COMMISSION REGULATION (EC) No 1556/98

of 17 July 1998

imposing a provisional countervailing duty on imports of stainless steel bars originating in India and amending Regulation (EC) No 1084/98 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 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1], and in particular Article 12 thereof,

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 [2], as last amended by Regulation (EC) No 905/98 [3], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In October 1997 the Commission announced by a notice (hereinafter referred to as 'notice of initiation') published in the *Official Journal of the European Communities* [4] the initiation of an anti-subsidy proceeding with regard to imports into the Community of stainless steel bars (hereinafter referred to as '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 subsidisation of the said product, 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.

The Government of India, 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 the Government of India and 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 of subsidisation and injury, 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) *Government of India*

— Ministry of Commerce, New Delhi,

— Undersecretariat for Customs, New Delhi,

— Ministry of Finance, New Delhi.

(c) *Exporting producers in India*

— Bhansali Bright Bars 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.

[1] OJ L 288, 21. 10. 1997, p. 1.
[2] OJ L 56, 6. 3. 1996, p. 1.
[3] OJ L 128, 30. 4. 1998, p. 18.
[4] OJ C 328, 30. 10. 1997, p. 16.

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

— Isibars GmbH, Düsseldorf, Germany,

— Mukand International Ltd, London, United Kingdom.

(e) *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.

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

(6) The investigation of subsidisation covered the period 1 October 1996 to 30 June 1997 (hereinafter referred to as 'the investigation period'). The examination of injury covered the period 1994 to the end of the investigation period.

(7) On 30 August 1997 the Commission initiated an anti-dumping investigation concerning imports of the same product originating in India [1]. This investigation is still in progress; provisional anti-dumping duties have been imposed by means of Commission Regulation (EC) No 1084/98 [2].

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(8) 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.

(9) 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.

(10) 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

(11) The investigation established that the SSB produced in India and sold domestically or exported to the Community and the SSB produced and sold in the Community by the complainant Community producers had effectively identical physical characteristics and uses and were thus like products within the meaning of Article 1(5) of Regulation (EC) No 2026/97 (hereinafter referred to as 'the Basic Regulation').

C. SUBSIDIES

1. Introduction

(12) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission investigated the following five schemes, which allegedly involve the granting of export subsidies:

— Passbook Scheme,

— Duty Entitlement Passbook Scheme,

— Export Promotion Capital Goods Scheme,

— Export Processing Zones/Export Oriented Units,

— Income Tax Scheme.

(13) The first four schemes are based on the Foreign Trade (Development and Regulation) Act 1992 (effective from 7 August 1992) which repealed the Imports and Exports Control Act of 1947. The Foreign Trade Act authorises the Government of India (hereinafter referred to as the 'GOI') to issue notifications regarding export and import policy. These are summarised in 'Export and Import Policy' documents which are issued every five years and updated every year. Two Export and Import Policy documents are relevant to the investigation period of this case, i.e. the five-year plans relating to the years 1992 to 1997 and 1997 to 2002.

The last scheme, the Income Tax Scheme, is based on the Income Tax Act of 1961 which is amended yearly by the Finance Act.

(14) The declared objectives of India's current Export and Import Policy are:

— to accelerate the country's transition to a globally-oriented vibrant economy with a view to deriving maximum benefits from expanding global market opportunities,

[1] OJ C 264, 30. 8. 1997, p. 2.
[2] OJ L 155, 29. 5. 1998, p. 3.

— to stimulate sustained economic growth by providing access to essential raw materials, intermediates, consumables and capital goods required for augmenting production,

— to enhance the technological strength and efficiency of Indian agriculture, industry and services, thereby improving their competitive strength while generating new employment opportunities, and encourage the attainment of internationally accepted standards of quality,

— to provide consumers with good quality products at reasonable prices.

(15) The Commission examined these five schemes in the light of the policies set out in the relevant 'Export and Import Policy' plans and in the Income Tax Act of 1961 as amended.

2. **Passbook Scheme (PBS)**

(16) One instrument under the Export and Import Policy involving export-related assistance is the PBS which entered into force on 30 May 1995.

(a) *Eligibility*

(17) The PBS is available to certain categories of exporters, i.e. those which manufacture in India and subsequently export ('manufacturer-exporters') and exporters, whether manufacturers or only traders, granted an 'Export House/Trading House/Star Trading House/SuperStar Trading House certificate'. The latter category of exporters, which is defined in the Export and Import Policy document, has to provide in particular proof of prior export performance.

(b) *Practical implementation*

(18) Any eligible exporter can apply for a Passbook. This takes the form of a book in which credit and debit amounts of duty are entered. It is issued automatically if the company is a recognised manufacturer-exporter or an approved Export/Trading House.

(19) Upon the export of finished goods, the exporter is eligible to claim credit which can be used to pay customs duties on subsequent imports. Various elements are taken into consideration in calculating the amount of credit to be granted in accordance with 'Standard Input/Output norms' which are issued by the GOI for exported products. Standard Input/Output norms set out quantities of normally imported raw materials required to produce one unit of the finished product. The norms are established by the Special Advance Licensing Committee on the basis of a technical analysis of the production process and global statistical information. By applying the Standard Input/Output norms, the credit is granted up to an amount corresponding to the basic customs duty payable on the normally imported inputs used by the Indian industry producing the exported product in question. One other element is the 'minimum value addition' (MVA). The MVA is the minimum value which the Indian producer must add (i.e. through indigenously sourced inputs/labour costs) to the value of imported inputs in producing the finished goods. The MVA for exports of the products concerned is fixed at 33 % by the Indian authorities.

(20) The credit granted is entered in the Passbook and is available to be offset against customs duties due on future imports of any goods (e.g. raw materials, capital goods, etc.) except those contained in the 'Negative List of Imports' as laid out in the Export and Import Policy. This List sets out goods which either may not be imported or which may only be imported after the GOI has issued a special licence to the importer. The imported goods need not have any relation to the actual production of the exporter and may be sold on the Indian market.

(21) Passbook credits are not transferable. The Passbook is valid for a period of two years from the date of issue. Any credit at the end of the two-year period is allowed to be utilised within a period of 12 months thereafter. At the end of the third year, any unutilised credit lapses. Within this general timetable there is no time limit for claims for credit to be made for a particular export transaction.

(22) When all credits in the Passbook have been used, the Passbook is closed and the Passbook holder has to pay a fee to the relevant authority.

(23) The GOI has stated in its reply to the questionnaire in relation to the PBS that:

'Under this scheme, the exporter retrieves import charges on the exported product, whereas there is no remission of import charges on the like product destined for consumption within the exporting country. In this respect the Scheme is in accordance with Council Regulation (EC) No 3284/94 (the anti-subsidy Regulation)'.

(24) In response to this point, it should be noted that there is no difference on this point between this latter Regulation, which has since been repealed, and its replacement, the Basic Regulation. Article 2(1)(ii) of the Basic Regulation provides that the exemption of an exported product from duties/charges shall not be deemed to be a subsidy provided that it is granted in accordance with the

provisions of Annexes I to III to the Basic Regulation. Item (i) of Annex I (the Illustrative List of Export Subsidies) specifies that the remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product constitutes an export subsidy. Furthermore, Annex II to the Basic Regulation requires investigating authorities, in determining whether inputs are consumed in the production process, to establish whether the government of the exporting country has in place a system or procedure to confirm which inputs are consumed in the production process of the imported product. In this case, no such system exists. In fact, the benefit granted in India to exporters of the products concerned in the form of Passbook credits is automatically calculated on the basis of the Standard Input/Output norms independently of whether inputs have been imported, duty has been paid on them or whether the inputs were actually used for export production.

Furthermore, the exporter is under no obligation to either import actual inputs or consume the imported goods in the production process under the PBS. What happens in the PBS, in effect, is that upon export of a finished product, an exporter is granted an amount of credit based on the amount of customs duty which is deemed to have been paid on normally imported inputs used in producing the finished product. This credit amount can be used to offset customs duty due on future imports of any product. A benefit accrues to the exporter in the form of unpaid customs duty on imports of any product (whether raw materials or capital goods). This scheme therefore allows an exporter to import goods without paying customs duty once it has previously exported some goods. Hence, the PBS is not a remission/drawback scheme within the meaning of item (i) of Annex I or Annex II to the Basic Regulation.

(c) *Conclusion on PBS*

(25) The PBS is not a permitted remission/drawback or substitution drawback scheme within the provisions of the Basic Regulation since the Passbook credit is not calculated in relation to inputs actually to be consumed in the production process. Furthermore, the exporter is under no obligation to import goods free of duty which must be consumed in the production process.

In any case, even if it were assumed that the scheme in question constituted a remission/drawback or substitution drawback scheme, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product within the meaning of item (i) of Annex I and Annexes II and III to the Basic Regulation. Annex II(II)(5) and Annex III(II)(3) of that Regulation provide that where it is determined that the government of the exporting country does not have such a system in place, a further examination by the exporting country based on actual inputs involved, or actual transactions, respectively, will normally need to be carried out in the context of determining whether an excess payment occurred. The GOI did not carry out such an examination. Hence, the Commission did not examine whether there was in fact an excess drawback of import charges on inputs consumed in the production of the exported product.

(26) The scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties forgone on imports confers a benefit upon the Passbook holder who can import goods duty free using credits earned on exports. It is a subsidy contingent in law upon export performance and is therefore deemed to be specific pursuant to Article 3(4)(a) of the Basic Regulation. In addition, the MVA requirement (see recital 19) is considered to require the use of domestic over imported goods. In this regard, the PBS is a specific subsidy within the meaning of Article 3(4)(b) of the Basic Regulation.

(27) In early 1997, the GOI announced that the PBS was effectively terminated and credit claims could no longer be made for export transactions taking place after 31 March 1997. An exporter may, however, continue to use a Passbook which has already been issued, for a period of three years after the date of issue. Additionally, there is no time limit within which claims for credit must be made for export transactions made before 31 March 1997. While the scheme in that form has technically been terminated, exporters can continue to benefit from this scheme by importing goods, free of customs duties, until all credits have been exhausted or until 31 March 2000 at the latest. In these circumstances, it is considered that the scheme can be countervailed.

(d) *Calculation of the subsidy amount*

(28) The benefit to the exporters has been calculated on the basis of the amount of customs duty normally due on imports made during the investigation period but which remained unpaid under the PBS. In order to establish the full benefit to the recipient under this scheme, this amount has been adjusted by adding interest during the investigation period.

Since the benefits from import duty exemptions are obtained regularly during the investigation period, they are equivalent to a series of grants. It is normal practice to reflect the benefit to the recipient of one-time grants by adding the annual commercial interest to the nominal amount of the grant, on the assumption that the grant is considered to have been made on the first day of the investigation period. However, in the present case, it is clear that individual grants can be made at any time between the first and the last day of the investigation period. Consequently, instead of adding annual interest to the whole amount, it is considered appropriate to assume that an average grant would have been received at the mid-point of the investigation period, and therefore the interest should cover a period of six months, equivalent to half of the annual commercial rate during the investigation period in India, i.e. 7,29 %. This amount (i.e. unpaid customs duty plus interest) has been allocated over total exports during the investigation period.

Nine companies benefited from this scheme during the investigation period and obtained subsidies of between 0,2 and 84,5. Where companies claimed deductions linked to the payment of fees for obtaining the PBS, these were granted. One of the companies claimed an additional deduction for costs incurred to obtain the subsidy; these costs consisted of consultant fees for handling PBS applications. Pursuant to Article 7(1)(a) of the Basic Regulation a deduction can be granted for any cost necessarily incurred in order to obtain the subsidy. Since companies can obtain the benefit without the need to have recourse to external consultants the deduction claim is not justifiable.

Facor (Ferro Alloys Corp. Ltd) provided incomplete verifiable information relating to this scheme. In accordance with the provisions of Article 28(1) of the Basic Regulation, provisional findings relating to subsidies received by this company under the PBS have been made on the basis of the facts available. In view of the absence of other reliable information from independent sources and in order to avoid rewarding non-cooperation, it was considered appropriate to apply the highest rate of benefit under the PBS established for other cooperating exporters to this company, i.e. 84,5 %.

3. **Duty Entitlement Passbook Scheme (DEPB)**

(29) Another instrument under the Export Import Policy involving export related assistance is the DEPB which became effective on 7 April 1997. The DEPB constitutes the successor to the PBS which was terminated on 31 March 1997. The DEPB is of two types:

— DEPB on pre-export basis,

— DEPB on post-export basis.

(a) *DEPB on pre-export basis*

(30) The DEPB on pre-export basis is available to manufacturer-exporters (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders) linked with manufacturers. To be eligible under this scheme, the company must have exported during a three-year period prior to submitting a claim for credit.

However, no producer/exporter of the product concerned applied for or made use of the DEPB scheme on a pre-export basis. There is therefore no need for the Commission to assess this part of the scheme in the context of the investigation.

(b) *Eligibility for DEPB on post-export basis*

(31) The DEPB on post-export basis is virtually identical to the PBS described above. It is available to manufacturer-exporters (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders).

(c) *Practical implementation of DEPB post-export basis*

(32) Under this scheme, any eligible exporter can apply for credits which are calculated as a percentage of the value of exported finished products. Such DEPB rates have been established by the Indian authorities for most products, including the products concerned, on the basis of the Standard Input/Output norms. A licence stating the amount of credit granted is issued automatically.

DEPB on post-export basis allows for the use of such credits for any subsequent imports (e.g. raw materials or capital goods) not on the Negative List of Imports. Such imported goods can be sold on the domestic market (subject to sales tax) or used otherwise.

DEPB credits are freely transferable. The DEPB licence is valid for a period of 12 months from the date of granting of the licence.

(33) When all credits have been used, the company has to pay a fee to the relevant authority.

(d) *Conclusion on DEPB on post-export basis*

(34) This scheme is clearly contingent upon export performance. When a company exports goods, it is granted a credit which can be used to offset amounts of customs duties due on future imports of any goods (whether raw materials or capital goods). Like the PBS, it is not a permitted drawback or substitution drawback scheme for the same reasons as stated above in recital 25. The scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties forgone on imports confers a benefit upon a company which can import goods free of customs duty. It is a subsidy contingent in law upon export performance and is therefore deemed to be specific pursuant to Article 3(4)(a) of the Basic Regulation.

(e) *Calculation of the subsidy amount for DEPB post-export basis*

(35) Some of the companies applied for credits under the DEPB on a post-export basis during the investigation period. However, in view of the fact no use was made of the credits during the investigation period no countervailable benefit has accrued to them. In this respect no subsidy margin has been established with respect to this scheme.

4. **Export Promotion Capital Goods Scheme (EPCGS)**

(36) Another instrument under the Export Import Policy involving export related assistance is the EPCGS introduced on 1 April 1990 and amended on 5 June 1995.

(a) *Eligibility*

(37) The EPCGS is available to manufacturer/exporters (i.e. every manufacturer in India who exports) or merchant/exporters (i.e. traders). Since 1 April 1997, manufacturers linked with merchant-exporters can also benefit from the scheme.

(b) *Practical implementation*

(38) To benefit from the scheme, a company must provide to the relevant authorities details of the type and value of capital goods which are to be imported. Depending on the level of export commitment which the company is prepared to undertake, the company will be allowed to import capital goods at either a zero rate of duty or a reduced rate. A licence authorising the import at preferential rates is issued automatically.

In order to meet the export obligation, goods exported must have been produced using the imported capital goods.

(39) An application fee is payable to obtain a licence.

(c) *Conclusion on EPCGS*

(40) The EPCGS is a countervailable subsidy as the payment by an exporter of a reduced or zero rate of duty constitutes a financial contribution by the GOI, revenue otherwise due is foregone and a benefit is conferred on the recipient by lowering the duties payable or fully exempting him from paying the import duties.

(41) The subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the Basic Regulation, since it cannot be obtained without a commitment to export goods, and is therefore deemed to be specific.

(d) *Calculation of the subsidy amount*

(42) The benefit to the exporters has been calculated on the basis of the amount of unpaid customs duty due on imported capital goods by spreading this amount across a period which reflects the normal depreciation of such capital goods in the industry of the product concerned. This period has been established by using the weighted average (on the basis of production volume of the products concerned) of depreciation periods for capital goods actually imported under the EPCGS by each company, resulting into a normal depreciation period of 15,5 years. The amount so calculated which is attributable to the investigation period has been adjusted by adding interest during the investigation period in order to establish the full benefit to the recipient under this scheme. Given the nature of this subsidy, which is equivalent to a one-time grant, the commercial interest rate during the investigation period in India, i.e. 14,58 % was considered appropriate. This amount has then been allocated over total exports during the investigation period.

Three companies availed themselves of this scheme during the investigation period and obtained benefits of between 0,1 and 1,1 %.

Facor (Ferro Alloys Corp. Ltd) provided incomplete verifiable information relating to this scheme. In accordance with the provisions of Article 28(1) of the Basic Regulation, provisional findings relating

to subsidies received by this company under this scheme could not be based on the insufficient information submitted and have been made on the basis of the facts available. In view of the absence of other reliable information from independent sources and in order to avoid rewarding non-cooperation, it was considered appropriate to apply the highest rate of benefit under the scheme established for the other cooperating exporters to this company, i.e. 1,1 %.

One company, Raajratna Metal Industries Ltd, availed itself of the scheme with regard to machinery imported for production of a product (wire rod) not subject to the investigation. The Commission verified that the imported machinery could only be used for finishing operations on wire rod sold separately, that is that the machinery was not used in the production of stainless steel bright bars at any stage in the manufacturing process (including the production of common raw material). For that company therefore, it is considered that no benefit is conferred on the production of stainless steel bars under this scheme.

5. **Export Processing Zones (EPZ)/Export Oriented Units (EOU)**

(43) Another instrument under the Export Import Policy involving export related assistance is the EPZ/EOU scheme which was introduced on 22 June 1994.

The Commission established that no producer of the product concerned was established in an EPZ or was an EOU. There is therefore no need for the Commission to assess this scheme in the context of the investigation.

6. **Income Tax Exemption Scheme (ITES)**

(44) The Income Tax Act 1961 is the legal basis under which the ITES operates. The Act, which is amended yearly by the Finance Act, sets out the basis for the collection of taxes as well as various exemptions/deductions which can be claimed. Among the exemptions which can be claimed by firms are those covered by Sections 10A, 10B and 80HHC of the Act.

(a) *Eligibility*

(45) Exemption under Section 10A can be claimed by firms located in Free Trade Zones. Exemption under Section 10B can be claimed by Export Oriented Units. Exemption under Section 80HHC can be claimed by any firm which exports goods.

(b) *Practical implementation*

(46) To benefit from the abovementioned deductions/exemptions from paying tax, a company will make the relevant claim when submitting its tax return to the tax authorities at the end of the tax year. The tax year runs from 1 April to 31 March. The tax return must be submitted to the authorities by the following 30 November. The final assessment by the authorities can take up to three years after submitting the tax return. A company can only claim one of the deductions available under the three sections mentioned above.

Under Sections 10A, 10B and 80HHC companies can claim exemption from taxable income for profits realised on export sales. Only the 80HHC income tax exemption was used by the companies during the investigation period.

(c) *Conclusion on ITES*

(47) Item (e) of the Illustrative List of Export Subsidies (Annex I to the Basic Regulation) refers to the 'full or partial exemption ... related to exports, of direct taxes' as constituting an export subsidy. Under the ITES, the GOI confers a financial contribution to the company by foregoing government revenue in the form of direct taxes which would otherwise be due if the income tax exemptions were not claimed by the company. This financial contribution confers a benefit on the recipient by reducing its income tax liability.

(48) The subsidy is contingent in law upon export performance in the meaning of Article 3(4)(a) of the Basic Regulation, since it exempts profits from export sales only, and is therefore deemed to be specific.

(d) *Calculation of the subsidy amount*

(49) As stated in recital 46, claims for benefit under Sections 10A, 10B and 80HHC are made when submitting a tax return at the end of the tax year. As the tax year in India runs from 1 April to 31 March, it is considered appropriate to calculate the benefit under this scheme on the basis of the tax year 1996/97 (i.e. 1 April 1996 to 31 March 1997) which covers six months of the investigation period. The benefit to the exporters has therefore been calculated on the basis of the difference

between the amount of taxes normally due with and without the benefit of the exemption. Account has been taken of the fact that some companies are liable to the payment of Minimum Alternate Tax which is an alternative method of calculating tax due under the Income Tax Act. The rate of corporate tax applicable during this tax year was 43 %. In order to establish the full benefit to the recipient, this amount has been adjusted by adding interest during the investigation period. Given the nature of this subsidy, which is equivalent to a one-time grant, the commercial interest rate during the investigation period in India (14,58 %) was considered appropriate. The amount of benefit has been allocated over total exports during the tax year 1996/97.

During the tax year 1996/97 six companies benefited from this scheme under Section 80HHC and obtained subsidies of from 0,7 to 2,8 %.

7. **Amount of countervailable subsidies**

(50) In view of the above, the total amount of countervailable subsidies for each of the investigated exporters is as follows:

	Passbook	DEPB	EPCGS	Income tax	Total
Bhansali Bright Bars	13,8 %			0,7 %	14,5 %
Facor	84,5 %		1,1 %		85,6 %
Grand Foundry	84,5 %				84,5 %
Isibars	38,7 %		1,1 %	1,2 %	41,0 %
Mukand	18,1 %		0,1 %	1,5 %	19,7 %
Panchmahal Steel	0,2 %		0,7 %		0,9 %
Raajratna	44,2 %			2,8 %	47,0 %
Venus Wire	22,9 %			1,9 %	24,8 %
Viraj Alloys	25,6 %			1,4 %	27,0 %

D. **INJURY**

1. **Community industry**

(51) 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 9(1) and 10(8) of the Basic Regulation.

2. **General remarks**

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

3. **Consumption in the Community**

(53) 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.

(54) 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 subsidized imports**

(55) The Indian import volume in tonnes developed as follows: 7 597 in 1994, 11 170 in 1995, 10 329 in 1996 and 8 311 in IP12, which corresponds to an overall increase of 714 tonnes or 9,4%, with a peak of 36 % (2 732 tonnes) between 1994 and 1996.

(56) 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 investigation period the market share dropped but remained at the significant level of 5,6 %.

5. Prices of subsidized imports from India and price undercutting

(57) It has been established for the period from 1994 to the investigation period 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 investigation period.

(58) In particular, in order to establish whether prices of the cooperating Indian exporters undercut the Community industrys' sales prices, a detailed analysis was carried out for each of them for sales made during the investigation period. 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.

(59) 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.

(60) 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.

(61) 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.

(62) 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 so-called 'alloy surcharge' for nickel, chromium and molybdenum) could not be granted since it was not demonstrated that they affected price comparability.

(63) 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.

(64) 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 97). According 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 Council Regulation (EC) No 3281/94 [1], as last amended by Regulation (EC) No 602/98 [2], states that the granting of GSP treatment does not preclude to counteract injurious dumping.

(65) The comparison of the duly adjusted weighted average export prices with the weighted average

[1] OJ L 348, 31. 12. 1994, p. 1.
[2] OJ L 80, 18. 3. 1998, p. 1.

sales prices of the Community industry showed that the Indian exporting producers had undercut the sales prices of the Community producers as follows:

— Bhansali Bright Bars 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, Mumbai 17,9 %

— Panchmahal Steel Ltd, Baroda 13,9 %

— Raajratna Metal Industries Ltd, Ahmedabad 16,8 %

— Venus Wire Industries Ltd, Mumbai 13,2 %

— Viraj Alloys Ltd, Mumbai 19,8 %.

(66) 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 Commission Decision 98/247/ECSC 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-subsidy investigation. SSB fall into the category stainless steel long products, as opposed to stainless steel flat products, the product concerned by the abovementioned 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 17/62 ([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 for 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.

6. **Situation of the Community industry**

6.1. *Production volume, capacity and capacity utilisation*

(67) 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.

(68) It was concluded that the total production of the Community industry had fluctuated over 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 investigation period the production of the Community industry increased again, benefiting from higher demand, but only achieved lower sales prices.

(69) As far as the development of capacity and capacity utilisation is concerned, the Community industry uses the same machines also 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*

(70) The sales volume by the Community industry to unrelated parties in the Community (expressed in

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

tonnes) was 31 659 in 1994, 33 264 in 1995, 22 988 in 1996, 21 081 in the investigation period 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 the investigation period and 17 456 in IP12.

(71) 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 fluctuated over the past few years and 1996 showed a particularly significant drop. This trend was only reversed after significant price reductions during the investigation period with a higher sales volume in this period when compared to 1996.

(72) 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*

(73) 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 investigation period with 30,7 %.

(74) As regards sales to unrelated parties only, it was established that the market share decreased significantly from 27,0 % 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 investigation period with 18,9 %.

6.4. *Sales prices*

(75) The sales prices of the Community industry followed a downward trend since 1995. In order to prevent further losses of market share the Community industry 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 investigation period (index 100 corresponds to 1994).

6.5. *Profitability*

(76) 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 investigation period. The profit margins of all companies dropped significantly, notably between 1995 and the investigation period, and one company in particular faced significant losses during the investigation period. The weighted average profit margin during the investigation period 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 investigation period.

6.6. *Employment and stocks*

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

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

7. **Conclusions**

(79) From the above it can be concluded that the Community industry is suffering material injury. The main injury factors are the significant price undercutting practiced 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 subsidized imports**

(80) 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.

(81) When faced with subsidized 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 subsidised

prices with negative consequences for profitability. In 1996, some Community producers tried to maintain their sales prices at a high level, whilst 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 investigation period 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.

(82) 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**

(83) 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.

(84) Certain Indian producers alleged that the complaining Community industry was inefficient and drew attention in particular to the low rate of capacity utilisation. In any event, as indicated above, it was considered not 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 subsidized imports.

(85) 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 51 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.

(86) 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 investigation period accounted only for 1,2 % of the Community market.

(87) 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 the last 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. This claim was not substantiated and could not be therefore taken into consideration at this stage.

3. **Conclusion**

(88) 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 subsidised imports from India — taken in isolation — had caused material injury to the Community industry.

F. **COMMUNITY INTEREST**

(89) In accordance with Article 31 of the Basic Regulation, and in order to evaluate whether the adoption of countervailing measures would be against the interest of the Community as a whole, the Commission examined the impact of taking or not taking measures on the various interests involved.

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

(91) 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 countervailing measures would be moderate given the high number of competitors inside and outside the Community.

(92) Fourteen 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.

(93) 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 unjustifiably high.

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

G. PROVISIONAL DUTY

(95) On the basis of the conclusions on subsidization, injury, causal link and Community interest, the Commission considers it necessary to adopt provisional countervailing measures.

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

(97) To that effect, the Commission considered that the prices of subsidized 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 recital 58 *et subseq.* with the weighted average cost of production of the Community 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 mature nature of the product concerned.

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

— Bhansali Bright Bars 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 %

— Raajratna Metal Industries Ltd, Ahmedabad 21,2 %

— Venus Wire Industries Ltd, Mumbai 16,5 %

— Viraj Alloys Ltd, Mumbai 23,5 %.

(99) In accordance with Article 12(1) of the Basic Regulation the duty rate should correspond to the subsidy margin, unless the injury margin is lower. The following rates of duty therefore apply for the cooperating producers:

— Bhansali Bright Bars Pvt Ltd, Mumbai 14,5 %

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

— Grand Foundry Ltd, Mumbai 16,7 %

— Isibars Ltd, Mumbai 25,0 %

— Mukand Ltd, Mumbai 19,7 %

— Panchmahal Steel Ltd, Baroda 0 %

— Raajratna Metal Industries Ltd, Ahmedabad 21,2 %

— Venus Wire Industries Ltd, Mumbai 16,5 %

— Viraj Alloys Ltd, Mumbai 23,5 %.

(100) 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. 25 %.

H. **FINAL PROVISION**

(101) 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.

(102) In accordance with Article 24(1) of the Basic Regulation no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidization. Considering that anti-dumping duties have been imposed on imports of the product in question it is necessary to determine whether and to what extent the subsidy and the dumping margin arise from the same situation.

(103) In the case in question all of the investigated schemes have been found to constitute export subsidies within the meaning of Article 3(4)(a) of the Basic Regulation. As such the subsidies can only affect the export prices of the Indian producers leading to increased margins of dumping. In other words the dumping margins established are wholly or partly due to the existence of export subsidies. In these circumstances it is not considered appropriate to impose both countervailing and anti-dumping duties to the full extent of the relevant subsidy and dumping margins established. In view of the fact the dumping margins are wholly or partly due to the existence of the export subsidies, the anti-dumping duties, imposed by Regulation (EC) No 1084/98, need to be adjusted to reflect the actual dumping margins remaining after the imposition of the countervailing duties offsetting the effect of the export subsidies,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing 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, Mumbai	14,5	8226
Facor (Ferro Alloys Corp. Ltd), Nagpur	11,5	8400
Grand Foundry Ltd, Mumbai	16,7	8401
Isibars Ltd, Mumbai	25,0	8402
Mukand Ltd, Mumbai	19,7	8403
Panchmahal Steel Ltd, Baroda	0	8404
Raajratna Metal Industries Ltd, Ahmedabad	21,2	8405
Venus Wire Industries Ltd, Mumbai	16,5	8407
Viraj Alloys Ltd, Mumbai	23,5	8410
All other companies	25,0	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

Article 1(2) of Regulation (EC) No 1084/98 is hereby amended as follows:

'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, Mumbai	2,2	8226
Facor (Ferro Alloys Corp. Ltd), Nagpur	0	8400
Grand Foundry Ltd, Mumbai	0	8401
Isibars Ltd, Mumbai	0	8402
Mukand Ltd, Mumbai	0	8403
Panchmahal Steel Ltd, Baroda	11,4	8404
Raajratna Metal Industries Ltd, Ahmedabad	0	8405
Venus Wire Industries Ltd, Mumbai	0	8407
Viraj Alloys Ltd, Mumbai	0	8410
All other companies	0	8900'

Article 3

Without prejudice to Article 30 of Regulation (EC) No 2026/97, 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 15 days of the date of entry into force of this Regulation.

Pursuant to Article 31(4) of Regulation (EC) No 2026/97, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 4

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

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

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

Done at Brussels, 17 July 1998.

For the Commission

Leon BRITTAN

Vice-President