COMMISSION REGULATION (EC) No 1778/97

of 12 September 1997

imposing a provisional anti-dumping duty on imports of ferro-silico-manganese originating in the People's Republic of China

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 Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 17 December 1996, 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 into the European Community of ferro-silico-manganese originating in the People's Republic of China; it commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged on 7 November 1996 by Euroalliages, the liaison committee of the European ferro-alloy industry, on behalf of producers representing a major proportion of total Community output of the product concerned.

(3) The Commission officially advised the producers, exporters and importers known to be concerned, as well as the representatives of the exporting country and the complainant, of the opening of the proceeding, and gave interested parties the opportunity to make their views known and to request a hearing within the time limit set in the notice of initiation.

(4) A number of producers and traders in the People's Republic of China and in Hong Kong, as well as some Community producers, importers and a consumer association made their views known in writing. All parties who so requested within the time limits laid down in the notice of initiation were granted a hearing.

(5) The Commission sent questionnaires to all parties known to be concerned and received replies from Community producers and importers, as well as from producers and traders in the People's Republic of China, Hong Kong and the reference country (Brazil).

(6) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of dumping, injury and Community interest, and carried out verifications at the premises of the following companies:

(a) *Community producers:*

- Sadaci SA, Belgium,
- Dunkerque Electrometallurgie (DEM), France,
- Ferroatlantica SA, Spain,
- Hidro-Nitro SA, Spain,
- Fornileghe SpA, Italy,
- Italghisa SpA, Italy,
- Elletrosiderurgica Italiana SpA, Italy;

(b) *importers not related to exporters:*

- Thyssen Sonnenberg Metallurgie GmbH, Germany;

(c) *importers related to exporters:*

- Tinfos Jernverk Deutschland GmbH, Germany;

(d) *traders in Hong Kong:*

- Glory Profit Development Ltd, Hong Kong,
- Noble Resources Ltd, Hong Kong,
- Perfect Billion International Ltd, Hong Kong;

(e) *producers located in the reference country:*

- Companhia Paulista de Ferro-Ligas, Brazil,
- Sibra Electrosiderurgica Brasiliera SA, Brazil.

(7) The investigation of dumping covered the period from 1 January to 30 September 1996 (hereinafter referred to as the 'investigation period'). The examination of injury covered the period from 1993 to 1996.

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 317, 6. 12. 1996, p. 1.
[3] OJ C 381, 17. 12. 1996, p. 4.

(8) It should be recalled that on 6 October 1995 the Council, by Regulation (EC) No 2413/95 [1], as amended by Regulation (EC) No 92/96 [2] imposed a definitive anti-dumping duty on imports of ferro-silico-manganese originating in Brazil, Russia, South Africa and Ukraine. In addition, undertakings were accepted for certain producers from Ukraine and South Africa. These measures consist of variable duties set as the difference, if any, between the net free-at-Community-frontier price and a minimum price. All of the measures for the four countries concerned are currently under review [3].

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Description of the product under consideration

(9) The product concerned by this proceeding is ferro-silico-manganese (hereinafter 'FeSiMn'). This product is used in the steel industry for deoxidization and as an alloy. FeSiMn is mainly produced from manganese ore and silicon which are mixed and brought to fusion temperatures in open electrical furnaces. The production process is very similar for producers all over the world. The power supply, electricity, is an important element in the cost of production.

FeSiMn exists in different qualities and is sold in different grain or lump sizes. Despite these differences, all qualities and sizes have been considered as a single product since the main physical and technical characteristics and the main uses are alike.

(10) In the course of the investigation, it was established that 90 % of consumption of FeSiMn in the Community relates to so-called 'standard quality FeSiMn'.

Standard quality FeSiMn has a manganese content of 65 % or more, a silicon content of 16 % or more (typically 17 %), a maximum carbon content of 2 % (typically 1,8 %), a maximum phosphorus content of 0,25 % and a maximum sulphur content of 0,04 %. The grain or lump dimensions of standard quality FeSiMn range from 10 to 200 mm. The remainder of Community consumption consists of other (non-standard) qualities, including 'low carbon FeSiMn' (with a maximum carbon content of 0,10 %).

(11) FeSiMn falls within CN code 7202 30 00.

2. Like product

(12) FeSiMn manufactured and sold in the Community was found to be alike in all aspects to FeSiMn produced and sold for export in the People's Republic of China as well as to FeSiMn produced and sold on the domestic market in the reference country (Brazil).

Consequently, these products are considered to be a like product within the meaning of Article 1 (4) of Regulation (EC) No 384/96 (hereinafter referred to as the 'Basic Regulation').

C. DUMPING

1. Cooperation

(13) The Commission received 12 questionnaire responses from producers and traders in the People's Republic of China. The responses of four of those companies showed that they had sold FeSiMn to the Community only outside the investigation period. Accordingly, their submissions could not be taken into account for the purpose of calculating the Chinese dumping margin. The companies are:

— China Jiangxi Provincial Metals and Minerals Import & Export Corporation, People's Republic of China,

— China Metallurgical Import & Export Xia Men Company, People's Republic of China,

— Emei Ferroalloy Works, People's Republic of China,

— Minmetals International Non-Ferrous Metals Trading Co., People's Republic of China.

(14) During the course of the investigation it was established that three of the remaining eight producers and traders had provided the Commission with false or misleading information or that they had not provided certain important documents requested within the agreed deadlines. The information which was finally received was still, in some instances, obviously inaccurate and was in any event submitted after the verification visits in Hong Kong had already taken place. It was therefore decided to base the findings for these companies on the basis of the 'facts available', pursuant to Article 18 (1) of the Basic Regulation. The companies were informed accordingly.

[1] OJ L 248, 14. 10. 1995, p. 1.
[2] OJ L 18, 24. 1. 1996, p. 1.
[3] OJ C 381, 17. 12. 1996, p. 5.

The companies concerned are:

— China Hu Nan Ferroalloy Factory Import & Export Company, People's Republic of China (exporting producer),

— Guangxi Ba Yi Ferroalloy Works Import & Export Corporation, People's Republic of China (exporting producer),

— Shanghai Shenjia Ferroalloys Co. Ltd, People's Republic of China (exporting producer).

(15) The following five producers and exporters co-operated fully with the Commission:

— Dandong Joint Venture Gold Benefit Metallurgical Co., Ltd, People's Republic of China (exporting producer),

— Zunyi Ferroalloy Works Import & Export Company, People's Republic of China (exporting producer),

— China Metallurgical Import & Export Ji Lin Ferroalloy Corporation, People's Republic of China (trader),

— China Metallurgical Import & Export Liao Ning Ferroalloy Company, People's Republic of China (trader),

— National Non-Ferrous Metals Import & Export Shanxi Corporation, People's Republic of China (trader).

2. Individual treatment

(16) All exporters and producers that replied to the questionnaire and sold the product concerned to the Community during the investigation period claimed individual treatment and requested that an individual dumping margin should be calculated for each of them separately. Accordingly, the Commission sought to establish whether the respective companies enjoyed, in law and in fact, a degree of independence from the Chinese State comparable to that which would prevail in a market-economy country. To that end, detailed questions regarding ownership, management, control and determination of commercial and business policies were addressed to the companies. On the basis of the information supplied, the Commission came to the conclusion that none of the claims for individual treatment was justified, for the reasons given below.

(17) First, it is not the Commission's general policy even to consider granting individual treatment to non-cooperating companies. This applies to the producers mentioned above in recital 14.

(18) Secondly, trading companies are, generally speaking, not eligible for individual treatment since they can purchase the product concerned from any producer in the country concerned, which would bring about a risk of circumvention by exporters channelling export sales through the trader with the lowest duty. In this regard, no reasons were cited by the companies as to why in their particular case the Commission should deviate from its usual practice.

(19) Thirdly, the investigation showed that the remaining cooperating producers are not sufficiently independent from the Chinese State. For the following companies, the information provided showed:

(a) *Dandong Joint Venture Gold Benefit Metallurgical Co. Ltd*

This company is a Chinese/Hong Kong joint venture. Despite its legal form, the company is significantly influenced by the Chinese Government in its normal business activities. In this particular respect, the Commission established that, according to the joint venture contract, approval by the Chinese authorities is required for a number of important business decisions and that the company is not entirely free to determine the quantities sold on the export and domestic markets.

(b) *Zunyi Ferroalloy Works Import & Export Company*

(20) This company is a State-owned company, which means that all decisive business decisions are or can be taken, controlled or influenced by the State or its representatives. In addition, the company failed to supply sufficient data concerning its sales of FeSiMn on the Chinese domestic market. This information would have been needed to establish whether the company enjoys freedom to carry out its business activities and, in particular, if there were any restrictions on its selling on the domestic market.

3. Reference country

(21) As the People's Republic of China is considered to be a non-market-economy country, in accordance with Article 2 (7) of the Basic Regulation and Council Regulation (EC) No 519/94 [1], as last amended by Regulation (EC) No 847/97 [2], a reference market-economy country was required for establishing normal value.

[1] OJ L 67, 10. 3. 1994, p. 89.
[2] OJ L 122, 14. 5. 1997, p. 1.

The Commission contacted producers of FeSiMn in various market-economy countries, whose exports of the product concerned to the Community are not subject to anti-dumping measures. However, despite significant efforts, there was insufficient cooperation from companies in such countries.

(22) In view of this, consideration was given to using Brazil as the reference country. Brazil is a large market-economy country which, it should be recalled, has already served as reference country in the abovementioned previous anti-dumping proceeding concerning FeSiMn (see recital 8). It had also been suggested by the complainant as an appropriate reference country for this proceeding. It was established that FeSiMn is produced and sold on the Brazilian market in considerable quantities (approximately 80 000 tonnes during the investigation period), which is representative when compared with the volume exported to the Community by the People's Republic of China. In addition, the Commission has not received any information that would indicate that the production process in Brazil and the People's Republic of China would not be comparable. Finally, information submitted by the cooperating Chinese companies showed that the access to raw materials appears comparable in the two countries, as both countries have their own ore resources (though Chinese producers also purchase part of their manganese ore requirements from outside the People's Republic of China).

(23) Brazil is therefore considered to be an appropriate choice as the market-economy reference country for establishing normal value for the People's Republic of China. This selection has not been contested by any interested party.

4. Normal value

(24) The normal value established for the People's Republic of China has been based on the domestic Brazilian sales transactions of FeSiMn made in the ordinary course of trade as established for the two cooperating Brazilian producers. The Commission noted that the two Brazilian companies account for the majority of the Brazilian domestic sales of the product concerned and their sales volume is considered to be representative when compared to Chinese exports of FeSiMn to the Community.

5. Export price

(25) For the determination of the export prices, the Commission relied on information provided by the cooperating Chinese exporting producers and Chinese traders (export transactions), on data verified at the premises of the Hong Kong traders (purchase prices of the product concerned originating in the People's Republic of China), as well as on data provided by two importers of FeSiMn located in the Community (import transactions).

(26) In addition, the Commission considered it appropriate to make use of the 'facts available' for two groups of transactions:

For those exporting producers which had either provided incorrect or misleading information concerning their export transactions or had not provided information within the deadlines agreed with the companies, the Commission made use of facts available, in accordance with Article 18 of the Basic Regulation. Where the same transactions were reported by another cooperating party, use was made of the data provided by that party. In all other instances, it was considered appropriate, in order to avoid granting a bonus for non-cooperation, to base the findings on a representative set of the lowest import transactions found for the biggest cooperating traders, whose cumulated verified transactions represent more than 75 % of the verified Community import volume. Since FeSiMn exists in various qualities (see recitals 9 and 10), the percentage ratio of standard and non-standard quality as established for the cooperating companies was also used for the volume attributed to these non-cooperating companies.

(27) The Commission noted also that the import volume covered by cooperating companies and verified in the course of the investigation accounted for 58 % of the total Chinese import volume only when compared to Eurostat data. The Commission considered that the 42 % of exports attributed to the other exporters (non-cooperating companies) represented a very significant part of all exports and required a separate calculation of the export prices and the dumping margin. Moreover, the Commission noted that to regard the transactions reported by the cooperating parties as representative of all Chinese exports would be to reward the lack of cooperation by the other Chinese exporters. Consequently, it was decided to establish the export price for the remaining transactions (non-cooperating companies) on the basis of facts available in accordance with Article 18 of the Basic Regulation. In this respect, the Commission considered it appropriate to apply the same methodology as was used above, for the Chinese companies that had provided incorrect or misleading information.

Again, the percentage ratio of standard and non-standard quality as established for the cooperating companies was also used for the volume attributed to these non-cooperating companies.

6. Comparison

(28) A comparison of the normal value of FeSiMn established in Brazil was made with export prices of Chinese FeSiMn of the same quality. As the co-operating Brazilian producers only sell standard quality FeSiMn, it was determined that the comparison should be limited to this quality.

(29) As all exports sales of Chinese FeSiMn were made to traders, it was considered appropriate to compare the Chinese export prices with Brazilian domestic prices to traders only.

(30) As to the transport and insurance costs, the Commission considered it appropriate to compare the respective prices of the two countries concerned at an FOB domestic frontier level. In cases where it was established that the importers had purchased the product of Chinese origin from a trader located outside both the Community and the People's Republic of China, an adjustment was made for selling, general and administrative costs and profits for these transactions.

(31) Finally, an adjustment was made for differences in credit costs affecting price comparability, in accordance with Article 2 (10) (g) of the Basic Regulation.

7. Dumping Margin

(32) The dumping margin was established on the basis of a comparison of the weighted average normal value as found for Brazil with the weighted average export price as found for the People's Republic of China.

The comparison showed the existence of dumping at a level of 26,1 %, when expressed as a percentage of the net free-at-Community-frontier price, before duty.

D. COMMUNITY INDUSTRY

(33) In addition to the six Community producers on behalf of which the complaint was lodged, two more producers produce FeSiMn in the Community. One of them supported the complaint, fully cooperated and answered the Commission questionnaire.

The above seven cooperating producers account for more than 80 % of total Community production.

(34) On this basis, the Commission has determined that the seven Community producers, who fully co-operated with the investigation constitute the 'Community industry' pursuant to Article 4 (1) of the Basic Regulation, and the assessment of injury has been carried out on the basis of the situation of these companies.

E. INJURY

1. Preliminary remarks

(35) For the purpose of establishing injury in the present proceeding, the Commission has analysed data relating to the period 1993 to 1996.

As the investigation period covers only a period of nine months, the actual figures for the whole of 1996 are used for injury determination purposes; this was, exceptionally, possible since opening of the investigation was very close to year's end and justified by a more accurate year-to-year comparison on the basis of actual data rather than figures extrapolated from the nine-month period.

(36) In assessing the present case, one has to take account of the fact that since 1994 measures have been applied to imports originating in Ukraine (price undertakings), Russia, Brazil and South Africa (variable anti-dumping duties based on minimum prices) [1]. As will be shown below, those measures, which are subject to a review initiated at the same time as the current proceeding, had an impact on the Community industry and led to relatively positive developments for certain injury factors after 1994.

2. Consumption in the Community market

(37) The total consumption in the Community was established on the basis of the total import volume of FeSiMn into the Community (Eurostat import statistics), plus the total sales volume of FeSiMn of the Community industy in the Community market.

[1] Commission Regulation (EC) No 3119/94 (OJ L 330, 21. 12. 1994, p. 15), Regulation (EC) No 2413/95 and Regulation (EC) No 92/96.

The non-complaining producer did not submit any reliable information; according to available information, its sales were negligible when compared with available data on total Community consumption and were consequently disregarded in the assessment of injury.

(38) Community consumption of the product concerned increased from around 505 900 tonnes in 1993 to 538 700 tonnes in 1996 — an increase of 7 %.

During the same period the value of consumption increased from around ECU 216,4 million in 1993 to ECU 269,6 million — an increase of 25 %.

3. Volume, value and market share of dumped imports

(39) Dumped imports from the People's Republic of China increased substantially from around 12 000 tonnes in 1993 to 75 400 tonnes in 1996 — an increase of 526 %. During the same period the value of imports increased from around ECU 5,6 million to ECU 33,5 million — an increase of 502 %, indicating a decrease in unit prices whereas the above information on consumption indicates an overall increase in prices.

In terms of market shares based on total consumption, the market penetration of the dumped imports in volume rose almost six-fold from 1993 to 1996, from 2,4 % to 14 %. Market share based on value increased by a factor of five over the same period, from 2,6 % to 12,4 %.

4. Prices of dumped imports

(40) The Commission compared on a grade-by-grade basis the prices of the Community industry with the Chinese import transactions into the Community as established for the dumping calculation.

It was found that most of the Community producers' sales were made direct to end-users, whereas Chinese import transactions are also made with traders in the Community. Considering that this difference has an impact on price comparison, the Commission considered it reasonable to adjust the import prices in order to ensure a comparison at the same level of trade, namely, end-user level.

On the basis of the information collected during the investigation, Chinese import prices to traders were therefore adjusted by 5 % (on the basis of an average of verified data concerning importers in the Community) to take account of a reasonable margin for expenses and profit for delivery to end-users.

(41) On this basis, the comparison showed (standard quality) a weighted-average price undercutting margin, expressed as a percentage of the sales price, of 7,6 %. This margin must be seen in light of the commodity character of the product, making the FeSiMn market highly price-sensitive, which is underlined by the finding of the investigation that price differences of between 2 and 3 % affect a buyer's purchasing decision.

(42) The Commission also assessed the development of the average import prices from the People's Republic of China. It was established that since 1993 these prices had fallen by 4 %. Between 1993 and 1995 the decrease amounted to 17 %.

5. Situation of the Community industry

(a) *Preliminary remarks*

(43) In order to understand fully the movement of various injury indicators, it should be borne in mind that between 1993 and 1996 the Community industry:

— was confronted with a growing demand from the steel industry which had to be met in terms of production,

— had expectations of price rises, given this rising demand,

— was expecting a positive outcome to the anti-dumping complaint lodged in 1994 against imports from South Africa, Brazil, Ukraine and Russia.

(b) *Production*

(44) Overall Community production of FeSiMn rose from around 189 600 tonnes in 1993 to 249 100 tonnes in 1996, representing an increase of 31 %.

(c) *Capacity, capacity utilization*

(45) During the period under investigation the production capacity of the Community industry was stable. It should be noted that the production facilities of FeSiMn are designed to produce also other alloys to meet market demand and to decrease costs.

As a result, it was difficult to determine capacity levels for the product concerned. However, on the basis of an estimate of the capacity normally attributed by the Community producers to the production of FeSiMn, installed capacity remained unchanged between 1993 and 1996. Therefore the utilization rate rose from 48 to 64 %, which is in line with the increase in production. Even with this increase the rate of capacity utilization remains at a very low level.

(d) *Stocks*

(46) Stocks significantly increased from around 29 400 tonnes in 1993 to 55 300 tonnes in 1996 — an increase of 88 %. This increase is in line with the increase in production and the expectation of the Community producers (see recital 43).

(e) *Sales*

(47) The volume of sales realized by the Community industry in the Community market increased from around 164 500 tonnes in 1993 to 199 300 tonnes in 1996 — an increase of 21 %.

(48) Sales in value by the Community industry rose from around ECU 70,5 million in 1993 to ECU 97,4 million in 1996 — an increase of 38 %.

(49) The sales volume and value increase has to be seen in the light of the fact that consumption and sales prices have increased. The Community industry could therefore derive some advantage from this positive market situation. Profitability, however, still remains negative (see recital 55).

(f) *Market share*

(50) The market share by volume increased from 32,5 % in 1992 to 37 % in 1996 — an increase of 14 %. This increase occurred in the period between 1995 and 1996, after the imposition of measures against imports originating in Russia, Ukraine, Brazil and South Africa. It has to be noted that this increase has not allowed the Community industry to regain the position it had before injurious dumping from the four countries.

(51) These trends have to be compared with the almost six-fold increase of Chinese imports' market share (see recital 39) and the decrease of market share by 83,5 % for the four countries under measures, from 27,8 % in 1993 to 4,6 % in 1996. This underlines the fact that the effect of the imposition of these measures was to a large extent the replacement of these dumped imports by other dumped imports, namely those subject to the current investigation. In total the market share of imports originating from other countries decreased by 25 % during the same period (see recitals 69 to 74).

(52) An analysis of market share by value was also conducted. The patterns observed were similar to that of the market share by volume; Community industry gained market share at the level of the entire Community, from 32,6 % to 36,1 % — an increase of 11 %. It should be borne in mind that between 1995 and 1996 the market share of the Community industry, by value, decreased by 2 %.

(g) *Average sales price and price evolution*

(53) The Commission examined the development in average prices achieved by the Community industry for the period between 1993 and 1996. The average sales price of FeSiMn sold by the Community industry between 1993 and 1994, the year of the imposition of the anti-dumping measures against imports originating in Russia, Ukraine, Brazil and South Africa, increased by 12 %. Between 1994 and 1995, the prices rose by a further 2 % and remained at the same level between 1995 and 1996.

(54) The investigation has shown that the downward pressure on prices exerted by the dumped imports has prevented the Community industry from aligning its sales prices on levels previously held. As was established in Regulation (EC) No 3119/94, the Community industry had been compelled to reduce its prices by more than 40 % during the period under ivestigation concerning the four countries subjected to the measures. Despite an increase of 14 % over the period considered, these prices were therefore significantly suppressed.

(h) *Profitability*

(55) The weighted-average return of the Community industry results, expressed as a percentage of sales, showed a loss of 27 % in 1993, which became a loss of 9 % in 1994. The relative improvement of the financial situation of the Community industry continued in 1995, when losses amounted to 3 %.

The profitability of the Community industry deteriorated again in 1996 (– 7 %) despite higher sales prices and increased volume.

(i) *Employment*

(56) Between 1993 and 1996, employment in the Community industry decreased by 11 %. The importance of this should not be overestimated, given the fact that personnel can be employed in other alloy productions such as silicon metal and FeMn.

6. Conclusion on injury

(57) The situation of the Community industry between 1993 and 1995 did not improve as much as it should have improved; in any event the situation as reflected by profitability was not brilliant.

From 1995 to 1996, the situation of the Community industry deteriorated (profitability – 7 %), despite the fact that some injury factors had improved throughout the period under examination.

(58) In view of the above findings, and having given special consideration to the steadily increasing volume of imports at low dumped prices significantly undercutting the Community industry's sales prices in a transparent market, the increasing stocks and the negative profitability of the Community industry since 1993, the Commission considers that the Community industry has suffered material injury during the period under examination.

F. CAUSATION

1. Introduction

(59) The Commission examined whether the injury suffered by the Community industry was caused by the volume and price level of Chinese dumped imports or whether other factors had caused that injury or contributed to it.

For this purpose, it is recalled that the Commission has already established in previous Regulations on FeSiMn imports into the Community that the Community market for this product is price-sensitive, with the consequence that the mere availability of low-priced dumped imports has a preceptible and immediate impact on the situation of the Community market overall.

2. Effect of the dumped imports

(60) It should be stressed that the Community industry could not fully benefit from the effect of measures imposed against Russia, Ukraine, South Africa and Brazil (see recital 54), as the re-establishment of fair trading conditions with the above countries were immediately undermined by an increase in dumped imports from the People's Republic of China.

(61) It appeared that, during the period considered (1993 to 1995), the decrease in the other imports (Russia, Ukraine, Brazil and South Africa) into the Community (– 115 937 tonnes) was largely offset by the increase in Chinese imports (+ 109 226 tonnes), made at low-dumped prices. The Chinese dumped imports replaced the dumped imports from the four abovementioned countries.

(62) Indeed, the prices of Chinese imports decreased by 17 % between 1993 and 1995, in an effort to take over the market share left by the four countries subject to measures. In this connection, it has to be underlined that the Chinese imports were made at prices far below the minimum prices imposed on these countries and the lowest in the Community market in 1995, although this trend has been halted in 1996 when the Chinese exporters increased their prices and consequently lost some of their market share.

(63) There is also a clear coincidence in time between the failure of the Community industry to improve, or — by certain indicators — even the deteriorating situation of the Community industry, and the volume and growth of Chinese imports at low-dumped prices. In view of the price-sensitivity of the market, this low-price policy, well known to the potential customers of the Community industry, had the effect of suppressing the prices of the Community industry.

(64) Indeed, it was also found that, as a result of systematic price-undercutting by Chinese imports (see recital 43), the Community industry had to adjust its prices to the market situation in order to avoid losing its market share (see rectials 53 and 54). This defensive behaviour on the part of the Community industry is explained by the fact that the industry has to maintain a continuous cycle of production and cannot reduce it nor easily adapt its production, due to high switching costs, in order to limit the negative effects of such a situation.

(65) The recovery of the Community industry was thus heavily hampered by the combination of the high-volume and low-dumped prices of Chinese imports, which was particularly evident in 1994 and continued to be so in 1996. It is concluded that dumped Chinese imports clearly contributed to the deterioration of the situation of the Community industry during the period considered, on the one hand by impeding the recovery of the Community industry from past dumping practices by other third countries, and on the other hand by influencing negatively, notably in profitablity terms, this situation.

3. Effect of other factors

(a) *Development of consumption*

(66) Although Community consumption fell from 1995 to 1996, it nevertheless improved throughout the whole period covered by the injury examination (+ 7 %).

Demand is linked to the perfomance of the steel industry, whose production showed an increasing trend from 1993 up to the first half of 1996. Therefore the injury suffered by the Community industry cannot be attributed to the trend of Community demand.

(b) *Non-complaining industry*

(67) As was states above (see recitals 33 and 37), one Community producer did not cooperate in the present investigation. According to information received, its production and its market share (less than 3 %) appear to be negligible. Accordingly, its impact on the situation of the complaining Community industry has also to be regarded as negligible.

Furthermore, there is no information available to suggest that the behaviour of this non-cooperating producer might have had a materially injurious impact on the complaining industry, nor is there any evidence that its economic situation developed differently from that of the Community industry. Consequently, neither internal Community competition nor inefficiency can have been a cause of the poor situation in which the Community industry found itself.

(c) *Imports under anti-dumping measures*

(68) As was mentioned above (see recital 36), imports from Russia, Ukraine, South Africa and Brazil have been subject to anti-dumping measures since December 1994. Imports from these countries declined from around 140 100 metric tonnes in 1993 to 24 600 in 1996. Accordingly, their market share expressed in tonnes significantly decreased from 27,7 % in 1993 to 4,6 % in 1996.

Furthermore, it was established that the average import price from these countries was on average higher than the price of Chinese imports and, on average, as from 1994/95, above those of the Community industry (see recital 63).

It can therefore be concluded that their impact on the situation of the Community industry was limited compared to that of the Chinese imports.

(d) *Other imports to the Community*

(69) Other imports into the Community originating mainly in Norway, Romania, and Slovakia.

The Commission has analysed separately the behaviour of the Norwegian producers which are the largest importing suppliers of FeSiMn in the Community market, and that of the other importing countries mentioned above.

(70) It was found that from 1993 to 1996 Norway's exports into the Community in volume had fallen by 10 %, but in value the trend showed an increase of 7 %. Furthermore, during the above period the average Norwegian price, which was already significantly higher than that of the Community industry, was increased by 18 %.

(71) This pricing policy should be compared with that of the Community industry, which in attempting to keep or increase its market share, had to follow the downward pressure exerted by Chinese imports.

(72) In 1996 prices of Chinese imports increased with a consequent loss of market share of 7 % of the Community market to Slovakia and Romania, because those countries decreased their prices between 1995 and 1996.

(73) In the light of the above, the Commission concluded that although it could not be ruled out that the abovementioned non-Chinese imports had some impact on the Community industry, these could in no way be considered as being an exclusive cause for the precarious situation suffered by the Community industry or lead to the conclusion that Chinese imports had not had an impact to an extent that could be considered material.

4. Conclusion on causation

(74) Given the fact that FeSiMn is technically a simple product, offered through similar sales channels in the Community, the Commission considers that imported FeSiMn originating in the People's Republic of China has had a significant impact on the Community market. Furthermore, the market is transparent, with the consequence that low prices, well known to the potential customers of the Community producers and the exporters, also have an impact on the market as a whole.

(75) For these reasons and on the basis of the detailed analysis carried out above, the Commission is of the opinion that the dumped Chinese imports have caused material injury, in isolation, to the Community industry. Moreover, since the dumped Chinese imports are causing injury, any failure to impose anti-dumping measures would be discriminatory towards imports originating in Russia, Ukraine, Brazil and South Africa.

G. COMMUNITY INTEREST

1. Preliminary remarks

(76) The Commission provisionally examined, on the basis of all evidence submitted, whether, despite the conclusions on dumping and injury, there were compelling reasons leading to the conclusion that it is not in the Community interest to impose measures in this particular case. For this purpose, and pursuant to Article 21 (1) of the Basic Regulation, the Commission considered the impact of possible measures for all parties involved in the proceeding, and also the consequences of not taking measures.

In order to provide information for this assessment, the Commission sent questionnaires to importers and to the users of FeSiMn, seeking to appraise their economic interests. Other organizations which came forward were invited to make submissions.

2. Interest of the Community industry

(a) *Nature and viability of the Community industry*

(77) The Community industry of FeSiMn is a mature industry. The technology used is the only one existing in the world today. As is mentioned above, the electrical furnace where the production process takes place is also used for production of other alloys such as ferro-manganese and silicon metal. All Community producers, except two, are integrated with companies owning mines producing manganese ore. Some of them are producing their own energy in order to maintain their viability. One company was privatized and had started a restructuring plan.

(b) *Likely effects of taking or not taking measures*

(78) The purpose of anti-dumping measures is to remedy an unfair trading practice which has an injurious effect on a Community industry. Such a remedy should result in the re-establishment of a situation of effective competition which, as such, is in the interest of all the operators in the Community.

(79) First, considering the Community industry interest and given the results of the injury examination, it has been determined that not taking measures would cause the situation of the Community industry to deteriorate further and might lead to a number of enterprises having to close down.

(80) Within the framework of this investigation it has been established that the Community industry continues to suffer injury, and that it is highly probable that, in the absence of anti-dumping measures to correct the effects of dumped imports, the precarious financial situation of the Community industry, which has incurred losses for a number of years already, will deteriorate further. Thus, the existence of the Community industry as a whole may ultimately be at risk.

Furthermore, the ongoing restructuring efforts made by the Community industry show that it is not ready to abandon this segment of production and therefore needs to be protected against the adverse effects of dumped imports.

3. Impact on users

(81) The Commission, with the cooperaton of two users' associations (Eurofer and the Committee of European Foundries Associations), sent questionnaires to 32 Community users of FeSiMn. Only two companies, users of FeSiMn, fully cooperated by sending back questionnaire responses. Another six are not concerned by the imposition of measures as they either did not import Chinese material or imported limited quantities.

(82) Owing to the low level of cooperation from the user industry, no representative information was provided to the Commission. For this reason alone, the arguments of the user industry could be rejected. Nevertheless, the effects on the users were examined. The Commission has established that the steel companies are the main users of FeSiMn in the market and the share of the product concerned in the production cost of steel is limited to 1 %. Consequently, it can be concluded that any measures on FeSiMn and relative price increases would not significantly affect the steel producers.

The production of steel covered by this proceeding amounts to 134 million tonnes, assuming that to produce one tonne of steel, four kilograms of FeSiMn are needed. According to market information available, it is expected that steel consumption will increase in the future. Nevertheless, steel consumption forecasts rarely prove to be correct.

One user confirmed that a hypothetical imposition of 10 % duty on the dumped imports would have a limited impact on his cost of production of 0,1 %.

(83) On that basis, the Commission has come to the conclusion that any impact on users would be negligible.

4. Consequences for competition in the Community market

(84) As far as the competitive environment in the Community market is concerned, two aspects have to be highlighted. First, the measures are not such as to foreclose the Community market to the Chinese exporters and therefore will ensure the continued presence of Chinese products in the market.

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

Thus, the benefit of a market governed by competitive forces would still be available to end-users of the product concerned.

5. Conclusion

(85) In examining the various interests involved and all the above aspects, the Commission weighed up all the factors and considered that there were no compelling reasons not to impose measures in order to correct the distortive effects of injurious dumping, to restore a competitive regime of fair pricing practices and to prevent further injury to the Community industry.

Leaving the Community industry without adequate protection against cheap dumped Chinese imports would add to the difficulties of the FeSiMn industry, which appears to be at the beginning of a process of recovering from the effect of past dumping.

The price increase and the consequent extra costs to the steel industry are considered to be limited compared with the cost of the total disappearance of the Community industry of FeSiMn.

H. PROVISIONAL DUTY

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

(87) Since the injury consisted mainly of financial losses, the removal of such injury would be achieved through the establishment of a non-injurious price level which would allow the Community industry to cover its costs and achieve a reasonable profit.

(88) In this respect, the Commission has calculated, at an ex-factory level, a price level considered adequate to remove the injury based on the weighted-average cost of production of the Community industry, plus a profit of 7 % on turnover considered an appropriate minimum, regard being had to the need for long-term investment and, more particularly, a rate of return which the Community industry could reasonably expect in the absence of injurious dumping. This injury elimination level was then compared to the weighted-average selling price of FeSiMn of Chinese origin on a free-at-Community-frontier basis (customs cleared), duly adjuted to take account of the differences in distribution channels.

The injury elimination level thus established is 19,6 %.

(89) Since the injury elimination level thus established is lower than the dumping margin found pursuant to Article 7 (2) of the Basic Regulation, it is the injury elimination level which should constitute the basis for the anti-dumping duty at the provisional stage of this procedure.

I. FINAL PROVISION

(90) In the interest of a sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation 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 Regulaiton are provisional and may have to be reconsidered for the purpose of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. Provisional anti-dumping duties are hereby imposed on imports of ferro-silico-manganese originating in the People's Republic of China falling within CN code 7202 30 00. The rate of provisional duties applicable to the net free-at-Community-frontier price of imports of the product concerned, before duty, shall be 19,6 %.

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

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

Article 2

1. Without prejudice to Article 20 (1) of Regulation (EC) No 384/96, interested parties which have made themselves known within the time limit specified in the notice of initiation may make known their views in writing and apply to be heard by the Commission within one month of the date of entry into force of this Regulation.

2. In accordance with the provisions of Article 21 (4) of Regulation (EC) No 384/96, the parties concerned may provide comments on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Subject to Articles 7, 9, 10 and 14 of Regulation (EC) No 384/96, 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, 12 September 1997.

For the Commission

Leon BRITTAN

Vice-President