COMMISSION REGULATION (EC) No 1023/97

of 6 June 1997

imposing a provisional anti-dumping duty on certain imports of flat pallets of wood originating in Poland and accepting undertakings offered from certain exporters in connection with those imports

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as amended by Regulation (EC) No 2331/96 [2], and in particular Articles 7 and 8 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In July 1995, 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 flat pallets of wood originating in Poland.

The proceeding was initiated as a result of a complaint lodged by Anton Heggenstaller AR, Unterbernbach/Bayern, Germany, specifically on behalf of the *Federation des fabricants de palettes et emballages en bois* (FEFPEB), which in turn acts on behalf of all its member associations of producers in France, Germany, Italy, Netherlands, Portugal, Sweden, and the United Kingdom and also on behalf of several individual Community producers. The complaint contained evidence of dumping of the product concerned originating in Poland and of material injury resulting therefrom which was considered sufficient to justify the initiation of a proceeding.

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

(3) Sampling of exporters and Community producers has been applied in view of the large number of economic operators concerned. The Commission sent questionnaires to the companies selected for the sample of exporters, to exporters who have requested individual treatment, to an importer in the Community related to those exporters and to the companies selected for the sample of Community producers.

(4) The Commission verified all the information it deemed necessary for the purpose of a preliminary determination and carried out investigations at the premises of a number of producers in the Community and producers/exporters in Poland as well as at the premises of an importer in the Community related to Polish exporters. The producers/exporters in Poland and the related importer in the Community investigated are listed below:

(a) *producers/exporters in Poland:*

- PPHU Alpa, Spolka z o o, Dobrzyca,
- PPHiU Eldagran, Slawoborze,
- Intur-Kfs, Spolka z o o, Inowroclaw,
- ZPH Palettenwerk Kazimierz Kozik, Bystra Podhalanska,
- Paletex, Roman Panasiuk, Warsaw,
- PPHU Palimex, Spolka z o o, Wloszakowice,
- RSP Rzecko, Choszczno,
- Sabelmar Import-Export, Konczyce Male,
- Tor-Pal, Spolka z o o, Kwidzyn,
- ZPPD, Zielona Gora;

(b) *importer in the Community*

- Pallettenservice Brigitte Möncke, Hamburg, Germany.

(5) In view of the magnitude of the Community industry's negative situation determined during the injury investigation, it did not appear appropriate to single out those companies which were participating in the sample of Community producers (see below recitals 33 and 34) by specifying their names in this Regulation. This could damage their commercial relationship with regard to their customers and suppliers.

(6) The investigation of dumping covered the period from 1 January 1994 to 31 December 1994 ('the investigation period'). The examination of injury covered the period from 1 January 1991 to the end of the investigation period.

[1] OJ No L 56, 6. 3. 1996, p. 1.
[2] OJ No L 317, 6. 12. 1996, p. 1.
[3] OJ No C 178, 13. 7. 1995, p. 6.

(7) Injury to the Community industry and dumping by Polish exporters have been established on the basis of the relevant facts collected in the territory of the Community including the new Member States, Austria, Finland and Sweden, even for the period prior to 1 January 1995, the date of accession: since any measures would be applicable to imports into the Community as a whole, the investigation should also cover the Community as a whole.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(8) The product under consideration is flat wooden pallets, falling under CN Code 4415 20 20. These are flat portable platforms of wood used for handling, storage and transport of goods and materials. Flat wooden pallets are either made to order or are of standard specifications, such as the EUR-pallet, which is the most important standard type in terms of quantities traded, and the various CP-pallet types, namely CP1, CP3 and CP5.

(9) It was established that all types of pallets, whether sold on the Polish market, exported from Poland to the Community or produced by the Community industry, have the same use and that their basic physical and technical characteristics are identical or closely resembling. Accordingly, all these pallets were considered to be like products under Article 1 (4) of Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation').

C. DUMPING

1. Sampling

(10) In view of the large number of Polish producers/exporters which had expressed their willingness to cooperate in the proceeding and had made sufficient information available (56 companies), the Commission decided to limit the investigation to a reasonable number of parties and selected a representative sample of eight companies, on the basis of the information available at the time of the selection and in accordance with Article 17 of the Basic Regulation. The final selection was made in consultation with and with the consent of the complainant, the Polish authorities and the cooperating Polish exporters.

The eight companies selected are:

— PPHiU Eldagran, Slawoborze,

— Eurohandels, Spolka z o o, Szczecin,

— Intur-Kfs, Spolka z o o, Inowroclaw,

— Biuro Handlowe Jawar Export-Import, Trzebnica,

— ZPH Palettenwerk Kazimierz Kozik, Bystra Podhalanska,

— RSP Rzecko, Choszczno,

— Sabelmar Import-Export, Konczyce Male,

— ZPPD, Zielona Gora.

(11) In addition, two Polish exporters which were not selected for the sample asked for individual treatment in the proceeding. In accordance with Article 17 (3) of the Basic Regulation, the Commission acceded to this request, given that, in particular, pursuant to Article 24 of the Basic Regulation the proceeding was not subject to statutory deadlines, and therefore the individual examinations would not prevent completion of the investigation in good time. The individually treated companies are:

— PPHU Alpa, Spolka z o o, Dobrzyca,

— PPHU Palimex, Spolka z o o, Wloszakowice.

(12) One Polish exporter selected for the sample did not reply to the questionnaire. Another Polish exporter, which did not produce pallets and did not sell on the domestic market, replied to the questionnaire; however its suppliers, whose cooperation was indispensable for establishing normal value, refused to cooperate. Accordingly, the Commission had to disregard the information submitted by the exporter concerned.

(13) In these circumstances, the Commission considered it appropriate to add to the initial sample two more producers, in order to reinforce the representativeness of the sample, both in quantitative terms and in relation to the conditions of the Polish domestic market for pallets.

The two additional companies selected are:

— Paletex, Roman Panasiuk, Warsaw,

— Tor-Pal, Spolka z o o, Kwidzyn.

(14) Some of the companies included in the sample and some of the other cooperating companies are members of the Polish Association of EUR-Pallet Producers. The members of this association have claimed to be treated separately from the non-members, on the grounds that the latter, being non-organized small producers, were much more likely to be practising dumping.

(15) The investigation has shown, however, that no significant differences exist between the two groups of companies which would justify a separate treatment.

2. Normal value

(16) In general, normal value had to be constructed in accordance with Article 2 (3) of the Basic Regulation since domestic sales were not made either in sufficient quantities or in the ordinary course of trade. In constructing normal value for a given pallet type, selling, general and administrative expenses (SG&A-expenses) actually incurred by the producer concerned in domestic sales of this type or other types were used, provided that such sales had been made in sufficient quantities. Profits realised by the producer concerned in domestic sales of other types were used when those sales were made in sufficient quantities and in the ordinary course of trade. In other cases, the amount of SG&A-expenses and profits were calculated by reference to the weighted average of those incurred and realised by other producers investigated in relation to domestic sales of comparable types.

(17) Only for one producer could normal value be based for all types exported to the Community on the actual domestic prices to independent customers of the corresponding sales of comparable types, since these sales were made in sufficient quantities and in the ordinary course of trade.

(18) As regards one type exported to the Community by eight of the producers investigated, six of them did not sell a comparable type on their domestic market either in sufficient quantities or in the ordinary course of trade. In accordance with Article 2 (1) of the Basic Regulation, the normal value of the type concerned for five out of these six companies was established on the basis of the weighted average price of the two other producers investigated which sold domestically the type in question in sufficient quantities and in the ordinary course of trade. As to the sixth producer, normal value was constructed according to the methodology mentioned in paragraph 16 since the weighted average price of the two other producers appeared to be lower than the cost of production of the producer in question for the type concerned sold in the domestic market in sufficient quantities.

3. Export price

(19) In general, the export price was established by reference to the prices actually paid or payable for the pallets sold for export to independent importers in the Community.

(20) One producer made some of its sales of pallets to an unrelated company located in Poland which subsequently exported the pallets to the Community. Given that the producer was aware of the final destination of the pallets, the latter were considered as sold for export to the Community by the producer in question. Export price for the sales concerned was thus established on the basis of the prices actually paid or payable by the unrelated Polish exporter to the producer investigated.

(21) Two producers made all their exports to the Community to the same related importer at prices which were considered not to be reliable. Therefore, it was decided to construct the export price of these producers on the basis of the prices at which the imported products were first resold to an independent buyer in the Community, in accordance with Article 2 (9) of the Basic Regulation. An adjustment for all costs incurred between importation and resale by the importer and for profits accruing was made so as to establish a reliable export price. The margin of profit was estimated by reference to that normally realised by an independent importer in the Community.

4. Comparison

(22) The weighted average normal value by pallet type was compared to the weighted average export price of all export transactions to the Community for the comparable type, in accordance with Article 2 (11) of the Basic Regulation. The comparison was made on an ex-factory basis and at the same level of trade. For the purpose of ensuring a fair comparison, the Commission took account, in accordance with Article 2 (10) of the Basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability.

(23) Two producers have claimed an adjustment for differences in discounts. The Commission did not grant such an adjustment since the producers failed to demonstrate that the discounts claimed were actually given or agreed.

(24) Several companies have claimed an adjustment for differences in level of trade between sales made in the export and those in the domestic market, on the grounds that they sold exclusively to traders in the Community whereas in Poland they sold exclusively or mainly to end-users.

For one of two producers whose normal value was based on their own domestic prices, the Commission did not grant an adjustment for differences in level of trade since consistent and distinct differences in prices and functions of the sellers for the different levels of trade in the domestic market could not be found. For the other producer, however, though an existing difference in level of trade could not be quantified because of the absence of more than one level in the domestic market, a special adjustment was granted. As regards producers for which normal value had to be constructed, the latter was already established at the level of trade of the export sales and, therefore, an adjustment for differences in level of trade was not necessary.

(25) For the conversion of the export invoices — expressed in Community currencies (mostly DM) — into domestic currency (Zloty), four producers claimed the use of the exchange rate prevailing 60 days after the invoice date instead of the exchange rate of the date of the invoice. In support of their claim these companies referred to Article 2 (10) (j) of the Basic Regulation and the continuous devaluation of the Zloty during the investigation period. The Commission did not grant such an adjustment since the purpose of Article 2 (10) (j) is to grant exporters time to adjust their export prices in order to reflect sustained movements in exchange rates. It follows that this Article does not provide for an adjustment which takes into account exchange rate variations that occur after the date of sale.

5. Dumping margins

(a) *Cooperating producers in the sample*

(26) The comparison as described above in recital 22 shows the existence of dumping in respect of six producers. For two producers no dumping was found. The provisional dumping margins for the eight producers expressed as a percentage of the CIF import price at the Community frontier are the following:

— PPHiU, Eldagran, Slawoborze 4,9 %,

— Intur-Kfs, Spolka z o o, Inowroclaw 9,7 %,

— ZPH Palettenwerk Kazimierz Kozik, Bystra Podhalanska 4,0 %,

— RSP Rzecko, Choszczno 0,0 %,

— Sabelmar Import-Export, Konczyce Male 9,8 %,

— Paletex, Roman Panasiuk, Warsaw 9,8 %,

— Tor-Pal, Spolka z o o, Kwidzyn 0,0 %,

— ZPPD, Zielona Gora 10,6 %.

(b) *Individually treated producers*

(27) The comparison as described above shows the existence of dumping in respect of the two individually treated producers (PPHU Alpa, Spolka z o o, Dobrzyca, and PPHU, Palimex, Spolka z o o, Wloszakowice). Since the two producers are indirectly related through the same related importer they were allocated one single dumping margin in order to preclude the possibility that all future exports to the Community might be channelled through the company having the lower dumping margin. This single dumping margin was established on the basis of the weighted average of the producers' individual dumping margins and amounts to 6,3 %.

(c) *Other cooperating producers not included in the sample*

(28) In order to establish the dumping margin to be applied to the cooperating Polish producers not included in the sample the Commission calculated a weighted average dumping margin for the producers in the sample, as stipulated in Article 9 (6) of the Basic Regulation.

(29) For the purpose of this calculation, the *de minimis* margins and the margins established on the basis of best information available were disregarded, in accordance with Article 9 (6) of the Basic Regulation.

(30) This exercise led to a weighted average dumping margin of 6,3 %.

(d) *Non-cooperating companies*

(31) For the two exporters included in the sample but who did not cooperate in the investigation and for any other non-cooperating producers in Poland, provisional dumping margins had to be established on the basis of the facts available. For this purpose, the highest dumping margin found for the investigated producers was used: 10,6 %. The reason is that, under Article 18 (6) of the Basic Regulation, it would constitute a bonus for non-cooperation, notwithstanding the considerable proportion of total exports from Poland to the Community covered by the cooperating producers, to assume that the dumping margin to be allocated to companies which either did not cooperate or did not make themselves known was lower than the highest found for a cooperating producer investigated.

D. COMMUNITY INDUSTRY

1. Definition

(32) The Community producers who supported the complaint in this proceeding constituted a major proportion of the total Community production of the product concerned, in accordance with Article 4 (1) and 5 (4) of the Basic Regulation.

One importer claimed that several producers in the Community were importing the allegedly dumped pallets from Poland. The investigation has nevertheless shown that the quantities of pallets imported from Poland by some Community producers were relatively small in relation to the production volume of such producers whose core interests clearly remained in the production of pallets in the Community. The limited imports in question were a defensive reaction to low-priced imports from Poland.

Consequently, it would not be warranted to exclude producers importing pallets from Poland from the assessment of Community industry. Thus, the Community producers who supported the complaint represent the Community industry within the meaning of Article 4 (1) of the Basic Regulation.

2. Sampling

(33) In view of the large number of companies supporting the complaint, which are mainly located in France, Germany, Italy, the Netherlands, Sweden, United Kingdom and Portugal, the following approach was taken: as a first step, the markets for France, Italy, the Netherlands and Germany were found to be representative of the whole Community market. The reason was that those Member States (hereinafter referred to as the 'selected markets') together account for the large majority of total Community production and total Community imports from Poland of the product concerned, namely over 70 % of total production and over 85 % of total imports from Poland.

(34) As a second step, and in accordance with Article 17 of the Basic Regulation, the investigation into the situation of the Community industry producers located in the selected markets was limited to some of them, by way of sampling.

This sample of producers (hereinafter referred to as 'the sample') covered a representative volume of production and sales of the Community industry which in the Commission's judgement could be investigated within a resonable time period. The sample consisted of nine producers located in the selected markets which were chosen from among those who had expressed support for the complaint.

Three producers were selected in Germany and two in each of the other three selected markets. The selection was made on the basis of turnover, geographic location across and within each Member State and a certain product mix.

In accordance with Article 17 of the Basic Regulation, all interested parties were informed of this selection and did not object to it.

E. INJURY

(35) On the basis of the definition of the Community industry and the sample as set out above, injury as defined in paragraphs 2, 3 and 5 of Article 3 of the Basic Regulation has been investigated on the basis of two categories of information: the first category relates to the situation of the Community industry and the sales concerned, market shares, production, capacity, capacity utilization and employment indicators. The relevant information was collected and verified at the level of the national pallet associations and of the Member States' authorities. The second category of data covers performance-related injury indicators of the individual companies in the sample and their profitability, price movements, price undercutting and price undercelling. The latter data received from the sample have been cross-checked with the information obtained from the authorities of the Member States and from the national pallet associations.

Imports of Polish pallets by Community producers were disregarded when the injury factors pertinent to the Community industry were established.

1. Community consumption

(36) The total consumption in the Community was established on the basis of the total imports of pallets into the Community, plus the total sales of pallets manufactured in the Community, less the total Community exports of pallets to third countries. From 1991 to 1994, consumption, expressed in tonnes, was fairly stable at around 5 200 000 tonnes.

2. Volume and market share of dumped imports

(37) From 1991 to the end of the investigation period the volume of imports from Poland increased from 297 000 tonnes to 557 000 tonnes, giving an increase of 87 %.

(38) In terms of market share the Commission established that the share of the Community market held by the dumped Polish imports increased from 5,7 % to 10,6 %, an 86 % increase.

3. Price level and price comparison in the Community

(a) *Average price of dumped Polish imports*

(39) The average Polish import price per tonne on a global basis, that is to say, covering all different models of imported pallets, calculated on the basis of the Eurostat import statistics, decreased from ECU 212 in 1991 to ECU 157 in the investigation period, a 26 % decrease.

(40) The average cif price per tonne for the investigation period, calculated on the basis of data submitted by the cooperating sampled Polish exporters was established at ECU 158 per tonne and hence in line with the average import price established for all Polish imports.

(b) *Price movements of the Community industry*

(41) It was established that the general movement of prices of all types of pallets sold by the sample throughout the Community between 1991 and the end of the investigation period showed a decrease of 7,5 %.

(42) Furthermore, the movement of prices charged by the sample in the selected markets, where Polish imports are particularly present, was also analysed. This exercise was carried out for those models of pallets which represent the major part of both Polish imports and sample sales in the Community, namely the EUR-pallet and CP1, CP3 and CP5 pallet types. This analysis showed that during the above period the prices of the sample had decreased by over 15 %.

(c) *Price undercutting*

(43) The resale prices to independent buyers in the Community charged by the Polish exporters investigated were compared with the prices charged by the sample for identical models, in the selected markets and at the same level of trade.

The identical models compared were the EUR pallet, CP1, CP3 and CP5 pallet types.

(44) Sales of the above pallet types represented the greater part of the total turnover of the sample during the investigation period. The above models were also found to be highly representative of the overall export turnover to the Community by the Polish exporters investigated during the same period.

(45) As a result, average undercutting margins ranging from 2 % to 31 % were established for the above Polish exporters. The weighted average undercutting margin, expressed as a percentage of resale price of the sample, was about 14 %.

4. Situation of the Community industry

(a) *Sales*

(46) Sales by the Community industry from 1991 to the investigation period decreased by 7 % in volume, from around 2 921 000 tonnes to 2 716 000 tonnes.

(b) *Market share*

(47) As a result of the above decrease in sales, the market share held by the Community industry decreased from 55,8 % in 1991 to 51,6 % in 1994, that is by 7,5 %.

(c) *Production, capacity and capacity utilization*

(48) Between 1991 and the investigation period the production of the Community industry decreased by 6,6 %, from 2 861 000 tonnes to 2 674 000 tonnes.

During the same period the total capacity of the Community industry was stable at around 3 100 000 tonnes. However the capacity utilization of the Community industry decreased by more than five percentage points, from 91 % to 86 %.

(d) *Employment*

(49) Between 1991 and 1994, the number of people employed by the Community industry decreased by 2 800 — a decrease of 14 %. It was also established that over 100 small and medium-size enterprises belonging to this industry had disappeared in the Community during the same period.

(e) *Profitability*

(50) The average return on sales for the product concerned deteriorated from a profit of 1,5 % of turnover in 1991 to losses of 2,9 % during the investigation period.

5. Conclusion on injury

(51) All the injury factors deteriorated during the whole period under analysis. In particular it has been established that the Community industry has experienced a decrease in sales prices and has incurred financial losses. This finding is reached despite the fact that certain injury factors, such as sales, improved from 1993 up to the investigation period. Such an improvement, however, has to be seen in the light of the market recovery of 9 % in the same period.

(52) Despite the fact that the Community industry significantly lowered its prices, from 1991 to 1994, in a stagnant market it still suffered the loss of part of its market share whereas at the same time the Polish exporters were continually increasing theirs.

The Community industry production, as well as sales volume and capacity utilization, also decreased. The employment situation was found to be very negative and the deterioration of profitability, together with a loss on sales, had negative effects on the cash flow and the ability of the Community industry to raise capital.

(53) Analysis of the abovementioned injury factors shows that the Community industry has suffered material injury during the period under examination.

F. CAUSATION OF INJURY

(54) The Commission examined whether the material injury sustained by the Community industry had been caused by dumped Polish imports or whether other factors might have caused or contributed to this injury in order to ensure that injury caused by other factors was not attributed to the dumped imports concerned.

Such other factors which might have had an impact on the situation of the Community industry are competition from other producers in the Community, imports other than those from Poland and the economic environment during the whole period covered by the current investigation, in particular a possible contraction in demand.

1. Impact of dumped imports

(55) It was established that pallets produced in the Community and those imported from Poland are in direct competition with each other on the Community market. This competition occurs essentially on the basis of price given that pallets are mainly of standard specification and that there are no significant differences in quality between imported pallets and those produced in the Community. Both are aimed at the same customers and are sold through similar sales channels throughout the whole Community market. Therefore, in such a transparent market, the presence of low-priced dumped imports had a direct negative impact on the situation of the Community industry over the period under examination.

(56) As is apparent from the above injury findings, there is a coincidence between the deterioration of the situation of the Community industry in terms of sales, production, market share, employment and profitability and the growth in volume of low-priced Polish imports singificantly undercutting prices of the Community industry.

(57) In order to illustrate the impact of dumped Polish imports and the injury suffered by the Community industry, the Commission has analysed separately, at global level, the injury indicators pertinent to the Community industry in the selected markets where the presence of low-priced Polish pallets is greatest.

In those markets, it has been established that imports from Poland increased by 88 % from 1991 to 1994, whereas the Community industry lost 12 % of market share, and its sales volume decreased by 11 %, its production by 12 %, its capacity utilization by 9 % and its employment by 22 %.

(58) The degree of deterioration in the economic situation of the Community industry in the selected markets is even more pronounced than that established for that industry over the Community market as a whole. This conclusion is reinforced by the higher price erosion suffered in those markets by the Community industry, as described in recital (42) above.

(59) Furthermore, an analysis of the performance of both the Polish exporters and the Community industry in the whole Community market, when consumption was decreasing in 1993 or recovering in 1994, showed that dumped imports from Poland consistently and constantly had a negative impact on the Community industry.

(60) As a matter of fact, despite a decrease in consumption of more than 5 % in 1993 when compared with 1992, the import volume from Poland increased by 8 % and its market share by two percentage points while the average Polish import price decreased by 12 %. In the same period sales and production of the Community industry decreased by 3 % despite a decrease in the average sales prices of 8 %. This resulted in a further deterioration of the financial situation of the Community industry as indicated by its negative results in 1993 (losses of 2,7 % on turnover).

(61) In 1994 (the investigation period), despite a 9 % increase in consumption over 1993, Community industry sales increased by only 5 %, leading to a further loss in market share of 2 % and negative financial results despite an increase in the sales price of 4 %. Meanwhile, Polish exporters continued to reduce their sales prices, with the result that their sales increased by 34 % and market share by 39 %.

(62) The conclusions of the above detailed analysis and the causal link between the material injury suffered by the Community industry and Polish dumped imports are strengthened by the findings as to the situation of the Community industry in the selected markets where the negative impact of dumped Polish imports is stronger.

2. Other factors

(a) *Situation of the other producers in the Community*

(63) Analysis of the situation of the other producers in the Community has shown that, during the period covered by the injury investigation, the trends in their injury factors have also been negative since 1992 up to the investigation period; their market share decreased by 4 %, from 34,7 % to 33,3 %, employment decreased by 5 % and capacity utilization by 4 %.

On the basis of the available information there are no indications that the other producers in the Community are using technology which is more developed than the rest of the pallet industry. Therefore, as differences, if any, between the production performances of both the complaining and non-complaining producers in the Community are very limited, the injury suffered by the former producers cannot be the result of poor cost efficiency or production efficiency.

However, the other producers traditionally have, in addition to the activity of producing pallets, diversified trading activities, (wood and other related goods, refurbished pallets, and such like) which explains that they were in a somewhat better situation than the complaining producers during the investigation period.

(64) It should be pointed out that pallets sold by many of the other producers in the Community are aimed at local purchasers ordering small quantities of goods, whereas the complaining producers usually deliver to customers ordering large quantities of pallets; therefore competition between the two groups of Community producers was rather limited. Consequently the negative trends in the other Community producers' injury indicators add weight to the conclusion that they, too, suffered from dumped Polish imports.

(b) *Other imports to the Community*

(65) From 1991 to the investigation period, other imports into the Community, and particularly those from Hungary, the Czech Republic and Slovakia which together account for 75 % of all the other imports of pallets into the Community, decreased by 33 %. Their average import price was fairly stable and the market share they lost, namely from 6 % points in 1991 to 4 % points during the investigation period, was lost solely in favour of Polish exporters. Therefore any impact that they had, on the Community industry was also very limited.

(c) *Economic environment*

(66) The investigation has shown that the general recessive situation in the Community has also caused a downturn in the pallet market, mainly in 1993 as the trend in pallet consumption in the Community market indicates. However, given its general nature, such a situation should affect all the economic operators in a comparable way. The result of the analysis made above has demonstrated that this was not the case as regards its impact on the situation of Polish imports in the Community market, which increased, and on sales of the Community industry, which decreased.

(67) In fact, the results of the injury investigation have shown that during the whole investigation period Polish imports had a negative impact on the situation of the Community industry, both during the recessive period and afterwards, when the effects of the downturn practically disappeared during 1994.

Indeed, despite a significant recovery in the market in 1994 compared with 1993, the general situation of the Community industry worsened because of the increasing import volume and the low level of the Polish prices which, contrary to the general tendency, continued to decrease in that period, hereby preventing the recovery of the Community industry.

Accordingly, the excessive situation in the Community may have weakened the Community industry and all the other economic operators, but Polish imports have clearly prevented a recovery during the upsurge from 1994 ouwards.

3. Conclusion on causality

(68) Given the fact that pallets are technically a simple product and that pallets exported to the Community originating in Poland and pallets produced by the Community industry and sold on the Community market were found to be like products sold through similar sales channels in the Community, the Commission considers that the dumped imports of Polish pallets have had a negative impact on the overall Community market.

This impact was amplified by the fact that the pallet market is transparent, with the result that low prices are well-known by potential and regular customers of Community producers and of Polish exporters.

(69) For these reasons, and on the basis of the detailed analysis carried out above, the Commission concludes that dumped Polish imports have caused material injury to the Community industry.

G. COMMUNITY INTEREST

1. General

(70) In spite of the limited information submitted by interested parties or otherwise available to the Commission, an assessment of all the various interests of economic operators in the Community was made. To that end, and in accordance with Article 21 of the Basic Regulation, the Commission provisionally examined whether, despite the findings of injury caused by dumped imports, it could be clearly concluded that it would not be in the Community interests to apply provisional anti-dumping measures.

For this purpose the Commission has considered the impact of possible measures and the consequences of not taking any measures.

2. Consequences for the Community industry

(71) As regards the Community industry the Commission found that during the period under examination, even though the industry was competitive and globally viable, its economic situation deteriorated, as the price suppression, price depression and financial losses suffered clearly indicate.

(72) If no measures were taken, the situation of many Community producers, mainly composed of small and medium-sized enterprises, would no doubt deteriorate even further and certainly lead to companies having to close down. This possibility is illustrated by the number of company closures that this industry has experienced in the recent past, as indicated in recital (49) above. This would have the effect of reducing competition and employment in the Community market.

3. Impact on the upstream industry

(73) The wood industry, supplier of the main raw material for pallet production, depends to a large extent on its sales to the pallet industry. Disappearance of part of the pallet industry would therefore have considerable adverse consequences in terms of profitability and employment in the whole wood industry, which would, if no measures were taken, also be negatively affected by dumped imports from Poland.

4. Impact on users

(74) The Commission has analysed the potential users of pallets in the market. This analysis has shown that the main users are transport and logistics companies, together with a heterogeneous group of industries (namely construction material, chemical products, breweries, and such like) using pallets for their own packaging and transport.

(75) It is considered that without any measures to restore fair competition, the user industries may derive some benefits from buying low-priced pallets. However, any consequent cost advantage would be very marginal given that pallets are inexpensive, can be re-used a considerable number of times and only cover a limited portion of the user's transport costs. This conclusion is underlined by the fact that no such user companies came forward to submit information in the light of this investigation.

In addition, any effect of cost increase for users of pallets would be dampened by the high degree of competition on the Community market, where a great number of suppliers not affected by the measures are active.

5. Impact on importers

(76) In a general submission, one importer argued that measures would be against Community interest.

He claimed that measures would only have adverse effects on pallet prices, costs and employment in the Community, especially for importers and users, asserting also, in that context, that Polish and Community produced pallets are often not comparable, owing mainly to reasons of quality.

(77) Due to the lack of any supporting information related to the above submission, the Commission concluded that the arguments raised could not be taken into account.

6. Impact on the competitive environment

(78) As regards competition in the wood pallet market, two aspects have to be highlighted. First, the form and the level of the measures envisaged are not such as to foreclose the Community market to Polish exporters and therefore will ensure the continued presence of Polish products in the market.

Secondly, a regards other imports to the Community which were found to have lost a considerable share in the market during the period under investigation, there are no indications that these imports could not increase their presence in the Community market once fair competitive conditions are restored.

Thus, the benefit of a market governed by additional competitive forces would probably be available to users of the product concerned.

7. Conclusion

(79) The Commission has considered the negative effects of any price increase on importers and users as against the consequences which the absence of measures would entail for the Community industry and the economic situation as a whole.

The Commission concludes that without the imposition of measures, the closure of more small and medium-sized undertakings in the Community is very likely, with all the negative consequences that this would have on the economy as a whole. As to the possible negative impact on importers and users, it is considered that the advantages of not taking measures would only benefit a limited number of importers, and not necessarily the user industries, bearing in mind the benefit which enhanced fair competititon would have on the whole market.

(80) On the basis of the above facts and considerations and after having examined all the information available, and in particular after giving specific consideration to the need to eliminate the trade-distorting effects of injurious dumping and to restore effective competition, the Commission found that, on balance, there are no compelling reasons for not taking action against the dumped imports in question.

H. PROVISIONAL MEASURES

1. Injury elimination level

(81) In establishing the level of the measures necessary to remove the injury caused by the dumped imports, the Commission compared the export price of these imports with the price level which would allow the Community industry to cover its costs and achieve a reasonable profit.

(82) Accordingly, injury elimination levels were determined on a pallet type basis by comparing the export prices of a given type with the average cost of production of the Community producers investigated for the comparable type, increased by a profit margin of 5 % on turnover. This profit was considered to be needed by the Community industry for long-term investment in the absence of injurious dumping.

2. Undertakings

(83) Some Polish producers have offered price undertakings with regard to the most important pallet type, in terms of export volume — the EUR-pallet — in accordance with Article 8 (1) of the Basic Regulation. The various price increases offered under the undertakings match the levels necessary to eliminate the injurious effect of the dumping found. Therefore the Commission considers that the undertaking offered by the exporting producers concerned can be accepted.

(84) The Commission points out that in the event of a breach or withdrawal of the undertaking a provisional anti-dumping duty may be imposed, based on best information available, pursuant to Article 8 (10) of the Basic Regulation.

(85) Furthermore, it should be noted that, in accordance with Article 8 (6) of the Basic Regulation, the investigation of dumping and injury will be completed, notwithstanding the acceptance of undertakings during the course of the investigation.

3. Provisional duties

(86) According to Article 7 (2) of the Basic Regulation, the level of the provisional duty should be equal to the margin of dumping or the amount necessary to remove the injury, whichever is lower.

(87) For all Polish producers investigated the provisional amounts necessary to remove the injury (injury elimination levels) were in all instances higher than the dumping margins found, both being expressed as a percentage of the cif value at the Community border, duty unpaid, of the imports in question. Furthermore, the weighted average injury elimination level provisionally established for the Polish producers in the sample was higher than the corresponding weighted average dumping margin. Consequently, in all cases the provisional duties should be based on the dumping margins found.

(88) For two Polish producers no provisional duty will be imposed since no dumping was provisionally found.

(89) For the two Polish producers included in the sample but who did not co-operate in the investigation and for any other non co-operating producers in Poland, the provisional duty should be based, for the reasons given in recital 31 above, on the highest dumping margin found for the co-operating producers investigated.

I. FINAL PROVISIONS

(90) Pursuant to the Europe Agreement concluded between the Communities and Poland, the Commission informed the EC/Poland Association Council on 27 November 1996 about the provisional findings made and the intended provisional measures, with a view to seeking a solution acceptable to Poland and the Community. Since no decision was made by the Association Council within 30 days from the date of this information, the Commission may adopt provisional anti-dumping measures on imports of the product concerned originating in Poland, in accordance with Article 33 (3) (b) on the EC/Poland Europe Agreement.

(91) In the interests of sound administration, a period should be fixed in 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 measures which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of flat pallets of wood, falling within CN code ex 4415 20 20 (Taric code: 4415 2020 10), originating in Poland.

2. The rate of the provisional duty shall be 10,6 %, applicable to the net, free-at-Community-frontier price, before duty (Taric additional code: 8900).

3. Prodcts manufactured by the following companies shall be excluded from the rate mentioned under paragraph 2:

(a) The companies listed below, to which shall instead be applied the following duties:

Manufacturer	Rate of Duty	Taric Additional code
Zielonogorskie Przedsiebiorstwo Przemyslu Drzewnego, PL-65-950 Zielona Gora	10,6 %	8013
Firma 'Sabelmar', Leszek Sabela, PL-43-525 Konczyce Male	9,8 %	8014
PPHU 'Alpa' Sp. z o o, PL-76-038 Dobrzyca	6,3 %	8015
PPHU 'Palimex' Sp. z o o, PL-64-140 Wloszakowice	6,3 %	8015
PW 'Intur-KFS' Sp. z o o, PL-88-100 Inowroclaw	9,7 %	8016
'Paletex' Produkcja Palet, Roman Panasiuk, PL-01-601 Warszawa	9,8 %	8014
Przedsiebiorstwo Produkcyji Handlu I Uslug S.C. 'Eldagran', Mr. M. Zeminski, PL-78-314 Slawoborze	4,9 %	8017
ZPH 'Palettenwerk', K. Kozik, PL-34-789 Bystra Podhalanska	4,0 %	8018

(b) The companies listed in Annex I to which shall instead be applied a duty of 6,3 % (Taric additional code: 8019)

4. Products manufactured by the following companies shall be excluded from any provisional duty:

Manufacturer	Taric Additional code
Przedsiebiorstwo Produkcyjno Handlowe 'Tor-Pal' Sp. z o o. PL-82-500 Kwidzyn	8020
Rolnicza Spoldzielnia Produkcyjna Rzecko PL-73-200 Choszczno	8020

5. Unless otherwise speicfied, the provisions in force concerning customs duties shall apply.

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

Article 2

Notwithstanding Article 1, the provisional duties shall not apply to imports of one specific pallet type, the EUR-pallet, being a flat pallet of wood, marked by the registered mark 'EUR' and the initials of the approving railway, manufactured, exported and invoiced direct to buyers in the Community by the companies listed in Annex II (Taric additional code: 8021) in respect of which the undertakings offered are hereby accepted.

Article 3

Pursuant to Article 20 (1) of Regulation (EC) No 384/96 and without prejudice to Article 20 (2) and (3) of that Regulation the parties concerned may make their views known in writing and may apply within 15 days of the date of entry into force of this Rgulation to be heard orally by the Commission.

Pursuant to Article 21 (4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 4

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

Subject to Articles 7, 9, 10 and 14 of Regulation (EC) No 384/96, Article 1 of this Regulation shall apply for a period of six 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, 6 June 1997.

For the Commission

Leon BRITTAN

Vice-President

ANNEX I

Manufacturer

'Baum-Holz' SC, PL-10-547 Olsztyn
'DAST' GmbH, PL-60-682 Poznan
Drew-Pol Import-Export, Mr. Wodarz Norbert, PL-46-030 Murow
Eugeniusz Dziurny — Czeslaw Nowak, PL-38-313 Snietnica
FPH 'Tina' — E.J. Grabias, PL-40-733 Katowice
Firma Produkcyjno-Handlowa, Mr. Tadeusz Fisher, PL-87-313 Maly Gleboczek
Firma Produkcyjno-Uslugowo-Handlowa 'Rol-Mar', Mr. Adam Piatek, PL-57-300 Klodzko
Import-Export, Miroslaw Przybyiek, PL-98-363 Klonowa
Internationale Paletten Company, PL-84-300 Lebork
'Kross-Pol' Sp. z o o, PL-78-100 Kolobrzeg
PPH 'Drewnex' SA, PL-31-159 Kraków
PPH 'GKT' SC, PL-23-414 Majdan Nowy
PPH 'Pamadex' J. Szczypka, PL-43-518 Ligota
PPH 'Unikat', PL-23-408 Aleksandrow IV
PPHU 'ADAPOL' SC, PL-06-200 Wolomin
Sp. 'PPHU' Alwa z o o, PL-76-123 Tychowo
PPHU 'SMS' — St. Mrozowicz, PL-83-320 Suleczyno
PTH 'Mirex', PL-78-100 Kolobrzeg
'PW Peteco' Sp. z o o, PL-04-330 Warszawa
Parafia Rzymsko-Katolicka, M. B. Niepokalanej Dzialalnosc Gospodaroza, PL-33-300 Nowy Sacz
Produkcja Palet 'Andrzej Adamus', Mr. Marek Gajzler, PL-63-523 Kuznia Grabowska
Produkcja, Skup Palet Drewnanych, Stanislaw Lachowicz, PL-37-536 Majdan Sieniawski 170
Przedsiebiorstwo 'Amesko', Mr. Andrzej Skora, Director, PL-55-100 Trzebnica
Przedsiebiorstwo Handlowe Uslugowe 'Justyna', PL-66-620 Gubin
Przedsiebiorstwo Handlowe-Uslugowe 'Akropol', PL-30-140 Kraków
Przedsiebiorstwo Handlowe Uslugowe Produkcyjne 'Lech', Mr. Lech Szwec, PL-68-200 Zary
Przedsiebiorstwo Obrobki Drewna 'Palet-Pol' Sp. o o, Mr. Andrzej Niemiec, PL-66-311 Dabrowka WLKP
Przedsiebiorstwo Produkcyjno Handlowe, Zygmunt Skibinski, ul. Kopernika 18, PL-87-820 Kowal
Przedsiebiorstwo Produkcyjno Handlowe-Uslugowe, 'AWA' Sp. z o o, PL-33-300 Nowy Sacz
Przedsiebiorstwo Wielobranzowe, Mr. Zdzislaw Milocki, PL-14-100 Ostroda
'Scan-Product-System Wood' SA, Podczerwone, PL-34-470 Czarny Dunajec
SC 'Cama', Mr. Dariusz Zuk, PL-21-004 Krasienin
SUTR 'Rol Trak', PL-59-230 Prochowice
Stolarstwo Export-Import, Mr. Tadeusz Swirski, PL-57-520 Dlugopole Zdroj
Torunskie Przedsiebiorstwo Przemyslu Drzewnego w Toruniu, Mr. Adam Wisniewski, PL-87-100 Torun
'Transdrewneks' Sp. z o o, PL-86-317 Grudziadz-Owczarki
WZPUM 'Euro-Tech', Import-Export Spedycja, PL-87-111 Rakszawa
Wytwazanie Skrzyn i Opakowan Drewnianych, Malgorzata i Ryszard Nowak, PL-77-207 Piaszyna
Zaklad Produkcyjno Bohuszko, Mr. Ryszard Bohuszko, PL-69-220 Osno
Zaklad Produkcyjno Handlowy 'Maw' SC, Mr. Andrzej Kulej, PL-58-536 Lubomierz
Zaklad Uslugowo-Handlowy 'Rolmex', Mr. E. Cackowski, Direktor, PL-87-600 Lipno
Zaklad Wielobranzowy Produkcyjno Uslugowy, Ryszard Potoniec, PL-33-370 Muszyna
Zaklad Przerobu Drewna, JZS Kawinscy, PL-78-500 Drawsko Pomorskie
Zphu 'Drewex', Spolka Cywilna, Ms. Agnieszka Pawlaczyk, PL-66-440 Skwierzyna

ANNEX II

Manufacturer

'Baum-Holz' SC, PL-10-547 Olsztyn
Eugeniusz Dziurny — Czeslaw Nowak, PL-38-313 Snietnica
FPH 'Tina' — E.J. Grabias, PL-40-733 Katowice
Firma 'Sabelmar' — Leszek Sabela, PL-43-525 Konczyce Male
Import-Export, Miroslaw Przybylek, PL-98-363 Klonowa
Internationale Paletten Company, PL-84-300 Lebork
'Kross-Pol' Sp. z o o, PL-78-100 Kolobrzeg
PPH 'Drewnex' SA, PL-31-159 Kraków
PPH 'GKT' SC, PL-23-414 Majdan Nowy
PPH 'Pamadex' J. Szcypka, PL-43-518 Ligota
PPH 'Unikat', PL-23-408 Aleksandrow IV
PPHU 'ADAPOL' SC, PL-06-200 Wolomin
PPHU 'Alpa' Sp. z o o, PL-76-038 Dobrzyca
'PPHU' Alwa Sp. z o o, PL-76-123 Tychowo
PPHU 'Palimex' Sp. z o o, PL-64-140 Wloszakowice
PPHU 'SMS' — St. Mrozowicz, PL-83-320 Suleczyno
PTH 'Mirex', PL-78-100 Kolobrzeg
PW 'Intur-KFS' Sp. z o o, PL-88-100 Inowroclaw
PW 'Peteco' Sp. z o o, PL-04-330 Warszawa
'Paletex' Produkcja Palet, Roman Panasiuk, PL-01-601 Warszawa
Produkcja Palet 'Andrzej Adamus', Mr. Marek Gajzler, PL-63-523 Kuznia Grabowska
Przedsiebiorstwo Produkcyjno Handlowe, Zygmunt Skibinski, ul. Kopernika 18, PL-87-820 Kowal
Przedsiebiorstwo Handlowe-Uszugowe 'Akropol', PL-30-140 Kraków
SUTR 'Rol Trak', PL-59-230 Prochowice
'Scan-Product-System Wood' SA, Podczerwone, PL-34-470 Czarny Dunajec
'Transdrewneks' Sp. z o o, PL-86-317 Grudziadz-Owczarki
WZPUM 'Euro-Tech', Import-Export Spedycja, PL-87-111 Rakszawa
ZPH 'Palettenwerk' — K. Kozik, PL-34-789 Bystra Podhalanska
Zakzad Przerobu Drewna, JZS Kawinscy, PL-78-500 Drawsko Pomorskie.