest of the Community to eliminate the trade-distorting effects of injurious dumping and to restore effective competition. It is considered that measures would, neither as a matter of general principle, nor in relation to the particular circumstances of this proceeding, not necessarily lead to the exclusion from the Community market of imports from the countries concerned. It is considered, furthermore, that restoring fair market conditions would lead to the Community industry regaining its viability and continuing to be an active player on the market. The imposition of anti-dumping duties would not, therefore, impede competition on the Community market.

As to the allegation that the largest Norwegian exporter has a dominant position on the Community market because of its shareholding in Comilog, it is highly improbable that such a small minority shareholding could allow the Norwegian producer in question to control Comilog and no evidence has been presented to substantiate such a proposition. Nor does it appear likely that Comilog can control the behaviour of the Community producers in which it has shareholdings. This seems to be borne out by the fact that the data available show that trends in sales volume and market shares were substantially worse for the Norwegian exporter than for the Community producers related to Comilog. If the Norwegian exporter controlled Comilog and Comilog in turn controlled the Community producers in which it has shareholdings, it might reasonably be expected that the sales volume and market share trends of the Norwegian producer would at least be similar to those of those Community producers. As pointed out, the available data shows this not to be the case.

The measures in question will not reduce competition in the Community market because it will be supplied at fair prices not only by the complainant Community producers, the Norwegian exporters and the exporters subject to the investigation, but also from non-cooperating Community producers and exporters other than those in Norway, not subject to anti-dumping measures (which taken together accounted in the investigation period for more than 15 % of the Community consumption of FeSiMn). These arguments and claims have therefore to be rejected.

Substitution of FeSiMn by other ferro alloys

(63) One exporter argued that, from 1989 to the investigation period, the production output of the European Union steel industry, the almost exclusive user of FeSiMn, fell by nearly 6 %, whereas the Commission had established that consumption of FeSiMn on the Community market in the same period increased by 21,4 %. The exporter claims that it would have important implications for the determination concerning Community interest, if this situation was due to a substitution of ferro-silico (FeSi) and ferro-manganese (FeMn) by FeSiMn because a substitution could take place, in the opposite direction, after imposition of anti-dumping duties on FeSiMn which would prevent any remedial effects of the measures.

(64) In the light of the Commission's findings during the investigation, it appears that a substitution of FeSi and FeMn, as indicated above, has probably taken place. This does not however alter the fact that injurious dumping has occured against which the Community industry has a legitimate right to be protected. The aim of such protection in the framework of an anti-dumping proceeding is to restore fair market conditions. It should also be recalled that anti-dumping measures have been in force for some time against certain imports of FeSi, which may have been a factor in the substitution of FeSi by FeSiMn. The imposition of duties on FeSiMn is, however, less likely to result in substitution in the opposite direction because duties on FeSi remain in force.

Conclusion

(65) In the light of the above, the preliminary determination reached at recital (63) of the provisional duty Regulation, that it is in the Community interest to adopt anti-dumping measures, is confirmed.

H. UNDERTAKINGS

(66) The Commission received offers of undertakings from the Ukrainian authorities in conjunction with the Ukrainian exporters and from the Brazilian and South African exporters. These offers have been examined carefully, with particular attention being paid to the feasibility of monitoring the undertakings proposed. In this latter respect, the Community Institutions have, in general, certain reservations as regards the acceptance of undertakings concerning ferro-alloy products of this kind given the possibilities for circumvention resulting from the fungibility of the products and from the existence of various qualities which command different prices. However, in view of the limited number of producing exporters involved in this case, and the nature of the marketing channels in the Community, the Commission has accepted the undertakings offered by the Ukrainian authorities in conjunction with the Ukrainian exporters and by the South African exporters (see Commission Decision 95/418/EC [1]) since such undertakings would eliminate the injurious effects of dumping pursuant to Article 10 (2) of the basic Regulation and could in the Commission's view be satisfactorily monitored.

With regard to Brazil, the Commission has decided not to accept undertakings from the Brazilian exporters because the minimum prices they have offered were not sufficient to remove injurious dumping. The Commission has informed the Brazilian exporters accordingly.

Given the above, the Council concludes that measures should be imposed on imports of FeSiMn originating in Brazil in the form of an anti-dumping duty.

[1]) See page 56 of this Official Journal.

Notwithstanding the acceptance of the undertakings from the Ukrainian Authorities in conjunction with the Ukrainian producers and from the South African exporters, a residual duty should be imposed on imports of FeSiMn originating in Ukaine and South Africa in order to underpin the undertakings and avoid their circumvention.

I. DUTY

(67) Provisional measures were imposed at the level of the dumping margins found, except for one South African producer, for which the duty was imposed at the level of the injury margin which was lower than the dumping margin. The definitive findings indicate that the amended dumping margins are lower in all cases than the injury margins, which, in the absence of any comments following the imposition of provisional measures, are confirmed. Consequently, definitive measures should be imposed on imports in the European Union of FeSiMn originating in Russia, Ukraine, Brazil and South Africa at a level which would eliminate the dumping, pursuant to Article 13 (3) of the basic Regulation.

In the case of Brazilian and South African firms which failed to cooperate in the investigation or otherwise make themselves known, the findings reached at recital (71) of the provisional duty Regulation are, in the absence of any new evidence or arguments, confirmed. Accordingly, for Brazil, the duty for non-cooperators should be at a level corresponding to the dumping margin established for the two cooperating related exporters and, for South Africa, at a level that eliminates the dumping on the basis of the higher of the two dumping margins established for the two cooperating exporters.

(68) Given the price sensitivity of the market for ferro-silico-manganese, and in order to minimize the impact of the measures on users in the event of possible significant price increases, it is considered appropriate in this case that the duties be imposed in the form of variable duties. To this end, the variable duties should be set as the difference between the net free-at-Community frontier price, before duty, of the product originating in Russia, Ukraine, Brazil and South Africa and the undermentioned minimum prices in all cases where the net free-at-Community frontier price, before duty, is lower.

— Russia : ECU 504 per metric tonne product,

— Ukraine : ECU 492 per metric tonne product,

— Brazil : ECU 485 per metric tonne product,

— South Africa : ECU 500 per metric tonne product.

The duties should not apply to imports of FeSiMn produced and exported to the EU by the Ukrainian and South African exporters from which price undertakings have been accepted.

(69) Since imports of FeSiMn originating in Georgia were found to be *de minimis* and therefore considered not to have caused injury to the Community industry, the Commission considered it appropriate to terminate the proceeding in this respect (see Decision 95/418/EC).

(70) The Commission will examine the situation of the market following the imposition of anti-dumping measures and, should circumstances, in particular as regards price evolution, warrant a review, this should be initiated as promptly as possible.

J. COLLECTION OF THE PROVISIONAL DUTIES

(71) The Council considers that it is not appropriate, in view of the change in the form of duty, in this particular case, definitively to collect the provisional anti-dumping duty. Therefore, the amounts secured by way of the provisional anti-dumping duty should be released,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive 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. For the product originating in Russia, the amount of the anti-dumping duty shall be the difference between the minimum import price of ECU 504 per metric tonne product and the net free-at-Community frontier price, before duty, in all cases where the net free-at-Community frontier price, before duty, per metric tonne product is less than the minimum import price.

3. For the product originating in Ukraine (Taric additional code 8848), the amount of the anti-dumping duty shall be the difference between the minimum import price of ECU 492 per metric tonne product and the net free-at-Community frontier price, before duty, in all cases where the net free-at-Community frontier price, before duty, per metric tonne product is less than the minimum import price.

4. For the product originating in Brazil, the amount of the anti-dumping duty shall be the difference between the minimum import price of ECU 485 per metric tonne product and the net free-at-Community frontier price, before duty, in all cases where the net free-at-Community frontier price, before duty, per metric tonne product is less than the minimum import price.

5. For the product originating in South Africa (Taric additional code 8818), the amount of the anti-dumping duty shall be the difference between the minimum import price of ECU 500 per metric tonne product and the net free-at-Community frontier price, before duty, in all cases where the net free-at-Community frontier price, before duty, per metric tonne product is less than the minimum import price.

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

7. The duties shall not apply to imports of the product defined in paragraph 1, produced and exported to the Community by the following companies from which price undertakings have been accepted :

— *Ukraine* (Taric additional code 8847) :

  — Nikopol Ferro Alloy Plant,

  — Zaporozhye Ferro Alloy Plant,

— *South Africa* (Taric additional code : 8819) :

  — Highveld Steel & Vanadium Corporation Limited,

  — Samancor Limited.

Article 2

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

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

Done at Luxembourg, 6 October 1995.

For the Council

The President

J. BORRELL FONTELLES