COMMISSION REGULATION (EC) No 1084/98

of 28 May 1998

imposing a provisional anti-dumping duty on imports of stainless steel bars originating in India

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 last amended by Regulation (EC) No 905/98 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In August 1997 the Commission announced by a notice (hereafter 'notice of initiation') published in the *Official Journal of the European Communities* [3] the initiation of an anti-dumping proceeding with regard to imports into the Community of stainless steel bars (hereafter 'SSB') originating in India and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged by the European Confederation of Iron and Steel Industries (Eurofer) on behalf of Community producers representing a major proportion of the Community production of SSB. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

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

A number of exporting producers in India as well as some producers, importers and suppliers in the Community made their views known in writing. All parties who so requested within the time limits set in the notice of initiation were granted a hearing.

(4) The Commission sent questionnaires to all parties known to be concerned and received replies from a number of companies in the Community and India.

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

(a) *Community producers*

— Cogne Acciai Speciali Srl, Aosta, Italy,

— Krupp Edelstahlprofile GmbH, Siegen, Germany,

— Rodacciai SpA, Bosisio Parrini, Italy,

— Sprint Metal Edelstahlziehereien GmbH, Hemer, Germany,

— Trafilerie Bedini Srl, Peschiera Borromeo, Italy,

— Ugine-Savoie SA, Ugine, France.

During the verification visit to Rodacciai SpA the company withdrew its cooperation and consequently the information provided by this company could not be taken into account for the investigation.

(b) *Exporting producers in India*

— Bhansali Brightbars Pvt Ltd/Bhansali Ferromet Pvt Ltd, Mumbai,

— Facor (Ferro Alloys Corp. Ltd), Nagpur,

— Grand Foundry Ltd, Mumbai,

— Isibars Ltd, Mumbai,

— Mukand Ltd, Mumbai,

— Panchmahal Steel Ltd, Baroda,

— Raajratna Metal Industries Ltd. Ahmedabad,

— Venus Wire Industries Ltd, Mumbai,

— Viraj Alloys Ltd, Mumbai.

(c) *Importers in the Community related to exporting Indian producers*

— Isibars GmbH, Düsseldorf, Germany,

— Mukand International Ltd, London, United Kingdom.

(d) *Importers in the Community not related to exporting Indian producers*

— Thyssen Schulte GmbH, Dortmund, Germany,

— Ibero Edelstahlhandel & Co KG, Mülheim, Germany,

— Metaalcompagnie 'Brabant', Valkenswaard, Netherlands.

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 128, 30. 4. 1998, p. 18.
[3] OJ C 264, 30. 8. 1997, p. 2.

In the course of the investigation, it was found that Ibero Edelstahlhandel and Thyssen Schulte were, in fact, related to Community producers.

(6) After the initiation of the proceeding the Indian producer Sindia Steels Ltd applied for newcomer treatment in the sense of Article 11(4) of Council Regulation (EC) No 384/96 (hereafter referred to as 'the Basic Regulation'). The Commission then sought and verified all information deemed necessary for the purposes of a preliminary determination and carried out investigations at the premises of this company.

(7) The investigation of dumping covered the period from 1 October 1996 to 30 June 1997 (hereafter referred to as 'the investigation period' or 'IP'). The examination of injury covered the period from 1994 to the end of the IP.

(8) It should be recalled that on 30 October 1997 the Commission initiated an anti-subsidy investigation on the same originating in India [1]. This investigation is still in progress.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(9) The product concerned is stainless steel bars and rods, not further worked than cold-formed or cold-finished, containing by weight 2,5 % or more of nickel, of circular cross-section as well as of other cross-sections, currently classifiable within CN codes 7222 20 11, 7222 20 21, 7222 20 31 and 7222 20 81.

(10) Stainless steel is characterised by a significant content of nickel, chromium and in some instances molybdenum. These alloys protect stainless steel against corrosion. SSB are used by a variety of industrial users, such as the automobile, building, mechanical engineering and chemical industries.

(11) There exists a wide variety of types of SSB differentiated by alloy content, shape, tolerance and diameter. Despite the existence of these types of SSB, they all fall under the broad definition of SSB because they have the same basic physical, chemical and technical characteristics and the same uses and are distributed via the same distribution channels. They are consequently considered as forming one single category of product for the purposes of this investigation.

2. Like product

(12) The Commission found that SSB produced and sold in India as well as the SSB produced and sold in the Community were alike within the meaning of Article 1(4) of the Basic Regulation to the SSB exported from India to the Community because they had the same physical, chemical and technical characteristics and uses.

C. DUMPING

1. Normal value

(13) In order to establish normal value, for each exporting producer it was first analysed whether the volume of its domestic sales of the product concerned was representative in accordance with Article 2(2) of the Basic Regulation, i.e. whether these sales represented more than 5 % of the sales volume of the product concerned exported to the Community.

(14) It was then examined whether its total domestic sales of each product type constituted 5 % or more of the sales volume of the same type exported to the Community.

For those product types meeting the 5 % representativity test, it was assessed whether sufficient sales had been made in the ordinary course of trade in accordance with Article 2(4) of the Basic Regulation. Where, per product type, the volume of sales above unit cost was at least 80 % of the total domestic sales volume, normal value was established on the basis of the weighted average prices actually paid for all domestic sales. Where, per product type, the volume of profitable transactions was lower than 80 %, but not less than 10 % of the total domestic sales volume, normal value was established on the basis of the weighted average prices actually paid for the profitable domestic sales only.

Where, per product type, the volume of domestic sales was lower than 5 % of the volume destined for export to the Community, or where the volume of profitable domestic sales was less than 10 %, domestic sales of that product type were considered insufficient in the sense of Article 2(2) and (4) of the Basic Regulation and were therefore disregarded. In these cases, normal value was based on

[1] OJ C 328, 30. 10. 1997, p. 16.

the weighted average of the prices charged by other exporting producers in the country concerned for representative domestic sales of the corresponding product type made in the ordinary course of trade.

Where, per product type, there were no such representative domestic sales by other exporting producers in the country concerned, normal value was constructed in accordance with Article 2(3) and (6) of the Basic Regulation, i.e. on the basis of all costs of manufacturing incurred by the exporting producer concerned for the exported product type in question plus a reasonable amount for selling, general and administrative expenses (hereafter 'SG&A') and profit. The SG&A and profit were usually based on domestic sales of those product types of the like product made by the producer in question in representative quantities and in the ordinary course of trade. However, where the exporting producer concerned did not sell the like product on the domestic market in representative quantities or in the ordinary course of trade, the amount for SG&A and profit was established in accordance with Article 2(6)(a) of the Basic Regulation, i.e. on the basis of the weighted average of the actual amounts determined for other exporting producers subject to the investigation in respect of representative domestic sales of the product concerned made in the ordinary course of trade.

(15) The manufacturing costs of one company which did not sell the product concerned on the domestic market were found to be unreliable. Consequently, in accordance with Article 18 of the Basic Regulation, for those product types for which normal value had to be constructed, manufacturing costs were based on the weighted average of all manufacturing costs incurred by other exporting producers for the same product type plus a reasonable amount for SG&A and profit. The amount for SG&A and profit was established in accordance with Article 2(6)(a) of the Basic Regulation as indicated above.

2. **Export price**

(16) Where export sales to the Community were made directly so unrelated importers, in accordance with Article 2(8) of the Basic Regulation, export prices were established on the basis of the prices actually paid or payable by these independent customers.

(17) Where export sales were made to importers in the Community which were related to an exporting producer, in accordance with the provisions of Article 2(9) of the Basic Regulation, the export prices were constructed on the basis of the prices at which the imported products were first resold to independent buyers. Adjustments were made for all costs incurred between importation and resale, including a reasonable margin for SG&A and profit. The level of profit was determined on the basis of information on profits submitted by the co-operating unrelated importers of the products concerned in the Community where such information was considered reliable.

3. **Comparison**

(18) For the purposes of a fair comparison, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect price comparability. In accordance with Article 2(10) of the Basic Regulation, these adjustments were made in respect of import charges and indirect taxes, transport, insurance, handling and ancillary costs, packing, credit costs, commissions and currency conversions.

(19) Some companies claimed an allowance for currency conversions pursuant to Article 2(10)(j) of the Basic Regulation on the grounds that the foreign currencies in which they invoiced their export sales had devalued significantly against the Indian rupee during the IP.

These companies claimed that the date of sale should be the date of the purchase order and that the exchange rate prevailing 60 days before the purchase order date should be used for the dumping calculation.

However, as the companies concerned did not submit any evidence to show that at the time of the purchase order, precautionary measures had been taken to cover them against the currency exchange risk, it was assumed that this risk was implicitly accepted. Consequently, the claim was provisionally rejected but the matter will be investigated further.

(20) Some companies claimed an allowance for import duties due on imported raw materials. They based their claim on the 'Pass book scheme'. Under this scheme, when the finished goods incorporating the raw materials are exported, the import duties payable are compensated for in the form of import duty exemptions on future imports.

However, pursuant to Article 2(10)(b) of the Basic Regulation, this allowance was only granted where it was shown that the materials on which import duties were paid were physically incorporated in the product concerned sold on the domestic market and that the import duties were not collected or refunded in respect of the product exported to the Community.

(21) One company claimed an adjustment for differences in levels of trade on the grounds that, while it sold for export solely to distributors, it sold to both distributors and end-users on the domestic market. It was alleged that the prices charged to domestic end-users were consistently higher than the prices charged to domestic distributors.

This request was not granted since the company could not demonstrate that there were consistent and distinct differences in prices for the alleged different levels of trade in the domestic market. In particular, it was found for some product types that the average price to domestic end-users was lower than the average price to domestic distributors.

4. **Dumping margin**

(22) Pursuant to Article 2(11) of the Basic Regulation the dumping margins were established on the basis of a comparison between the weighted average normal value and the weighted average export prices at ex-factory level and at the same level of trade.

(23) The dumping margins expressed as a percentage of the net free-at-Community-frontier price were as follows:

— Bhansali Brightbars Pvt Ltd/Bhansali Ferromet Pvt Ltd, Mumbai	16,7 %
— Facor (Ferro Alloys Corp. Ltd), Nagpur	10,9 %
— Grand Foundry Ltd, Mumbai	12,2 %
— Isibars Ltd, Mumbai	17,7 %
— Mukand Ltd, Mumbay	17,3 %
— Panchmahal Steel Ltd, Baroda	11,4 %
— Parekh Bright Bars Pvt. Ltd, Thane	15,5 %
— Raajratna Metal Industries Ltd, Ahmedabad	14,4 %
— Venus Wire Industries Ltd, Mumbai	15,4 %
— Viraj Alloys Ltd, Mumbai	10,9 %.

(24) In the course of the investigation it was established that Bhansali Brightbars and Bhansali Ferromet were related companies. Given the risk that anti-dumping measures could be circumvented by channelling exports to the Community through the company with the lower dumping margin if two different margins were established, it was concluded that only one dumping margin, based on the weighted average of the dumping margin found for both, should be established for the two companies.

(25) For any exporting producer concerned which neither replied to the Commission's questionnaire nor otherwise made itself known, the dumping margin was determined on the basis of the facts available in accordance with the provisions of Article 18(1) of the Basic Regulation.

A comparison of Eurostat figures with the data on the volume of exports to the Community of the cooperating exporting producers was made in order to establish the level of cooperation in the current investigation.

Since the level of cooperation was high, the Commission's services considered it appropriate to base the dumping margin for non-cooperating companies on the highest dumping margin found for the cooperating exporting producers in the country concerned since there was no reason to believe that a non-cooperating exporting producer had dumped at a level lower than the highest found.

This approach was considered necessary in order to avoid creating a bonus for non-cooperation and an opportunity for circumvention.

Accordingly, the dumping margin provisionally established for the non-cooperating exporting producers in India is 17,7 %, expressed as percentage of the free-at-Community frontier price.

(26) With regard to the exporting producer mentioned in recital 6, it was established that all the conditions set out in Article 11(4) of the Basic Regulation for the initiation of a new exporter review were met. The Commission concluded that, in this particular case, the dumping margin applicable to this producer and to any company meeting the same conditions should be set at a level different to that applicable to non-cooperating exporting producers, which is at the highest level because of their non-cooperation and in order to prevent circumvention. In these circumstances it was considered appropriate that the weighted average dumping margin found for the cooperating Indian companies, i.e. 15,5 %, should apply to this company.

D. **INJURY**

1. **Community industry**

(27) The aggregated production of the five Community producers of SSB that had supported the complaint and fully cooperated with the Commission (see

recital 5) accounts for 45 % of total Community production. These companies constitute the Community industry as defined in Articles 4(1) and 5(4) of the Basic Regulation.

2. General remarks

(28) It will be recalled that the IP has a duration of only nine months. Therefore, for the purpose of comparison, the findings relating to the IP were extrapolated to 12 months in order to allow for a comparison on a yearly basis (hereinafter 'IP12').

3. Consumption in the Community

(29) The apparent consumption of SSB in the Community during the period January 1994 to June 1997 was based on total production in the Community plus total imports minus total exports. In this respect, the Commission relied on data provided by the Community industry, the other producers located in the Community and Eurofer, as well as on Eurostat statistics.

(30) During the period 1994 to June 1997 the total consumption in the Community expressed in tonnes amounted to 117 039 in 1994, 146 025 in 1995, 113 448 in 1996, and 148 457 in IP12.

4. Import volumes and market share of dumped imports

(31) The Indian import volume in tonnes developed as follows: 7 597 tonnes in 1994, 11 170 tonnes in 1995, 10 329 tonnes in 1996 and 8 311 tonnes in IP12, which corresponds to an overall increase of 2 732 tonnes or 36 % between 1994 and 1996.

(32) The Indian market share (based on Eurostat data) increased constantly from 6,5 % in 1994 to 7,6 % in 1995 and to 9,1 % in 1996. This corresponds to an increase of 40 % when comparing the years 1994 and 1996. During the IP the market share dropped but remained at the significant level of 5,6 %.

5. Prices of dumped imports from India and price undercutting

(33) It has been established for the period from 1994 to the IP that, based on Eurostat figures, imports from India have been made consistently at prices which undercut those of the Community industry. This analysis has been confirmed in detail for the IP.

(34) In particular, in order to establish whether prices of the cooperating Indian exporters undercut the Community industries' sales prices, a detailed analysis was carried out for each of them for sales made during the IP. This was done by comparing, per product type, their weighted average export prices with the weighted average sales prices of the Community industry to unrelated parties. If exports were made through related companies the export prices were duly adjusted for costs between importation and sales to the first independent customer. For the purposes of comparison, the products were grouped into product types according to steel grade, shape, diameter and tolerance.

(35) Adjustments to the Indian export prices were made where appropriate for transport costs and handling charges in order to arrive at the free-at-Community-frontier level, customs-cleared price.

(36) An adjustment to the sales prices of the Community producers was made for differences in levels of trade since it was found that the Indian producers sold to traders only whereas the Community industry sold to both traders and users, granting significant discounts to traders. The adjustment was made by reducing the Community industry's sales prices to end-users reflecting the discounts granted. Furthermore, the Community industry's sales prices were adjusted where appropriate for transport costs.

(37) The Indian exporting producers requested an adjustment for alleged quality differences, which could not be granted since the chemical composition of the product concerned is governed by international standards. The request was only made in a general manner, i.e. no company-specific information was provided by the Indian producers which, as a consequence, could not be properly verified.

(38) Similarly, Indian requests for an adjustment concerning (1) different lead times between order and delivery and (2) different price-setting mechanisms (Indian producers sell at fixed prices whereas Community producers use a base price system and add a alloy surcharge for nickel, chromium and molybdenum) could not be granted since it was not demonstrated that they affected price comparability.

(39) Furthermore, a request for an adjustment for differences in payment terms made by two Indian exporting producers could not be accepted. The Indian exporting producers had stated that, contrary to the payment terms applied by the Community industry, they used payment terms requiring payment approximately 30 days before the goods were delivered. This statement is contradicted by the findings of the Commission, which established that the Indian producers concerned apply payment terms requesting payment 60 days after the shipping date. Since transport from India to the Community does not exceed, on average, 30 days, the Indian producers received payment not before, but after delivery, as was found for the Community industry.

(40) Finally, the Indian producers requested that India's exemption from the 4,2 % customs duty on the product concerned under the GSP regime be taken into account for the calculation of price undercutting and injury elimination (see recital 75). According to to these producers the Indian export prices should be increased by 4,2 % 'as if' imports from India did not benefit from the GSP system. This argument was not accepted because the calculation of price undercutting is based on the actual prices paid on the market. Hypothetical duties can therefore not be considered. The relevant legislation, in particular Article 13 of Regulation (EC) No 3281/94, states that the granting of GSP treatment does not preclude to counteract injurious dumping.

(41) The comparison of the duly adjusted weighted average export prices with the weighted average sales prices of the Community industry showed that the Indian exporting producers had undercut the sales prices of the Community producers as follows:

— Bhansali Brightbars Pvt Ltd/Bhansali Ferromet Pvt Ltd, Mumbai	14,5 %
— Facor (Ferro Alloys Corp. Ltd), Nagpur	16,5 %
— Grand Foundry Ltd, Mumbai	13,3 %
— Isibars Ltd, Mumbai	19,5 %
— Mukand Ltd, Mumbay	17,9 %
— Panchmahal Steel Ltd, Baroda	13,9 %
— Parekh Bright Bars Pvt Ltd, Thane	15,5 %
— Raajratna Metal Industries Ltd, Ahmedabad	16,8 %
— Venus Wire Industries Ltd, Mumbai	13,2 %
— Viraj Alloys Ltd, Mumbai	19,8 %.

(42) For the Indian exporting producers Bhansali Brightbars and Bhansali Ferromet it was decided, for the reasons set out in recital 24, that only one undercutting margin, based on the weighted average of the undercutting margin found for both, should be established for the two companies.

(43) In the course of the investigation, certain Indian producers argued that the calculation of undercutting margins would be meaningless in the context of this investigation in view of the findings set out in a recent Commission Decision in competition matters (Case IV/35.814 — Alloy Surcharge) ([1]).

This Decision stated that Community producers of stainless steel, flat products, had modified 'in a concerted fashion the reference values used to calculate the alloy surcharge, a practice having the object and effect of restricting and distorting competition within the common market'.

It should be noted, however, that this Decision does not relate to the product subject to the anti-dumping investigation. SSB fall into the category stainless steel long products, as opposed to stainless steel flat products, the product concerned by the abovementioned Commission Decision.

The Indian companies confirmed this distinction, but alleged that a concerted practice also existed for SSB. Two of them lodged a formal complaint pursuant to Article 3 of Council Regulation No 17 ([2]). However, at this stage, no conclusive evidence was submitted or made available to the Commission which suggested that the producers of SSB had 'in a concerted manner agreed on a price setting mechanism of SSB'. In this context it is important to underline that the producers of stainless steel, flat products, and the producers of SSB are, to a large extent, not identical.

In addition, it was noted that, when comparing the sales prices of the Community industry, the sales prices for identical product types sold to comparable categories of customers varied substantially within the same time period. Moreover, it was noted that sales prices varied over different time periods (with a downward trend since 1995) resulting in different levels of profitability for the producers making up the Community industry over different periods. The Commission therefore concluded that, contrary to the allegation of the Indian producers, there was nothing at this stage of the investigation to indicate that the undercutting calculation was meaningless.

([1]) Commission Decision of 21 January 1998 (OJ L 100, 1. 4. 1998, p. 55).
([2]) OJ 13, 21. 2. 1962, p. 204/62.

6. **Situation of the Community industry**

6.1. *Production volume, capacity and capacity utilisation*

(44) During the period 1994 to June 1997 the total production of the Community industry expressed in tonnes amounted to 60 800 in 1994, 65 459 in 1995, 53 070 in 1996, and 66 640 in IP12.

(45) It was concluded that the total production of the Community industry had fluctuated over the recent years in reaction to changes in demand and low-priced imports from India. While 1995 in terms of production can be described as a successful year for the Community industry due to very high demand, 1996 showed a significant drop in the level of production. This was due to a decrease in Community consumption in 1996 and to the Indian exporting producers selling their products at very low prices, thereby undercutting the sales prices of the Community industry. During the IP, the production of the Community industry increased again, benefiting from higher demand, but only achieved lower sales prices.

(46) As far as the development of capacity and capacity utilisation is concerned, the Community industry uses the same machines for the manufacture of other products. Therefore, it is difficult to assess the precise capacity and capacity utilisation rates for the product concerned. Hence, it was considered appropriate not to draw any conclusions on the basis of these two factors.

6.2. *Sales volume*

(47) The sales volume by the Community industry to unrelated parties in the Community (expressed in tonnes) was 31 659 in 1994, 33 264 in 1995, 22 988 in 1996, 21 081 in IP and 28 108 in IP12, whereas the sales volume to related parties was 12 977 in 1994, 13 675 in 1995, 11 930 in 1996, 13 092 in IP and 17 456 in IP12.

(48) It was concluded that the sales volume to unrelated parties in the Community as well as the combined volume to unrelated and related parties in the Community followed a similar trend as was observed for the volume of production. Sales volumes have fluctuated over the past few years and 1996 showed a particularly significant drop. This trend was only reversed after significant price reductions during the IP with a higher sales volume in this period when compared with 1996.

(49) This development corresponds to a loss of more than 11 % of sales volumes to unrelated parties when comparing 1994 and IP12. In this respect it was also noted that the Community industry could not benefit from the overall growth in the market.

6.3. *Market share*

(50) While the market share of Indian imports increased significantly between 1994 and 1996 (see above), the same period showed a negative development in the market share of the Community industry. For sales to both related and unrelated parties it was noted that while the Community industry accounted for 38,1 % of the market in 1994, its market share amounted to 32,1 % in 1995 and 30,8 % in 1996. This corresponds to a loss of 19,2 %. The market share reached its lowest level in the IP with 30,7 %.

(51) As regards sales to unrelated parties only, it was established that the market share decreased significantly from 27 % in 1994 to 22,8 % in 1995 and to 20,1 % in 1996. Again, this corresponds to a loss of 25,6 %. The market share reached its lowest level in the IP with 18,9 %.

6.4. *Sales prices*

(52) The sales prices of the Community industry have followed a downward trend since 1995. In order to prevent further losses of market share the Community industry has lowered its prices by 21 % since 1995. Expressed in index form the sales prices decreased from 134 in 1995 to 126 in 1996 and to 106 in the IP (index 100 corresponds to 1994).

6.5. *Profitability*

(53) As regards profitability, the investigation showed that with one exception all the producers forming the Community industry were in a better financial situation in 1994 than during the IP. The profit margins of all companies dropped significantly, notably between 1995 and the IP, and one company in particular faced significant losses during the IP. The weighted-average profit margin during the IP was unsatisfactory for all but one producer due to the reduction in sales prices.

The index of the profit margin developed as follows: 100 in 1994, 312 in 1995, 151 in 1996 and 73 in the IP.

6.6. *Employment and stocks*

(54) As regards employment, the Community industry's workforce remained almost stable at 602 in 1994 to 592 during the IP. In some instances redundancies could only be avoided by short-time working.

(55) The stocks increased by more than 3 000 tonnes between 1994 and the IP and amounted to 10 923 tonnes by the end of the IP.

7. **Conclusions**

(56) From the above it can be concluded that the Community industry is suffering material injury. The main injury factors are the significant price undercutting practised by the Indian exporting producers, the consequent depression of the Community industry's sales prices, the unsatisfactory profitability, the significant gain in market share by the Indian exporting producers from 1994 to 1996 and the corresponding loss of market share by the Community industry; the losses in sales volumes and the increase in stocks.

E. **CAUSATION**

1. **Effect of the dumped imports**

(57) The rapid increase in the market share held by Indian imports (40 % between 1994 and 1996) and the substantial price undercutting found (up to 16,3 %) coincide with the deterioration of the situation of the Community industry, in particular its loss of market share, depressed prices and unsatisfactory profitability.

(58) When faced with dumped imports originating in India, the Community industry had the choice, after the successful year of 1995, of either maintaining its prices or of following the dumped prices with negative consequences for profitability. In 1996, some Community producers tried to maintain their sales prices at a high level, while others reduced them. Both strategies resulted in a negative impact on profitability either directly (lower prices) or indirectly (lower sales volume resulting in higher overheads per tonne sold). During the IP all Community producers lowered their sales prices still further, which again had a negative impact on their profitability. This clearly shows the price sensitivity of the market and the important impact of the price undercutting practised by the Indian exporting producers.

(59) Certain Indian exporting producers submitted that they had not caused any material injury since they only sold to a limited number of traders whereas the Community producers also sold to users and traders which were not customers of the Indian producers. Accordingly, there would only be limited competition between the Indian and Community products affecting 35 % of the total Community market. This argument is contradicted by the transparency of the market reacting quickly to changes in prices and the possibility for the Indian producers to sell to other purchasers in the Community.

2. **Other factors**

(60) The Commission also considered whether other factors such as the overall development of the market, the behaviour of the Community industry itself or imports from other countries could have caused the injury suffered by the Community industry.

(61) Certain Indian producers alleged that the complainant Community industry was inefficient and drew the attention in particular to the low rate of capacity utilisation. In any event, as indicated above, it was not considered appropriate to use the capacity utilisation rate as a decisive injury factor. However, any decrease in capacity utilisation would occur at a time of a substantial decrease in sales of the Community industry coinciding with an increase in dumped imports.

(62) In the course of the investigation it was also considered whether the situation of the producers in the Community which were not part of the Community industry as defined in recital 27 was any different from the situation of the Community industry. Due to a lack of verifiable information and taking into account the transparency of the SSB's market in the Community, in particular as regards prices, it is concluded that the other producers located in the Community are likely to have followed a similar trend to the cooperating producers.

(63) Furthermore, it was found that imports from other countries had had no decisive impact on the Community industry. These imports were made either in negligible quantities and/or at higher prices. Only Russian imports appear, on average, to have been made at lower prices than those from India, but the quantities imported during the IP accounted only for 1,2 % of the Community market.

(64) Finally, the Indian producers have argued that the prices of hot-rolled bars, i.e. the major raw material for the production of SSB, and the prices of SSB have not followed the same downward trend over recent years. This allegedly has led to difficulties for non-integrated producers, as they were forced to purchase their raw materials at higher prices. The difficulties of the non-integrated producers could therefore not be attributed to the Indian imports. The latter was not substantiated and could not therefore be taken into consideration at this stage.

3. **Conclusion**

(65) In view of the coincidence in time between the level of price undercutting, the reduction in the sales price of the Community industry and the unsatisfactory profitability, as well as the significant market share gained by the Indian imports from 1994 to 1996 (a trend which could only be reversed after price decreases by the Community industry) and the corresponding loss of market share suffered by the Community industry, it was concluded that the dumped imports from India, taken in isolation, had caused material injury to the Community industry.

F. **COMMUNITY INTEREST**

(66) In accordance with Article 21 of the Basic Regulation, and in order to evaluate whether the adoption of anti-dumping measures would be against the interest of the Community as a whole, the Commission examined the impact of measures on the various interests involved.

(67) Measures cannot be applied where the Community institutions, on the basis of all information submitted, clearly conclude that it not in the interest of the Community to apply such measures.

(68) In order to investigate this issue, questionnaires were sent to 59 users of SSB but no substantiated replies were received. This was considered as meaning that the outcome of the investigation would probably not have a significant impact on users, either because SSB are not a significant cost factor for them or because their production of downstream products relating to SSB only accounts for a small proportion of total production. Anyhow, it was noted that any price increase resulting from the anti-dumping measures would be moderate given the high number of competitors inside and outside the Community.

(69) 14 suppliers of raw material to SSB Community producers were also contacted. Their replies indicated that the re-establishment of fair trade would lead to benefits to this upstream industry from the point of view of production, sales, employment and profitability.

(70) Finally, it has been argued that it could not be in the interest of the Community to impose measures taking into account the aforementioned alleged practices in the calculation of the alloy surcharge. In this respect reference is made to the comments made above. Furthermore, consideration was given to the fact that no user replied to the Commission's questionnaire, arguing that purchase prices of the Community industry for SSB were injustifiably high.

(71) In short, there was no evidence to suggest that it was not in the interest of the Community to impose measures.

G. **PROVISIONAL DUTY**

(72) On the basis of the conclusions on dumping, injury, causal link and Community interest, the Commission considers it necessary to adopt provisional anti-dumping measures.

(73) For the purpose of determining the level of these measures, the Commission took account of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Community industry.

(74) To that effect, the Commission considered that the prices of dumped imports should be increased to a non-injurious level. The necessary price increase was determined on the basis of a comparison of the weighted average import price used to establish price undercutting, as outlined in rectial 34 et seq. with the weighted average cost of production of the Communtiy industry and a reasonable return on sales of the product concerned. In this respect a profit rate of 5 % on turnover was used. The Commission considers this profit level sufficient given the nature of the product concerned.

(75) This comparison showed the following injury margins (expressed in relation to the free-at-Community-frontier price level):

— Bhansali Brightbars Pvt Ltd/Bhansali Ferromet Pvt Ltd, Mumbai 18,3 %

— Facor (Ferro Alloys Corp. Ltd), Nagpur 11,5 %

— Grand Foundry Ltd, Mumbai 16,7 %

— Isibars Ltd, Mumbai 25,0 %
— Mukand Ltd, Mumbai 24,5 %
— Panchmahal Steel Ltd, Baroda 17,6 %
— Parekh Bright Bars Pvt Ltd, Thane 15,5 %
— Raajratna Metal Industries Ltd, Ahmedabad 21,2 %
— Venus Wire Industries Ltd, Mumbai 16,5 %
— Viraj Alloys Ltd, Mumbai 23,5 %.

(76) As regards the Indian producers Bhansali Brightbars and Bhansali Ferromet it was decided that only one injury margin, based on the weighted average of the margins for both, should be established for the two companies.

(77) For the newcomer Sindia Steels Ltd it was considered that, due to the lack of comparable data, the injury margin should be calculated using a weighted average of the injury margins of the cooperating Indian companies. This resulted in an injury margin of 22 %.

(78) In accordance with Article 7(2) of the Basic Regulation the duty rate should correspond to the dumping margin, unless the injury margin is lower. The following rates of duty therefore apply for the cooperating producers:

— Bhansali Brightbars Pvt Ltd/Bhansali Ferromet Pvt Ltd, Mumbai 16,7 %
— Facor (Ferro Alloys Corp. Ltd), Nagpur 10,9 %
— Grand Foundry Ltd, Mumbai 12,2 %
— Isibars Ltd, Mumbai 17,7 %
— Mukand Ltd, Mumbai 17,3 %
— Panchmahal Steel Ltd, Baroda 11,4 %
— Parekh Bright Bars Pvt. Ltd, Thane 15,5 %
— Raajratna Metal Industries Ltd, Ahmedabad 14,4 %
— Venus Wire Industries Ltd, Mumbai 15,4 %
— Viraj Alloys Ltd, Mumbai 10,9 %.

For Sindia Steels Ltd the duty rate should be 15,5 %.

(79) In order to avoid granting a bonus for non-cooperation, it was considered appropriate to establish the duty rate for the non-cooperating companies at the level of the highest duty rate found, i.e. 17,7 %.

H. FINAL PROVISION

(80) In the interests of 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 the findings made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of stainless steel bars and rods not further worked than cold-formed or cold-finished, containing by weight 2,5 % or more of nickel, of circular cross-section as well as of other cross-sections, falling within CN codes 7222 20 11, 7222 20 21, 7222 20 31 and 7222 20 81 and originating in India.

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

Manufacturer	Rate of duty (%)	Taric additional code
Bhansali Bright Bars Pvt Ltd, / Bhansali Ferromet Pvt Ltd, Mumbai	16,7	8226
Facor (Ferro Alloys Corp. Ltd), Nagpur	10,9	8400
Grand Foundry Ltd, Mumbai	12,2	8401
Isibars Ltd, Mumbai	17,7	8402
Mukand Ltd, Mumbai	17,3	8403
Panchmahal Steel Ltd, Baroda	11,4	8404
Parekh Bright Bars Pvt Ltd, Thane	15,5	8406
Raajratna Metal Industries Ltd, Ahmedabad	14,4	8405

Manufacturer	Rate of duty (%)	Taric additional code
Sindia Steels Ltd, Nashik	15,5	8406
Venus Wire Industries Ltd, Mumbai	15,4	8407
Viraj Alloys Ltd/Viraj Impoexpo Ltd, Mumbai	10,9	8400
All other companies	17,7	8900

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

4. The release for free circulation in the Community of the product 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 interested parties which 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 orally by the Commission within one month of the date of entry into force of this Regulation.

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

Article 3

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 28 May 1998.

For the Commission

Leon BRITTAN

Vice-President