COMMISSION REGULATION (EC) No 593/97

of 25 March 1997

imposing a provisional anti-dumping duty on imports of unwrought, unalloyed zinc originating in Poland and Russia

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 23 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 9 June 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 unwrought unalloyed zinc originating in Kazakhstan, Poland, Russia, Ukraine and Uzbekistan and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged by Eurometaux (*Association Européenne des Métaux*), acting on behalf of Community producers whose collective output of unwrought, unalloyed zinc allegedly represented a major proportion of the total Community production of this product.

The complaint contained evidence of dumping of the product originating in the countries indicated above, and of material injury resulting therefrom; this evidence was considered sufficient to justify the initiation of a proceeding.

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

(4) The authorities of the exporting countries, a number of producers in the countries concerned and importers in the Community made their views known, orally and in writing. All parties who so requested were granted a hearing.

(5) The Commission sent questionnaires to all parties known to be concerned and received detailed information from the complaining Community producers, and from certain producers in Kazakhstan, Poland, Ukraine and Uzsbekistan. No Russian producer cooperated with the investigation.

(6) The Commission sought and verified all information it deemed necessary for the purpose of a preliminary and carried out investigations at the premises of the following firms:

(a) *Community producers*

- Union Minière, Brussels, Belgium,
- Outokumpu, Kokkola, Finland,
- Metaleurop, Fontenay-sous-Bois, France,
- Ruhrzink, Datteln, Germany,
- Enirisorse, Rome and Portovesme, Sardinia, Italy,
- Pertusola Sud, Rome, Italy;

(b) *Producers/exporters in Poland*

- Huta Cynku 'Miasteczko Slaskie', Miasteczko Slaskie,
- Kombinat Gorniczco-Hutniczy Boleslaw, Bukowno.

(7) The investigation of dumping covered the period from 1 April 1994 to 31 March 1995 (hereinafter 'the investigation period').

The geographical scope of the investigation was the enlarged Community of 15 Member States.

(8) Owing to the volume and complexity of the data gathered and examined, the investigation exceeded the normal duration provided for in Article 6 (9) of Council Regulation (EC) No 3283/94 [4], as amended by Regulation (EC) No 1251/95 [5], under which this proceeding was initiated.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(9) The product covered by the complaint and for which the proceeding was opened is unalloyed, unwrought zinc. Unalloyed, unwrought zinc is manufactured in different degrees of purity: 'Super

[1] OJ No L 56, 6. 3. 1996, p. 1.
[2] OJ No L 317, 6. 12. 1996, p. 1.
[3] OJ No C 143, 9. 6. 1995, p. 12.
[4] OJ No L 349, 31. 12. 1994, p. 1.
[5] OJ No L 122, 2. 6. 1995, p. 1.

High Grade' (SHG) which requires a zinc content of 99,99 % or more, 'High Grade' (HG) which requires a zinc content of more than 99,95 % and 'Good Ordinary Brand' (GOB) which requires a zinc content of more than 98,5 %.

(10) The different grades of zinc fall within the CN codes 7901 11 00 (zinc, not alloyed, containing by weight 99,99 % or more of zinc), 7901 12 10 (zinc, not alloyed, containing by weight 99,95 % or more but les than 99,99 % of zinc) and 7901 12 30 (zinc, not alloyed, containing by weight 98,5 % or more but less than 99,95 % of zinc) respectively. All grades of zinc covered by the proceeding closely resemble each other. These grades are alike as far as their essential physical and technical characteristics are concerned (minimum zinc content for all grades: 98,5 %). They are also alike as far as their main uses are concerned.

(11) Various processes are used to produce unwrought, unalloyed zinc, the main ones being by electrolytic processing method and by the imperial smelting furnace method. Differences in the production processes used, however, have no major influence on the physical and technical characteristics of the finished product.

(12) The industrial use of unwrought, unalloyed zinc generally does not vary according to the impurity content. All three grades covered by the proceeding (SHG, HG, GOB) are directly used by industrial users, that is to say, without any purification, for hot-dip galvanizing (corrosion protection of tubes, sheet metal, etc.) and for the production of brass and some other alloys. Only the 'casting alloys' and the 'continuous galvanizing' applications require SHG quality. The Commission has, therefore, come to the conclusion that the three grades are to a very large extent interchangeable.

(13) The market for unwrought, unalloyed zinc is a world-wide commodity market. Prices for all grades are related to the daily price quotations on the London Metal Exchange (LME), where the price of SHG is established on the basis of world-wide supply and demand.

2. Like product

(14) The investigation showed unalloyed, unwrought zinc sold on the domestic market of Poland has similar basic characteristics and uses compared with that exported from Poland and Russia to the Community. Similarly, the unwrought, unalloyed zinc manufactured by the Community industry and sold on the Community market has similar basic characteristics and uses when compared to that exported to the Community from the countries in question.

(15) Consequently, unalloyed, unwrought zinc sold in Poland, the zinc exported from Poland and Russia to the Community, and that produced and sold in the Community are considered a single like product within the meaning of Article 1 (4) of Regulation (EC) No 384/96 (hereinafter called 'the Basic Regulation').

C. DUMPING

1. Kazakhstan, Ukraine, Uzbekistan

(16) The Commission found it unnecessary to establish whether imports of unwrought unalloyed zinc originating in Kazakhstan, Ukraine, Uzbekistan were dumped, since the injury caused by these imports was regarded as negligible with regard to the Community consumption determined during the investigation [1].

2. Poland

(17) Since inflation in Poland was considered significant during the investigation period, normal value was established on a monthly basis. Consequently, the export prices used in the dumping calculations were also established on a monthly basis.

(a) *Normal value*

(18) For one Polish producer it was established that profitable domestic sales were taking place in sufficient quantities throughout the investigation period. Monthly normal values were therefore based on prices actually paid or payable, in the ordinary course of trade, by independent parties on the Polish market.

(19) For the other Polish producer it was established that there were insufficient profitable sales during two months of the investigation period. Therefore, normal values for these months were constructed, in accordance with Article 2 (3) of the Basic Regulation, on the basis of the cost of production (duly adjusted in accordance with Article 2 (5) of the Basic Regulation) plus a reasonable amount for selling general and adminstrative costs and for profits. For the remaining ten months normal values were based on prices actually paid or payable, in the ordinary course of trade, by independent parties on the Polish market.

[1] Commission Decision (EC) No 97/223/EC of March 1997, terminating the anti-dumping proceeding concerning imports of unwrought unalloyed zinc originating in Kazakhstan, Ukraine and Uzbekistan; see p. 47 of this Official Journal.

(20) For both Polish producers which cooperated it was found necessary to exclude sales to certain Polish trading companies reported as domestic sales since the final destination of the products concerned was outside Poland. In addition, sales of one producer to an associated party were excluded since those prices appeared to be unreliable because of the relationship between the parties.

(b) *Export price*

(21) The monthly average export prices were established on the basis of prices actually paid or payable for the product when sold from the exporting country to the Community. A few sales were, however, excluded from the calculation since conclusive clarification as to their final destination was not possible.

(c) *Comparison*

(22) The monthly average normal values were compared to the monthly average export prices at an ex-works level, in accordance with Article 2 (10) of the Basic Regulation, taking into account, where warranted, differences affecting price comparability.

(23) An adjustment for credit costs was requested by both cooperating Polish companies and this was granted to the extent justified. One company requested an adjustment in respect of taxes on imported raw materials reimbursed when the product was exported (duty draw back). This allowance has been granted to the extent to which satisfactory evidence was provided.

(24) An adjustment claimed for differences in level of trade was not granted, since the Commission was not provided with substantiated evidence that these differences would affect prices and price comparability as required under Article 2 (10) (d) of the Basic Regulation. In addition, the companies concerned did not demonstrate any consistent and distinct differences in functions between the parties allegedly situated at different levels of trade.

(25) Similarly, a request for an adjustment for differences in quantities by one of the companies could not be granted since the evidence submitted during the verification showed that no consistent discount policy for differences in quantities was applied by that company.

(d) *Dumping margin*

(26) The monthly dumping margins were established on the basis of a comparison of weighted average normal values with weighted average export prices for each month of the investigation period. The comparison showed the existence of dumping for each month.

(27) Since the dumping margins estabished for each month varied, a weighted average dumping margin for the investigation period was determined. Expressed as a percentage of the free-at-Community-frontier price for the exporters concerned, the dumping margins are as follows:

— Huta Cynku 'Miasteczko Slaskie', Miasteczko Slaskie 14,4 %,

— Kombinat Gorniczco-Hutniczy Boleslaw, Bukowno 5,5 %.

(e) *Non-cooperating producers/exporters*

(28) For the Polish producers/exporters that did not make themselves known or did not reply to the questionnaire, the Commission considered that it would constitute a bonus for non-cooperation if the dumping margin for these companies were any lower than the higher margin determined for the two cooperating exporters/producers. On this basis the following dumping margin was established:

— Other Polish producers/exporters: 14,4 %

3. **Russia**

(a) *Analogue country*

(29) Since Russia is considered to be a non-market economy, an analogue market-economy country had to be selected for the establishment of its normal value. Poland was suggested by the complainant and it was found to be a reasonable choice, as the zinc-production process and the access to and nature of raw materials in Poland and Russia appeared to be comparable. In addition, it was established that no significant non-tariff or tariff import restrictions were in place during the investigation period in Poland. Furthermore, sufficient domestic competition appeared to exist and Polish prices for the product concerned were based on the LME. Finally, the Commission established that the like product was sold in representative quantities and in the ordinary course of trade (in excess of 70 % in volume terms) on the Polish market as compared with Russian exports to the Community.

No comments on the choice of Poland as analogue country have been received from any producers and/or exporters in Russia or from the Russian authorities.

(b) *Normal value*

(30) Since of the Polish producers employed, according to indepedent sources, an identical production process to that which was used by the majority of the Russian producers, normal value was established on the basis of the prices and costs of that producer.

The normal value of Poland having been established on a monthly basis, normal value for Russia was also established on a monthly basis.

(c) *Export price*

(31) As none of the Russian exporters cooperated in the proceeding (see recital 5) the export prices were established on the basis of the facts available, in accordance with Article 18 of the Basic Regulation.

Consequently, monthly average export prices were established on the basis of Eurostat data for the Community of 12 and of import statistics provided by the statistical offices of Austria, Finland and Sweden.

(d) *Comparison*

(32) In order to allow for a fair comparison normal values and export prices were compared on an ex-frontier basis. Further adjustments were not considered to be appropriate or necessary.

(e) *Dumping margin*

(33) The monthly dumping margins were established on the basis of a comparison of weighted average normal values with weighted average export prices for each month of the investigation period. The comparison showed the existence of dumping for each month.

(34) Since the dumping margins established for each month varied, a weighted average dumping margin for the investigation period was determined. Expressed as a percentage of the free-at-Community-frontier price, the country-wide single dumping margin was found to be 7,4 %.

D. COMMUNITY INDUSTRY

(35) The investigation has confirmed that the six complainant Community producers account for a major proportion, namely 54 % [1] of total Community production of unalloyed, unwrought zinc. In addition to the Community producers represented by the complainant, at least four other Community producers are known to the Commission. Although they did not cooperate with the investigation, the Commission has not received any objections to the proceeding from the four companies concerned.

(36) On that basis, the Commission has determined that the six complainant Community producers, who fully cooperated with the investigation constitute 'the Community industry' in accordance with Article 4 (1) of the Basic Regulation.

E. INJURY

1. Preliminary remarks

Role of the LME and its influence on the Community market for zinc

(37) The London Metal Exchange is a commodity market where the price of zinc is established daily, on the basis of world-wide supply and demand for this metal. The existence of this system means that a producer of an LME-approved brand of Super High Grade is normally able to find a buyer for its products at all times, albeit with the disadvantage that the transaction is less attractive (for the reasons set out below) than selling direct to industrial consumers.

(38) The LME-approved warehouses also play the role of an external stock facility, where a producer can convert its production into warrants and thereby obtain cash, and repurchase its stored production if necessary. Therefore the LME warrant system operates as a semi-floor price for zinc producers, although it presents the characteristic that, as LME-approved stocks increase (data on stocks in LME-approved warehouses are publicly available), then the daily quoted price for zinc suffers downward pressure due to increasingly known availability of supply. It is worth noting in this context that world stocks in LME-approved warehouses [2] had increased from 152 000 tonnes at the end of 1991 to 1 019 000 tonnes by the end of the investigation period.

[1] Based on total cooperating companies' production volume (as ascertained by verification), compared to total Community production (source: International Lead and Zinc Study Group).

[2] Lead and zinc statistics, Monthly Bulletin of the International Lead and Zinc Study Group, September 1995.

(39) Direct sales from zinc refiners to industrial users are usually made at a premium over LME quotations. From the point of view of the user of the metal the payment of a premium can be justified by the following considerations: although industrial users of zinc can buy from a LME-approved warehouse, they still have to pay transport costs from the warehouse (the location of which is not necessarily at the discretion of the buyer) and broker's fees for the purchase of the SHG zinc; they do not know what brand of zinc they will obtain; depending on the period of stock turn-over in the LME-approved warehouse, a certain degree of oxidisation may also have taken place. Taken as a whole, these factors normally act as a sufficient disincentive when compared with buying direct from a recognized zinc producer, and serve to justify the payment of a premium. Moreover, as mentioned previously, this permanent market outlet is only available to SHG-quality zinc, and not to HG or GOB products (even though the prices of HG and GOB are almost always linked to the LME quoted price for SHG if normal competitive conditions prevail).

2. Total consumption on the Community market

(40) The apparent consumption of unalloyed unwrought zinc in the European Community has remained relatively stable over recent years: 1 854 000 tonnes in 1991, 1 813 000 tonnes in 1992, with a slight drop in 1993 (1 758 000 tonnes), followed by a small increase in 1994 (1 905 000 tonnes). The total Community consumption of unalloyed, unwrought zinc during the investigation period amounted to 2 037 800 tonnes.

3. Cumulative assessment of the effects of the dumped imports

(41) Under Article 3 (4) of the Basic Regulation, the effects of imports from more than one country simultaneously subject to an anti-dumping investigation may be assessed cumulatively if it is determined, *inter alia*, that the volume of imports from each country is not negligible. Imports originating in Poland and Russia cannot be considered negligible since the respective market shares of those countries are above the 1 % threshold as provided for in Article 5 (7) of the Basic Regulation.

(42) The investigation demonstrated that the dumped imports compete amongst themselves and with the Community industry products. Zinc from both Russia and Poland was mainly of GOB and HG quality, suitable for hot-dip galvanizing and for brass manufacture. Imports from each country compete direct with each other and with the SHG, HG and GOB zinc produced by the Community industry. The dumped imports from Russia and Poland also exhibit similar pricing behaviour.

(43) On that basis the Commission considers that the requirements laid down in Article 3 (4) of the Basic Regulation are met and that accordingly the effect of the imports from Poland and Russia should be cumulatively assessed.

4. Volume and market share of the dumped imports

(44) Imports of the product concerned from Russia and Poland into the Community have grown from 19 683 tonnes in 1991 to 66 004 tonnes in 1992, to 123 821 tonnes in 1993, to 103 653 tonnes in 1994, and amounted to 107 572 tonnes during the investigation period (an overall increase of 547 % over four years). Between 1991 and the end of the investigation period dumped imports have therefore increased both in absolute terms and in relative terms, and those increases appear to be significant.

(45) The market share of unalloyed unwrought zinc from Russia and Poland went up from 1,06 % in 1991 to 5,28 % during the investigation period.

5. Price undercutting and other price effects

(46) In order to determine whether the exporting producers were undercutting the prices of the Community producers during the investigation period, a price comparison was made on the basis of the Community industry's prices to industrial users and sales made to industrial users by the exporters at a released-for-free-circulation level in the Community.

(47) The Community industry's prices were established on the basis of the monthly-average LME prices for the investigation period plus a factor of 3 % to cover currency hedging and zinc hedging costs normally associated with the production and sale of refined zinc. This was found to reflect faithfully the actual commercial price for zinc intended for consumption by industrial users.

Hedging should be understood to be a means by which a party who deals in the purchase (zinc concentrates) or sale (unalloyed unwrought zinc) of commodities in large quantities for actual delivery at some future time insures itself against unfavourable changes in price of such commodities by entering into compensatory arrangements or counterbalancing transactions on the other side.

Since all purchases of zinc concentrate and sales of unalloyed unwrought zinc are normally based on the LME daily zinc quotation price which is always traded in US dollars, the Community industry also has to hedge its sales against movements in their invoiced currency against the US dollar for all agreed future sales.

The method based on LME prices was chosen because, given the nature of the zinc market, invoice prices are a less reliable guide to day-to-day commercial prices. Indeed, the invoice price often relates to a price agreed when the order was first received and therefore corresponds to the LME price at the time of order and not to a value when the transaction is completed, which would be based on the most recent LME quotation instead.

(48) On that basis, the examination of the price of the Russian and Polish dumped imports has shown consistent and significant price undercutting (up to 47 %) of the Community industry's prices to industrial users during the investigation period, as well as consistent and significant price undercutting of the London Metal Exchange world price. This appeared to be almost always the case, irrespective of whether the LME price had been falling or rising.

(49) The level of undercutting (as defined in recital 47) for imports originating in Russia was found to be on average 5,5 %, and for imports originating in Poland between 8,8 % and 18,5 %.

6. Situation of the Community industry

(a) *Production*

(50) Community industry production of the product concerned over the period under examination has been in decline, by indexation, from 100 in 1991 to 92 in the investigation period. Only some producers have been able, through investment, to redirect some of their production into the alloys sector (such as Zamak, a zinc/aluminium alloy) where fewer imports compete.

(b) *Capacity utilization*

(51) The Community industry was working at more than 90 % capacity utilization during the investigation period. However, the investigation showed that, because of the special nature of the production process and the high fixed costs linked to the production of unalloyed, unwrought zinc, capacity must be as fully used as possible, even when this means that sales of the final products would afterwards be made at a loss. Indeed, there are also high variable costs incurred (such as high energy consumption for start-up) if production is interrupted.

(c) *Stocks*

(52) Although overall internal stocks (namely those held by zinc refiners themselves) of SHG zinc had decreased, by indexation from 100 to 80 (see recitals 39 and 64), the internal stocks of non-SHG zinc (not saleable through the LME system) had increased, by indexation, fom 100 in 1991 to 410 in the investigation period.

(d) *Sales*

(53) The Community industry has lost sales to industrial users in the Community (by indexation) from 100 in 1991 to 83 at the end of the investigation period. In particular, sales to the brass industry reveal a decline (by indexation) from 100 to 53 and in hot-dip galvanizing channels from 100 to 63 over the same period. This loss of sales, over the same period, in these two sectors is demonstrably much higher than the overall negative sales performance of the Community industry. The Community industry had also increased its sales through the LME system with a consequent downward pressure on its selling prices. The importance of the loss of sales volume can only be fully appreciated in the light of the fact that sales through the LME system (at a time of rising LME-approved stocks) are recorded as sales but are in reality merely increased stock volume which is often simply held by a third party and is therefore still present on the market (see recitals 37 and 38).

(e) *Market share*

(54) The complainant Community industry's market share has declined from 38 % in 1991 to 31 % in the investigation period, compared with a relatively stable consumption in the Community, with a much higher market share loss in the brass and hot-dip galvanizing sectors (see recital 53).

(f) *Price developments*

(55) Since the price of zinc, as an internationally traded commodity, fluctuates for reasons not always associated with industrial demand, it does not appear

meaningful to carry out an analysis of the development of the Community industry's prices in relation to those of the dumped imports in isolation, without considering movements in the LME price. On this basis the price effects discussed below were found:

(g) *Price undercutting and associated prie depression*

(56) The Polish and Russian dumped imports have been found to undercut the Community industry's prices (as defined in recitals 48 and 49) to such an extent that there was a clear loss of direct sales to industrial users. It should be further recalled that those sales lost to the dumped imports also forced a shift from direct sales to industrial users to sales through the LME. This meant that the Community industry obtained a lower price than it could have obtained otherwise. This had a double effect on prices:

(i) lower price was achieved on such sales, as sales made in this way forgo any premium on the LME price customarily obtained when the sale is made to industrial users of the metal. Furthermore, a seller also incurs other costs (such as broker's fees) associated with such a sale;

(ii) the increased supply of metal into LME-approved warehouses served to contribute to an increasing supply of the metal, over and above known demand at the time.

Both these effects appear to have depressed zinc prices.

(h) *Profitability*

(57) Most of the Community zinc producers have recorded substantial losses, especially those involved in the production of GOB zinc. Losses, as a percentage of turnover have increased from 0,8 % in 1991 to 4,5 % in the investigation period.

(i) *Employment*

(58) The reduction in the number of workers employed in the production of unalloyed, unwrought zinc has been considerable, from 5 516 in 1991 to 5 367 in 1992, 4 677 in 1993 and 4 222 during the investigation period, representing a decrease of 23,5 % over the period concerned.

7. Conclusions on injury

(59) The findings in the factors concerning injury were as follows:

— production volume has decreased by 8 %,

— with regard to stocks, the increase in Community industry non-SHG stocks and LME SHG stocks indicated that there had been a continuing downward pressure on selling prices,

— the complainant Community industry's share of the Community market has declined from 38 % in 1991 to 31 % in the investigation period,

— in the investigation period, the dumped imports from Russia and Poland amounted to approximately 108 000 tonnes and the cumulated market share increased from just under 1 % in 1991 to 5,3 % during the above period,

— both price undercutting and price depression have been demonstrated,

— employment has declined by 23,5 %,

— the Community industry has seen a five-fold increase in the level of losses incurred.

(60) Thus there appear to be clear indications of material injury in the analysis of the relevant economic factors concerning the Community industry. This is especially evident in the Community industry's sales performance in the brass and hot-dip galvanizing sectors of its overall market (as regards market share and sales volume), as well as in the high level of losses made by the Community industry.

In view of the above the Commission concluded that the Community industry has been suffering material injury.

F. CAUSATION OF INJURY

1. Introduction

(61) The Commission examined whether the injury suffered by the Community industry was caused by the Russian and Polish dumped imports and whether other factors had caused or contributed to that injury and, if so, whether such injury caused by other factors was not incorrectly attributed to the dumped imports. The examination had to take account of the depressed state of the Community and international zinc markets during the investigation period and the consequent low prices for zinc.

2. Effect of the dumped imports

(62) The investigation has shown that given their purity, the dumped imports compete generally with the products of the Community industry and most directly in at least two clearly identifiable areas (hot-dip galvanizing and brass manufacturing). In those areas the Community industry has lost a particularly large proportion of sales, and trade with those sectors has declined from 30 % of total sales made by the Community industry in 1991 to 20 % of total sales during the investigation period. Given that total sales of the Community industry declined by 17 % over the same period, whilst those of the exporting countries concerned increased by over 500 %, it appears that the presence of the dumped imports is also clearly felt in the remaining market segments.

The competition from the dumped imports is carried out essentially on price. In this respect it should be noted that, because the Community industry operates on a refining margin between the cost of zinc concentrate (the raw material) and the value of refined zinc, any price undercutting of the standard market price has a disproportionate effect on the Community industry's cost structure. For instance, the refining margin between zinc concentrate (the raw material) and unalloyed unwrought zinc is between 45 to 50 % of the LME quoted price for SHG zinc. Consequently, an undercutting margin of 5 % on the LME quoted price would mean that the Community industry would have to forgo 10 % of its total margin if it was to compete at the same level of price.

(63) The Commission noted that, except for factors such as developments concerning the Community industry's domestic sales volume, its consequent market share and total Community consumption, the standard economic factors relevant to injury analysis are all directly affected to some degree by movements in the LME price, which sets the selling price of refined zinc and of the raw material used in the production process. The impact of these movements is further analysed in recital 65.

Nevertheless, it appears that the price undercutting practised by both the Polish and Russian producers has had an additional depressive effect on the ability of the Community producers to sell their production, over and above the cyclical depression of the LME price as reflected by the increasing stocks in the LME approved warehouse system. Since the Community industry price is transparent, in that it is dictated by the daily price quotations on the LME, any downward deviation from the selling price is injurious. Furthermore, as explained in recitals 38 and 56, the depression of the LME prices has been accentuated by the presence of the dumped imports.

(64) Within this framework, the significant lost sales in the brass and hot-dip galvanizing sectors brought about by significant price undercutting appeared to have had an injurious effect on the overall economic performance of the Community industry, since the industry, given the structural characteristics of zinc processing, could not respond by cutting prices or by significantly reducing production to save costs (see recital 51). The loss of these sales, the large increase in internal stocks of non-SHG zinc, and the consequent impact on the Community industry can be largely attributed to the imports from Poland and Russia. These dumped imports can therefore be considered, for the purposes of provisional findings, to have had a materially injurious impact on the Community industry.

3. Effects of other factors

(a) *Cyclical depression of the LME price*

(65) While it is likely that a portion of the Community industry's injury may have been caused by the cyclical depression of the LME zinc price (and even setting aside the question as to how much of this depression has been influenced by the availability of zinc at dumped prices), this, because of the nature of the zinc-refining business, cannot explain the totality of the injury found. If the price of zinc declines, the practice of currency hedging and zinc hedging both on sales and on purchases of zinc concentrates serves to soften the effects of downward price trends as the refiners' margin remain relatively stable (see recital 47).

(b) *Imports from other sources*

(66) It has been suggested that zinc originating in the People's Republic of China may also have caused injury to the Community industry. However, the import data received under the Community prior

surveillance system established under Council Regulation (EC) No 519/94 (1) indicate that no zinc originating in the People's Republic of China has been imported into the Community from 15 March 1994 until the end of the investigation period.

(c) *Over-capacity and high utilization of existing capacity*

(67) As to alleged over-capacity and to allegations of excessive capacity utilization, it has to be noted, first, that the capacity of the Community industry has already declined by 9 % in real terms since the end of 1991, and secondly that utilization is not elastic as a result of high cost associated with varying production volume (see recital 51). Thus a constant high level of capacity utilization appears to be a normal and necessary feature of zinc production.

(d) *External events*

(68) During the investigation period one Community producer suffered an explosion at its production facility and consequently this producer had to shut down production for a significant period of time. However, any shortfall in production of this producer was taken up by another Community producer on a tolling basis, after reactivating its own dormant GOB facilities. Therefore this event has had no effect on the overall performance of the Community industry.

(e) *Exchange rate of the US dollar*

(69) There had been a continual decline in the value of the US dollar (LME zinc prices are quoted in US dollars) in the investigation period. This may have had an impact on overall profitability of the Community industry, in relation to its fixed, and some variable costs (in Community currencies), compared to the LME US dollar price. However, this effect of the decline in the US dollar appears to have been offset by the parallel decline in raw material costs (also bought in US dollars) and by the universal practice of currency hedging.

4. Conclusion on causation

(70) There is strong evidence of a causal link between dumped imports and the material injury found. In particular, whilst the Community industry has seen Community consumption remain relatively stable:

— sales to the brass industry have fallen by 47 % and to hot-dip glavanizers by 37 %, which has contributed to an overall decline in sales of 17 % (as mentioned above, it is in the brass and hot-dip galvanizing sectors that the Community industry competes most directly with the dumped imports),

— Polish and Russian exports were sold below an already cyclically depressed (LME) world-recognized price, as well as substantially below the established Community industry price,

— consequently, even if it cannot be ruled out that other factors such as low world prices and Community prices may have contributed to the unsatisfactory financial performance of the Community industry, the injury suffered by reason of the dumped imports due to the margin of price undercutting found, is nevertheless material.

G. COMMUNITY INTEREST

(71) Pursuant to Article 21 (1) of the Basic Regulation, the Commission examined, on the basis of all the evidence submitted, the aspects pertinent to the assessment of Community interest. In such an examination, special attention must be paid to the need to remove trade-distorting effects of injurious dumping in order to restore fair and effective competition on the Community market. The need to remove the injurious effects of dumping is balanced by the requirement to assess, in cases where dumping, injury and causation are found to exist, whether there are compelling reasons indicating that the imposition of measures would be contrary to the interests of the Community.

No comment has been received from users on any aspect of Community interest, despite an invitation to do so, as contained in the Notice of Initiation of the proceeding.

1. Interest of the Community industry

(72) The countries concerned have been found to have sold below the easily identifiable world market price for export and below the normal value (based on prices in Poland, for both countries) and to have

(1) OJ No L 67, 10. 3. 1994, p. 89.

caused material injury to the Community industry. The continuation of such injury in the medium to long term appears likely to result in plant closures, some of which may be in areas of the Community which are already recognized as being economically deprived.

2. Impact on user industries

(73) Although no representations have been made by importers or users of the dumped products, the Commission has examined the effect on user industries of measures (in particular hot-dip galvanizers and the brass industry). Such effect should be minimal, as the basis of any measure (in accordance with the provisions of the 'lesser duty rule' as explained in recital 76) will take account of the level of the universally recognized world commodity price for zinc. Those customers who have relied on dumped imports for their inputs would not suffer a competitive disadvantage, as the price of zinc in the Community will still be dictated by the LME. Moreover, measures would also ensure that those parts of the user industry that have not had access to the dumped imports will be able to compete more fairly with those users who have had an unfair competitive advantage from buying the dumped imports.

3. Other arguments concerning Community interest

(74) Two of the Community producers most threatened by the dumped imports (those that produce GOB zinc) have production facilities located in already economically vulnerable areas (Sardinia and Nord-Pas-de-Calais). Furthermore, other Community producers are also located in similar areas in Belgium and in Germany. Consequently, any plant closures or rationalization of production would have a disproportionate effect on the economies of the local areas of these producers.

4. Conclusion

(75) On the basis of the information submitted, it can be concluded that it is in the Community interest to apply measures to eliminate the trade-distorting effects of injurious dumping and to restore fully fair and effective competition, since no compelling reasons have emerged which would justify the non-imposition of measures.

H. PROVISIONAL DUTY

(76) In accordance with Article 7 (2) of the Basic Regulation, the Commission considered what level of duty would be adequate to remove the injury to the Community industry caused by dumping. For that purpose the injury elimination threshold was set on the basis of the monthly LME price during the investigation period, plus a factor of 3 % (ex-factory sales premium to cover, *inter alia*, the costs of currency hedging and zinc-price hedging — see recital 47). The injury margins were then calculated by a comparison with actual export prices for Poland at a released-for-Community-free-circulation level, on a monthly transaction-by-transaction basis. For Russia, the Eurostat monthly average price plus Community customs duty was considered to equal free circulation price in the Community and was then compared to the monthly average LME price plus 3 %.

(77) For Poland, all transactions were found to be carried out at a price level below the injury threshold level except for sales by one company during one month. These latter sales would appear to have been caused by a sudden drop in the LME price for zinc rather than by any change in export pricing policy by the Polish exporter concerned. Accordingly, those sales could not be taken into consideration whereas all other sales were taken into account for the determination of the injury elimination levels. The calculations resulted in the following:

Company	Dumping margin	Injury margin	lesser margin
Huta Cynku 'Miasteczko Slaskie', Miasteczko Slaskie	14,4 %	18,5 %	14,4 %
Kombinat Gornizco-Hutniczy Boleslaw, Bukowno	5,5 %	8,8 %	5,5 %
Residual duty	14,4 %	18,5 %	14,4 %

(78) For Russia, because of a total lack of cooperation, the Commission could only rely on import data obtained from Eurostat and data provided by the statistical offices of Austria, Finland and Sweden. Consequently, all sales were taken into account, except for sales in three months (for the same reasons as those set out in recital 77). The injury elimination level was found to be 5,5 % (that is, below the corresponding dumping margin) and should therefore form the basis for the duty.

(79) Although Russian and Polish exports were consistently sold below the LME price, no evidence has emerged in the investigation which could indicate that sales from Russia and/or Poland have depressed the LME price to such an extent (taking into account the conclusions laid down in recitals 38, 56 and 63) as to make the LME price unreliable for the purpose of calculating, the injury margin. Exports from Russia and Poland during the investigation period (not saleable through the LME) represented less than 0,07 % of total zinc value (SHG of approved brands only) traded through the LME.

I. FINAL PROVISIONS

(80) In accordance with the Europe Agreement between the European Communities, their Member States and Poland [1] and in the light of the conclusions of the European Council meeting at Essen, concerning consultations of CEECs in anti-dumping proceedings, the Commission informed the EU-Poland Association Council that its investigation had led to the conclusion that dumping was being practised by Polish exporters of the product concerned. In addition, the findings of the Commission were disclosed to the Polish co-operating parties and to the Polish authorities. In the absence of a solution satisfactory to the Commission, the Commission has decided to impose a provisional anti-dumping duty on imports of the product concerned originating in Poland, in accordance with the provisions of Article 7 of the Basic Regulation.

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of unalloyed, unwrought zinc falling within CN codes 7901 11 00, 7901 12 10 and 7901 12 30 originating in Russia and Poland.

2. The rate of duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows:

Country	Product manufactured and exported by	Rate of duty (%)	Taric Additional code
Poland	Kombinat Gorniczo-Hutniczy Boleslaw, Bukowno	5,5 %	8965
	Other companies	14,4 %	8900
Russia	All companies	5,5 %	—

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

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

Article 2

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

In accordance with 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 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.

[1] OJ No L 348, 31. 12. 1993, p. 1.

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

Done at Brussels, 25 March 1997.

For the Commission
Leon BRITTAN
Vice-President