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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 495/98

of 23 February 1998

imposing a definitive anti-dumping duty on imports of ferro-silico-manganese originating in the People's Republic of China, amending Regulation (EC) No 2413/95 in respect of anti-dumping measures concerning imports of ferro-silico-manganese originating in Ukraine and terminating the proceeding in respect of imports of ferro-silico-manganese originating in Brazil, South Africa and Russia

THE COUNCIL OF THE EUROPEAN UNION,

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], and in particular Articles 9(4) and 11(3) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. General

(1) By Regulation (EC) No 2413/95 [2], the Council imposed definitive anti-dumping duties on imports of ferro-silico-manganese originating in Brazil, Russia, South Africa and Ukraine. The measures imposed took the form of variable duties, set as the difference between a minimum import price for each of the countries concerned and the net free-at-Community frontier price, before duty, in all cases where the net, free-at-Community frontier price, before duty, is less than the minimum import price.

(2) In addition, the Commission accepted undertakings [3] offered by the South African and Ukrainian exporters. Subsequently, however, one of the South African exporters withdrew its undertaking, thus necessitating the amendment of the definitive measures imposed by Regulation (EC) No 2413/95 by Regulation (EC) No 92/96 [4] and the imposition of a variable duty against the company in question. Unless otherwise specified, the investigation which led to the imposition of the above measures is hereinafter referred to as 'the original investigation'.

(3) In Regulation (EC) No 2413/95, the Council requested the Commission to examine the Community market for ferro-silico-manganese following the imposition of the measures and to initiate a review thereof as promptly as possible, if the circumstances so warranted. As the available economic indicators showed that the market price for the product in question had dropped by 13 % between October 1995 and August 1996, it was decided to initiate an interim review of the measures for all the countries concerned.

(4) To this end, on 17 December 1996, the Commission announced, by a notice published in the *Official Journal of the European Communities* [5], the initiation of an interim review of Regulation (EC) No 2413/95, in respect of ferro-silico-manganese originating in Brazil, Russia, South Africa and Ukraine, and commenced an investigation (hereinafter referred to as the 'review investigation') pursuant to Article 11(3) of Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation').

(5) On the same date, a parallel investigation [6] was initiated in respect of imports of ferro-silica-manganese originating in the People's Republic of China (hereinafter referred to as the 'new investigation'), following a complaint lodged by EuroAlliages, the Association representing the Community producers of ferro-silico-manganese.

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).
[2] OJ L 248, 14. 10. 1995, p. 1.
[3] OJ L 248, 14. 10. 1995, p. 56.
[4] OJ L 18, 24. 1. 1996, p. 1.
[5] OJ C 381, 17. 12. 1996, p. 5.
[6] OJ C 381, 17. 12. 1996, p. 4.

(6) By Regulation (EC) No 1778/97 [1] (hereinafter referred to as the 'provisional Regulation'), the Commission imposed a provisional anti-dumping duty on imports into the Community of the product in question originating in the People's Republic of China.

(7) This Regulation therefore contains the definitive findings for both the new investigation concerning the People's Republic of China and the review investigation concerning Brazil, Russia, South Africa and Ukraine. Owing to the need for further, detailed examination of certain of the issues raised in both cases, the investigations exceeded the normal period of twelve months provided for in Articles 6(9) and 11(5) of the Basic Regulation.

(8) The Commission sought and verified all information it deemed necessary for the purposes of a definitive determination in both investigations.

2. **Review investigation**

(9) As concerns the review investigation, the Commission officially advised the Brazilian, Russian, South African and Ukrainian exporting companies, as well as the importers known to be concerned, the representatives of the exporting countries and the complainant in the original investigation of the initiation of the investigation. The parties directly concerned were also given the opportunity to make their views known in writing and if they so requested were granted an opportunity to be heard by the Commission. Written submissions were made by certain interested parties, making known their views on the findings.

With regard to the review investigation, the Commission, furthermore, sent questionnaires to all parties known to be concerned and received replies from two companies in Brazil, from two in South Africa and from two in Ukraine. The Commission also received a reply from an importer located in the United Kingdom, related to one of the South African companies.

(10) Verification visits with respect to the review investigation were carried out at the premises of the following companies:

(a) *Community producers (also concerned in the new investigation):*

— Sadaci S.A. Belgium,

— Dunkerque Electrométallurgie (DEM), France,

— Ferroatlántica S.A., Spain,

— Hidro-Nitro S.A., Spain,

— Fornileghe S.p.A., Italy,

— Italghisa S.p.A., Italy,

— Elettrosiderurgica Italiana S.p.A., Italy;

(b) *producers/exporters in Brazil:*

— Companhia Paulista de Ferro-Ligas (hereinafter referred to as 'CPFL'),

— Sibra Electrosiderurgica Brasileira S.A. (hereinafter referred to as 'Sibra');

(c) *producers/exporters in South Africa:*

— Samancor Limited (hereinafter referred to as 'Samancor'),

— Highveld Steel and Vanadium Corporation Limited (hereinafter referred to as 'Highveld');

(d) *importer related to a South African producer/exporter:*

— Samancor International Ltd, London (hereinafter referred to as 'SIL').

(11) All the parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend definitive measures in the review investigation. All parties were granted a period within which representations could be made. Their representations were taken into consideration and, where appropriate, the findings have been changed accordingly.

3. **New investigation**

(12) Following the imposition of the provisional anti-dumping measures concerning imports from the People's Republic of China, certain interested parties submitted comments in writing. Parties who so requested were granted an opportunity to be heard by the Commission.

(13) All the parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive measures in the new investigation concerning the People's Republic of China. All parties were granted a period within which representations could be made. Their representations were taken into consideration and, where appropriate, the findings have been changed accordingly.

4. **Investigation period**

(14) For both investigations, dumping was examined for the period from 1 January 1996 to 30 September 1996 (hereinafter referred to as 'the investigation period'). The examination of injury, and of the likelihood of recurrence of injury, covered the period from January 1993 to the end of 1996 with the actual figures for the whole year 1996 being

[1] OJ L 252, 16. 9. 1997, p. 6.

used. This was possible, exceptionally, as the investigation was initiated very close to the end of 1996 and led to a more accurate year to year comparison, instead of figures extrapolated from the nine month investigation period. The detailed calculations for undercutting and underselling were, however, based on data established for the investigation period only.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(15) The product under consideration in both investigations is ferro-silico-manganese (hereinafter referred to as 'FeSiMn') falling within CN Code 7202 30 00. FeSiMn is used in the steel industry for deoxidization and as an alloy. It is mainly produced from manganese ore and silicon which are mixed together and brought to fusion temperatures in a furnace.

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

(16) In the course of the investigations, it was established that 90 % of consumption of FeSiMn in the Community consists of so-called 'standard quality FeSiMn' which has a manganese content of 65 % or more, a silicon content of 16 % or more (typically 17 %), a maximum carbon content of 2 % (typically 1,8 %), a maximum phosphorus content of 0,25 % and a maximum sulphur content of 0,04 %. The grain or lump dimensions of the standard quality product range from 10 mm to 200 mm. The remainder of Community consumption consists of other (non-standard) qualities, including 'low-carbon FeSiMn' (with a maximum carbon content of 0,10 %) and 'fines' or 'chips' which have a grain size of less than 10 mm.

(a) *Low-carbon FeSiMn*

(17) Following the imposition of provisional measures in the new investigation, certain companies argued that 'low-carbon' FeSiMn should be excluded from the scope of the measures. In this respect, it is noted again that although certain slight differences exist within the range of qualities which go to make up the like product, all qualities can be considered to be a single product since their main physical and technical characteristics and uses are the same.

(b) *Extension of the definition of the product under consideration*

(18) During the course of both investigations, EuroAlliages requested that the scope of the product under consideration be extended so as to include goods falling under CN code ex 8111 00 11 (i.e. 'unwrought manganese; powders'). EuroAlliages considered that this product was alike to FeSiMn imported under CN Code 7202 30 00.

(19) In order to investigate this issue further, EuroAlliages was invited to furnish additional data as well as to provide detailed information concerning the interchangeability of the two types of goods concerned. In this regard, however, EuroAlliages was not able to provide to the satisfaction of the Commission sufficient substantiated evidence in support of its request.

In consequence, the conclusion has been drawn that an extension of the product definition is not appropriate.

(20) It follows from the above that the product under consideration in the measures under review and in the provisional Regulation, is the same.

2. Like product

(21) As in the original investigation, it was found that FeSiMn produced and sold domestically or exported from Brazil and South Africa has the same basic physical and technical characteristics and uses as that produced in the Community and, therefore, can be considered as a like product within the meaning of Article 1(4) of the Basic Regulation.

(22) Similarly, FeSiMn exported by Russia, Ukraine and the People's Republic of China to the Community was found to be sufficiently alike not only to that produced by the Community industry but also to that produced and sold for domestic consumption in Brazil, the analogue country used for establishing the normal value for such exports from Ukraine and the People's Republic of China.

C. DUMPING

1. Brazil

(a) *Preliminary remark*

(23) As in the original investigation, the two cooperating Brazilian companies are related to one another (CPFL being a subsidiary of Sibra) and have therefore been regarded as forming one legal and economic entity.

(b) *Dumping margin*

(24) It was established that the two cooperating companies had made no exports of the product under consideration to the Community during the investigation period, therefore it was not possible to calculate a dumping margin for them.

(25) Examination of Eurostat data showed that a relatively small amount of 2 019 tonnes of FeSiMn had been imported from Brazil into the Community during the investigation period (out of a total consumption in the Community of approximately 538 000 tonnes). One other producer of FeSiMn is known to exist in Brazil, therefore, these imports into the Community have been attributed to this company. In order to establish a dumping margin for the non-cooperating company, it is necessary in accordance with Article 18 of them Basic Regulation to use the facts available. In this particular case, the most appropriate facts available were considered to be the domestic sales of the cooperating exporters in Brazil as the basis for calculating normal value, and available Eurostat import data as the basis for calculating the export price. A comparison thus made between normal value and export price showed no dumping.

2. **Russia**

(26) One company located in Russia, Promsyrioimport, contacted the Commission after initiation of the review investigation and stated that it had made no exports of the product under consideration during the investigation period (see recital 10). In addition, examination of Eurostat data showed that only a minimal quantity of 25 tonnes of FeSiMn were imported from Russia into the Community during the investigation period (out of a total consumption in the Community of approximately 538 000 tonnes). In view of the negligible quantity of these imports, it was neither considered necessary nor appropriate to calculate whether they were at dumped price levels.

3. **South Africa**

(a) *Normal value*

(27) The investigation established that one producer's domestic sales volume of FeSiMn significantly exceeded the quantities of FeSiMn exported to the Community during the investigation period. Accordingly, the requirement of Article 2(2) of the Basic Regulation concerning the representativeness of domestic sales when compared with export sales was satisfied.

As concerns the prices of these sales, it was found that a number of domestic transactions in the investigation period were made at prices which were below the weighted average unit cost of the company during the same period. By volume, these sales accounted for more than 20 % and less than 90 % of its total sales to independent customers. In accordance with Article 2(4) of the Basic Regulation, these loss-making sales were disregarded for the purposes of calculating normal value, with normal value established on the basis of the remaining, profitable sales.

(28) As concerns the other producer, the investigation showed that this company had exclusively exported non-standard quality FeSiMn to the Community during the investigation period (FeSiMn 'chips'). Domestic sales of the same quality FeSiMn chips had also taken place during the investigation period, but in quantities which were insufficient to satisfy the requirement of Article 2(2) of the Basic Regulation concerning the representativeness of the quantity of domestic sales when compared to the quantity exported. In accordance, therefore, with the provisions of Article 2(3) of the Basic Regulation, cost of production plus a reasonable amount for selling, general and administrative costs and for profit was used as the basis for establishing normal value.

(b) *Export price*

(29) The investigation showed that one company's export sales of FeSiMn to the Community during the review investigation period had been made through a related importer based in the UK. In view of this association, the company's sales prices of FeSiMn exported to its related importer in the Community were considered unreliable for the purpose of establishing the export price in this investigation. In accordance, therefore, with the provisions of Article 2(9) of the Basic Regulation, the export price of this company was constructed on the basis of the weighted average sales prices of this related importer to the first independent buyer in the Community.

(30) In accordance with Article 2(9) of the Basic Regulation, adjustments made included transport, insurance, handling, loading and ancillary costs and a reasonable margin for all selling, general and administrative expenses (hereinafter referred to as 'SGA') and profits. As concerns the adjustment for profits, a profit margin for the related importer of 3 % was considered to be reasonable. This margin was also used in the original investigation for the purpose of calculating the company's export price.

(31) As concerns the other company, the export price of this company was established in accordance with Article 2(8) of the Basic Regulation, i.e. on the basis of the prices paid or payable.

(c) *Comparison*

(32) For the purpose of ensuring a fair comparison between normal value and export price, due allowance in the form of adjustments was made in accordance with Article 2(10) of the Basic Regulation where it was claimed and demonstrated that differences affected price comparability. In this regard, adjustments were made for transport, packing and credits costs.

(33) In accordance with the provisions of Article 2(11) of the Basic Regulation, the normal value of each company was compared to the export price of each company on a weighted average to weighted average basis, at ex-works level and at the same level of trade.

(d) *Dumping margins*

(34) The dumping margins thus established, expressed as a percentage of the CIF Community frontier price, were as follows:

— Samancor Limited: 0,0 %,

— Highveld Steel and Vanadium Corporation Limited: 0,0 %.

(35) As there are no other known producers of FeSiMn in South Africa and in view of the findings with regard to likelihood of recurrence of injury by South Africa (see Recital 109), it was not considered necessary to calculate a residual dumping margin.

4. **Ukraine**

At the outset, it should be pointed out that two Ukrainian exporting producers, namely Nikopol Ferroalloy plant (hereinafter referred to as 'Nikopol') and Zaporozhye Ferro Alloys Plant (hereinafter referred to as 'Zaporozhye') responded to the questionnaire. However, the latter company stated that it had not exported the product under consideration to the Community during the investigation period.

(a) *Analogue country*

(36) The Ukrainian authorities submitted that Ukraine should be treated as a market economy country for the purpose of the present review investigation. In this respect, it is noted that Article 2(7) of the Basic Regulation, in conjunction with Council Regulation (EC) No 519/94 [1], requires the Community institutions to consider Ukraine as a non-market economy country in the framework of anti-dumping proceedings in general and, consequently, also for the purposes of the present investigation.

(37) Accordingly, in order to calculate dumping, it is necessary to compare the export prices of Ukrainian producers/exporters with the prices or costs in a third country with a market economy (the 'analogue country'). To this end, the notice initiating the interim review envisaged the use of Brazil or the USA as an appropriate analogue country. In this regard, it should be recalled that Brazil also served as the analogue country for Ukraine in the original investigation.

(38) However, as it was not certain that cooperation would be forthcoming from Brazil or the USA (and in order not to delay the investigation in the event of non-cooperation), producers in Norway and India were also contacted with a view to seeking their cooperation in establishing the normal value for Ukraine. With the exception, however, of the two cooperating producers in Brazil, it was not possible to obtain sufficient cooperation in any of the other countries.

(39) In considering whether it would be appropriate and not unreasonable to use Brazil as the analogue country in the present review investigation, the following elements were taken into account:

— Brazil is a large-size market economy country with production and sale of FeSiMn governed by market forces,

— FeSiMn was imported into Brazil in not insignificant quantities during the investigation period, thus indicating that it is an open market,

— considerable quantities produced in Brazil were found to have been sold domestically during the investigation period, not only by the two cooperating companies but also by another Brazilian producer, which also indicates that it is a competitive market,

— the quantities sold domestically by the cooperating producers in the investigation period were sufficient to be considered representative within the meaning of Article 2(2) of the Basic Regulation when compared to the quantities exported to the Community by Ukraine,

— the products produced in Brazil and Ukraine have similar physical and technical characteristics and applications,

— the conditions of access to raw materials in the two countries are considered to be comparable.

[1] OJ L 67, 10. 3. 1994, p. 89.

(40) In view of the foregoing, Brazil was selected as the analogue country. Both cooperating Ukrainian companies agreed to the selection of Brazil as an appropriate analogue country and no objections to this choice were raised by any of the other interested parties in the review investigation.

(b) *Individual treatment*

(41) Nikopol and the Ukrainian authorities both submitted that individual treatment was warranted in this particular case and that a separate dumping margin should be established for this company. The investigation therefore sought to establish whether Nikopol enjoyed a degree of legal and factual independence from the Ukrainian State comparable to that which would prevail in a market economy country and, to this end, detailed questions regarding ownership, management, control and determination of commercial and business policies were addressed to the company.

(42) On the basis of the information supplied, the company was unable to demonstrate to the satisfaction of the Commission that it was sufficiently independent from State control or interference and, accordingly, the claim for individual treatment was rejected.

(c) *Normal value*

(43) Normal value for Ukraine was consequently determined on the basis of the prices of domestic Brazilian sales made in the ordinary course of trade.

(d) *Export price*

(44) Examination of the data provided by Nikopol showed that the company's export volume to the Community only accounted for approximately 60 % of all imports into the Community from Ukraine during the investigation period (based on Eurostat). As concerns the remaining 40% of imports (hereinafter referred to as the 'residual imports'), it should be recalled that the other Ukrainian producer of FeSiMn, Zaporozhye, had stated that it had made no exports of the product under consideration to the Community in the investigation period.

(45) Examination of the detailed export data furnished by Nikopol showed that the company had apparently observed the undertaking offered in the original investigation. The other company, Zaporozhye, had made regular reports to the Commission of its sales to the Community in accordance with the terms of its undertaking. These reports confirmed that, during the investigation period, it had not exported the product under investigation to the Community.

(46) Given the apparent observance of the undertakings by the two Ukrainian producers, it was concluded that companies which did not make themselves known during the review investigation, situated inside or outside Ukraine, may have traded FeSiMn of Ukrainian origin and exported it to the Community.

(47) In order to determine the export price for FeSiMn originating in Ukraine, on the one hand, the data presented by Nikopol were used and, on the other hand, as far as the significant volume of exports to the Community of FeSiMn of Ukrainian origin made by non-cooperating companies is concerned, the export price had to be established on the basis of the facts available, the most reasonable of which were considered to be those reported in Eurostat.

(e) *Comparison*

(48) For the purpose of ensuring a fair comparison between normal value and export price, due allowance in the form of adjustments was also made in accordance with Article 2(10) of the Basic Regulation where it was claimed and demonstrated that differences affected price comparability. In this regard, adjustments were made, where appropriate, for transport, insurance and credit costs and for differences in physical characteristics.

(49) The adjustment necessary to establish the normal value on the basis of 'fob port, Brazilian frontier level' was calculated by using averages of the freight/handling costs between the production plants and the Brazilian ports in respect of their normal export sales.

(50) As the delivery terms for Nikopol's exports were DAF Community frontier, adjustments for freight/handling were made to the reported sales prices to bring them back to ex-Ukrainian frontier level. Since the export price for the residual imports was based on the cif Community frontier price as reported by Eurostat, an adjustment for freight/handling was made to bring them also back to ex-Ukrainian frontier level. The amount of this adjustment was determined, in accordance with Article 18 of the Basic Regulation, on the basis of data provided by Nikopol.

(51) As in the original investigation with regard to Nikopol, an additional adjustment was made to take account of differences in physical characteristics between the Brazilian product and the Ukrainian product due to the Ukrainian product's higher phosphorous content. This adjustment covered also, in accordance with the original investigation, an amount for crushing and screening costs incurred in the analogue country, but not in Ukraine.

(52) In accordance with the provisions of Article 2(11) of the Basic Regulation, the normal value established in the analogue country was compared to the export price on a weighted average to weighted average basis.

(f) *Dumping margin*

(53) On a country-wide basis, the dumping margin thus established for Ukraine, expressed as a percentage of the cif price, free-at-Community frontier, is 10,4 %.

5. **The People's Republic of China**

(a) *Individual treatment*

(54) Following imposition of the provisional measures, one Hong Kong based trader, Glory Profit Development Limited (hereinafter referred to as 'Glory Profit') claimed that it and/or its related producers in the People's Republic of China should be granted individual treatment. This claim could not be accepted as neither Glory Profit nor its related producers applied for individual treatment within the deadlines specified in the questionnaires. Moreover, individual treatment cannot be granted to a trader which can purchase the product under investigation from any producer in the country concerned (see recital 18 of the provisional regulation). Also, the Chinese producers of FeSiMn related to Glory Profit do not qualify for individual treatment as they did not cooperate with the investigation.

(b) *Arguments concerning analogue country and normal value*

(55) As laid down in the provisional Regulation, Brazil was considered to be the most appropriate market economy analogue country for establishing normal value for the People's Republic of China. Following the imposition of the provisional measures, however, a cooperating importer questioned the use of Brazil as the analogue country, arguing that the two cooperating producers of FeSiMn in Brazil used for establishing normal value are owned by a Brazilian mining company which at the same time holds shares in a European FeSiMn producer. It was submitted that the calculation of the Brazilian normal value would be affected by the internal transfer prices for manganese ore between the producers of FeSiMn and a shareholder.

(56) It is considered, however, that such a situation does not contradict, and therefore affect, the findings in Recital 22 of the provisional Regulation, which sets out in detail the various reasons why Brazil is considered to be an appropriate analogue country for the People's Republic of China. In addition, it should be recalled that the normal value established in Brazil was based on domestic sales prices in Brazil, achieved in the normal course of trade. Also, no evidence was found during the investigation that the aforementioned shareholding would have affected prices or costs of the cooperating Brazilian producers because the sales were made on an arm's length basis.

It is therefore considered that the choice of Brazil as the analogue country for the People's Republic of China and the method for calculating normal value are appropriate, and are confirmed for the purpose of the definitive measures.

(c) *Export price*

(57) No new comments, evidence or arguments were received on this issue, therefore the findings set out in the provisional Regulation concerning export price are confirmed.

(d) *Comparison*

(58) It should be recalled that, for the provisional Regulation, a comparison of the export price with the normal value was carried out at the same delivery terms (i.e. the export price established at 'fob port, Chinese frontier' level was compared to normal value established at 'fob port, Brazilian frontier' level). Following the imposition of the provisional Regulation, the cooperating Chinese producers questioned the adjustments made to bring the Chinese export prices to an fob port, Chinese frontier basis.

(59) In this respect, it should be noted that in order to establish the fob port, Chinese frontier prices, not only the prices and sales conditions reported by the cooperating parties were taken into account, but also the prices established on the basis of the facts available for the non-cooperating producers/exporters.

(60) Since some of the transactions made by the cooperating parties were on a cif Community frontier price level, adjustments were made, where appropriate, for transport and insurance costs. In addition, it was noted that some of the transactions reported by the cooperatirtg parties were made via traders located in third countries. The functions performed by these traders were considered to be similar to those of a trader acting on commission basis, therefore, it was considered appropriate to make an adjustment to these transactions to take account of the traders' SGA and a reasonable amount for profits, in order to arrive at a fob port, Chinese frontier price.

(61) Adjustments were also made to the transactions attributed to the non-cooperating companies. As set out in the provisional Regulation, the export price for non-cooperating companies was established on the basis of the facts available. In this respect, it was considered appropriate to calculate the export price on a representative set of the lowest import transactions found for the biggest cooperating traders (see recital 26 of the provisional Regulation). Since the import transactions related to Community frontier prices, it was considered appropriate to make an adjustment for transport and insurance costs as well as for the commission covering traders' SGA expenses and a reasonable amount for profits.

(62) Following observations from the cooperating Chinese exporters, the question of the adjustment for commissions has been reviewed, since it was established that only a certain proportion of the Chinese transactions reported by the cooperating companies were made via traders in third countries. This led to a proportional correction of the adjustment, which in turn led to a slightly higher fob port, Chinese frontier export price.

(63) The cooperating Chinese companies also questioned the established practice of the Community Institutions of comparing the normal value with the export price at a fob national frontier level in anti-dumping investigations involving non-market economy countries. These companies did not, however, propose an alternative level or method of comparison.

Notwithstanding the comments of these parties, it is considered that fob national frontier level is normally the best method for ensuring a reliable and non-discriminatory comparison between normal value and export price since it avoids reliance on, (or estimation of), cost data in non-market economy countries.

Accordingly, the methodology used for comparison purposes in the provisional Regulation is confirmed.

(e) *Dumping margin*

(64) In view of the foregoing, the dumping margin for the People's Republic of China was calculated to have decreased from the provisional level of 26,1 % to a definitive margin of 25,7 %.

D. DEFINITION OF THE COMMUNITY INDUSTRY

(65) The six Community producers supporting the new complaint and cooperating in the review investigation were identical (see recital 9). In addition to these producers, two other producers were known to produce FeSiMn in the Community. One of them also supported the complaint and fully cooperated in the investigation.

The abovementioned seven cooperating producers account for almost all of the Community production of FeSiMn. Consequently, in accordance with Article 4(1) of the Basic Regulation the investigation of injury has focused on the economic situation of these seven producers, which are referred to as the 'Community industry' hereinafter.

E. INJURY

1. Preliminary remark

(66) It should be recalled that it was the conclusion of the Commission in the provisional Regulation that imports of FeSiMn originating in the People's Republic of China had caused material injury to the Community industry, when taken in isolation. In order to reflect the fact that this Regulation sets out the conclusions reached in the new and in the review investigations, the findings set out in the provisional Regulation applicable also to the review investigation are again set out below. All these findings are confirmed for the purpose of the definitive determination since they were not disputed by any of the parties.

2. **Consumption in the Community**

(67) The total consumption of FeSiMn in the Community was established on the basis of the total imports into the Community (Eurostat import statistics, plus the total sales made by the Community industry on the Community market. No reliable information was obtained from the one Community producer which did not support the complaint. However, according to available information, its sales on the Community market were negligible when compared with available data regarding total Community consumption and were therefore disregarded in the assessment of injury.

(68) Between 1993 and 1996 Community consumption of the product by weight concerned increased by 32 887 tonnes, or 7 %. During the same period, the consumption by value increased by 25 %. The difference between the two above trends may be explained by the fact that one type of FeSiMn, with a low carbon content, commands a higher price than standard types and was exported in increasing quantities to the Community market during the period under consideration, notably by Norway.

3. **Imports of FeSiMn in the Community**

(a) *Appropriateness of cumulation*

(69) In the original investigation the Commission concluded that, for the purpose of injury analysis, the effect of the dumped imports from Brazil, South Africa, Russia and Ukraine should be assessed cumulatively. It was considered that the product under consideration was imported from each exporting country in substantial quantities, held a significant market share and competed both with each other and with the FeSiMn manufactured by the Community industry.

(70) Imports originating in the People's Republic of China and Ukraine were, throughout the period under examination, made in significant quantities. Exports from Ukraine even increased in 1996 when compared to export levels in 1995. However, the question as to whether or not imports from the People's Republic of China and Ukraine should be cumulated can be left undecided since, as shown below, the Chinese imports have, when assessed in isolation, caused material injury to the Community industry while there is a strong likelihood of a recurrence of injury with regard to imports from the Ukraine should measures on these imports be repealed.

As far as imports originating in Brazil, Russia and South Africa are concerned, a cumulative analysis of these imports together with those originating in the Ukraine and the People's Republic of China appeared unnecessary in the framework of the present injury investigation in view of the findings on dumping set out above.

(b) *Volume, value and market share of imports from the People's Republic of China*

(71) Dumped imports, by volume, originating in the People's Republic of China increased from around 12 000 tonnes in 1993 to 75 400 tonnes in 1996, an increase of 526 %. During the same period, the value of these imports increased from around ECU 5,6 million to ECU 33,5 million — an increase of 502 %.

In terms of market shares based on total consumption, the market penetration of the dumped Chinese imports in volume rose almost six-fold from 1993 to 1996, from 2,4 % in 1993 to 14 % in 1996 — an increase of 488 %.

(c) *Prices of dumped imports*

(72) As mentioned above, for the determination of price undercutting with regard to the People's Republic of China, the data analysed referred to the investigation period. For this purpose, comparison was made between the weighted average sales prices of the exporting country concerned and the weighted average sales prices of the Community industry producing FeSiMn.

In the provisional Regulation the determination of price undercutting was made at end-user level. Following observations from the cooperating importers and producers/exporters, the calculation concerning undercutting was reviewed, since it was established that the majority of Chinese imports transactions were made with traders in the Community. Taking into account the fact that a significant part of the Community industry's sales was at the same level of trade, it was these transactions which were used for price comparison.

(73) On that basis, and by applying the methodology already used at the provisional measures stage, the comparison showed a weighted average price undercutting margin concerning the People's Republic of China, expressed as a percentage of the sales price, of 6,5 %. This margin is significant considering the price suppression suffered over several years by the Community industry (see recital 54 of the provisional Regulation).

4. **Situation of the Community industry**

(74) In order to fully assess the evolution of various injury indicators, the following should be taken into consideration as far as the period from 1994 onwards is concerned:

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

— the anti-dumping measures presently in force in respect of Ukraine, Russia, Brazil and South Africa are, depending on the producer/exporter concerned, in the form of price undertakings or variable duties based on minimum prices. The particular impact of these type of measures should be borne in mind when analysing certain injury factors for the time period after 1994.

(a) *Production, capacity and capacity utilisation*

(75) Overall Community production of FeSiMn rose from around 189 600 tonnes in 1993 to 249 100 tonnes in 1996, representing an increase of 31 %. During the period under investigation, the production capacity of the Community industry was stable. On the basis of an estimate of the capacity normally attributed by the Community producers to the production of FeSiMn, installed capacity remained unchanged between 1993 and 1996. Therefore the capacity utilisation rate rose from 48 to 64 %, which is in line with the increase in production. Nevertheless, even with this increase the rate of capacity utilisation remains at a very low level.

(b) *Stocks*

(76) Stocks significantly increased from around 29 400 tonnes in 1993 to 55 300 tonnes in 1996, an increase of 88 % (see Recital 46 of the provisional Regulation).

(c) *Sales*

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

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

(78) The increase in sales volume and value has to be seen in the light of the fact that consumption and sales prices have increased. The Community industry has, therefore, derived some advantage from this positive market situation. Profitability, however, still remains in a negative situation (see recital 55 of the provisional Regulation and recital 81 of this Regulation).

(d) *Market share*

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

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

(e) *Average sales price and price evolution*

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

The investigation has shown that the downward pressure on prices exerted by the dumped imports has prevented the Community industry from aligning its sales prices to its relative costs. Despite an increase of 14 % over the period under consideration, these prices were therefore significantly suppressed.

(f) *Profitability*

(82) The weighted average profitability of the Community industry, expressed as a percentage of sales, showed a loss of 27 % in 1993, which became a loss of 9 % in 1994. The relative improvement in the financial situation of the Community industry continued into 1995, when losses amounted to 3 %. The profitability of the Community industry deteriorated again in 1996 when losses increased (to − 7 %), despite higher sales prices and increased volume.

(g) *Employment*

(83) Between 1993 and 1996, employment in the Community industry decreased by 11 %.

5. **Final conclusion on injury**

(84) As already stated in recital 57 of the provisional Regulation, the situation of the Community industry improved between 1993 to 1995. However, this positive development has to be seen in conjunction with the effect of the measures imposed on imports from Brazil, South Africa, Russia and Ukraine.

(85) As far as the situation of the Community industry is concerned, sales, production and prices increased, additional market share was gained and profitability recovered from very severe losses (– 27 %) in 1993 to (– 3 %) in 1995. From 1995 to 1996, however, the situation of the Community industry deteriorated again (profitability – 7 %).

(86) In view of the above findings, it is concluded for the purpose of the definitive measures that the Community industry has suffered material injury within the meaning of Articles 3 and 11 of the Basic Regulation.

F. **CAUSATION**

1. **Effect of Chinese imports**

(87) Although consumption in the Community increased by 7 % between 1993 and 1996, the rising level of imports from the People's Republic of China, meant that its total market share increased from 2,4 % in 1993 to 14 % in 1996, i.e. by 11,6 percentage points, with a peak of 21,5 % in 1995.

In contrast, the Community industry increased its market share from 32,5 % in 1992, to 37 % in 1996, i.e. by 4,5 percentage points. This increase occurred between 1995 and 1996, that is after the imposition of measures against imports originating in Russia, Ukraine, Brazil and South Africa and did, in any event, not reflect the level the Community industry had held before injurious dumping started (see recital 50 of the provisional Regulation).

(88) In addition, significant price undercutting was found for the People's Republic of China, while prices of Ukrainian imports reflected exactly the undertaking prices. It should be recalled that the Commission, at recital 75 of the provisional Regulation, reached the preliminary determination that imports originating in the People's Republic of China had caused material injury.

(89) In this regard, Chinese producers/exporters claimed that Chinese imports had not caused material injury to the Community industry. They also argued that in 1993, Chinese import prices were above the prices of Brazil, Russia, South Africa and Ukraine. Furthermore, they argued that, in an effort to gain market share in the Community market, they had to decrease their prices in order to follow the other four exporting countries. In their view, Chinese imports did not dictate the price evolution in the Community market.

The Commission re-examined its findings and established that the Chinese dumped imports increased between 1993 and 1994 by 260 %, following the initiation of the initial investigation concerning Brazil, Russia, South Africa and Ukraine. In 1994, due to the uncertainty of the outcome of the anti-dumping investigation, it seems that Chinese exporters took advantage of the fact that some users had started to look for new, cheap sources of FeSiMn.

It was established that already in 1994, Chinese import prices were below the average prices of FeSiMn originating in South Africa and Brazil. It should be recalled that the initial provisional Regulation was adopted in December 1994 and that the effects of those measures were expected to produce results in 1995. In 1996 Chinese import prices were below the prices of the four countries and caused the Community industry's sales prices to remain depressed.

(90) The expected recovery of the Community industry was thus heavily hampered by the combination of a slight increase in volume and the low-dumped prices of Chinese imports in 1994, and a significant increase in volume of these imports in 1995 and 1996. The market share of Chinese imports increased from 2,4 % 1993, to 7,9 % in 1994 and 21,5 % in 1995. In 1996 Chinese imports lost 7 % of their market share for the reasons explained at recital 72 of the provisional Regulation.

For the reasons mentioned above, these arguments have to be rejected.

(91) Therefore, it is concluded that imports from China had a negative impact on the situation of the Community industry, which must be considered as material.

2. **Effect of other factors**

Norway

(92) Chinese producers/exporters also argued that the injury caused to the Community industry resulted from imports of FeSiMn of Norwegian origin and not from imports from the Peopfe's Republic of China.

It should be noted in this context that, with regard to imports of FeSiMn from Norway, its market share decreased from 34,4 % in 1993 to 29,1 % in 1996 and that the average import prices on the Community market for FeSiMn of Norwegian origin (according to Eurostat), in the calendar years 1993-1996, were always higher than the Chinese prices, the Community industry and all other exporting countries (see Recitals 69 and 70 of the provisional Regulation).

In these circumstances, it is considered that imports from Norway were unlikely to have been responsible for the injury suffered by the Community industry, and, accordingly, these arguments and claims have to be rejected.

3. **Conclusion**

(93) As no other arguments concerning causation of the injury sustained by the Community industry were submitted after the imposition of the provisional anti-dumping measures and in the light of the above considerations, it is hereby concluded that, even if other factors might have contributed to the injury suffered by the Community industry, the dumped imports of FeSiMn originating in the People's Republic of China have, taken in isolation, caused material injury to the Community industry. This conclusion in particular also takes into account the analysis of the impact of the imports originating in the countries covered by the review investigations as set out in recital 68 of the provisional Regulation.

G. **LIKELIHOOD OF RECURRENCE OF DUMPING AND INJURY (WITH REGARD TO THE COUNTRIES SUBJECT TO THE INTERIM REVIEW)**

1. **Preliminary remark**

(94) As a preliminary remark, it should be pointed out that the definitive measures imposed previously by Regulation (EC) No 2413/95 should normally have eliminated the effects of injurious dumping to the Community industry. With regard to imports originating in Ukraine, irrespective of whether or not injury resulting from these imports has actually been established, a reasoned forecast must also be made as to what would happen if the measures currently in force against this country were to be removed or varied. The same applies with regard to imports from Brazil, South Africa and Russia for which no dumping has been found.

2. **Brazil**

(95) Analysis of the data provided showed that the two cooperating exporters:

— during the investigation period had very high capacity utilisation levels for FeSiMn production (and, therefore, limited excess capacity),

— had increased their domestic sales volumes (by 11 % between 1995 and the investigation period),

— had significantly increased their export volumes to markets other than the Community (an increase of over 40 % was observed between 1995 and the investigation period).

(96) On the basis of the above, it is clear from the findings in the present investigation that, following the imposition of anti-dumping measures by the Community after the original investigation, both Brazilian companies have established themselves on non-Community markets where their product commands higher prices than those prevailing for FeSiMn in the Community. It was also found that the selling prices of such non-Community exports were higher than the prevailing unit cost of production for these producers during the investigation period.

EuroAlliages questioned, however, the amount of spare capacity available and argued that the producers would switch from producing silicon metal to FeSiMn in the absence of measures. It should be recalled that the assessment made by the Commission was based on actual data verified at the premises of the companies, in respect of production of FeSiMn. Although it is always theoretically possible that a company will shift production from one product to another, no evidence was submitted and no indications were found in this particular case that Brazilian producers are likely to abandon their silicon-metal customers in order to increase their Community market share of the product under consideration, especially when account is taken of the prices achieved in other markets for FeSiMn. The argument by EuroAlliages could not, therefore, be accepted.

(97) Account was also taken of the fact that anti-dumping duties of 64,93 % had been imposed by the United States of America in December 1994 on imports of FeSiMn from the two cooperating Brazilian companies. Following a review of these measures, the US authorities increased the dumping duties to 80,54 % in January 1997. In view of these high duty rates, it was also deemed necessary to consider whether any deflection to the Community of FeSiMn previously exported to the USA would occur if the present measures imposed by the Community were to be removed or varied.

(98) In this regard, it should be noted that the US measures were initially imposed during the same month as the Community imposed provisional measures, namely December 1994. Given that the dumping duty rate imposed by the USA was almost double that imposed by the Community, it might have been expected that a certain amount of FeSiMn formerly sold to the USA would have been diverted to the Community already at this stage. The investigation has however shown that this did not happen.

(99) Instead, the investigation showed that following the imposition of measures in the Community, the cooperating companies made no exports at all to the Community. Moreover, they made no export sales to the USA in 1994 and 1996, and only a minor amount in 1995. In view of the high capacity utilization rate and the increased and profitable sales in Brazil and various third countries, it is not unreasonable to conclude that the anti-dumping duties imposed by the USA against the two cooperating producers do not pose a significant threat to the Community in terms of risk of deflection of trade.

(100) Accordingly, it has been concluded that there is no likelihood of recurrence of injurious dumping within the meaning of Article 11(3) of the Basic Regulation by the two cooperating Brazilian companies if the measures imposed by the Community in the original investigation were to be removed.

(101) As concerns the amount of capacity available in the non-cooperating Brazilian company or companies, EuroAlliages submitted that significant quantities of FeSiMn would be exported to the Community, in the event of removal of the measures, by these companies.

(102) It should be recalled that only a small quantity of FeSiMn was exported to the Community, by the non-cooperating Brazilian producers, at non-dumped price levels to the Community during the investigation period (and which accounted for 0,4 % of total consumption in the Community).

Accordingly, in these particular circumstances and, given the behaviour of these companies, it is concluded that there is little likelihood of recurrence of injurious dumping if the residual anti-dumping measures currently in force against Brazil were also to be removed.

3. **Russia**

(103) In order to evaluate whether injurious dumping would be likely to recur if the measure currently in force against Russia were to be removed, reference must be made to the pattern of trade between Russia and the Community in the investigation period and the period leading up to it.

In this regard, it should be recalled that only 25 tonnes of Russian FeSiMn was imported into the Community in the investigation period, which meant that its share of the Community market was insignificant.

(104) On the basis of these data and in the absence of any other information concerning possible economic trends which would indicate the contrary, it is concluded that there is no likelihood of recurrence of injurious dumping by exports of Russian origin if the measure currently in force were to be removed in the meaning of Article 11 (3) of the Basic Regulation.

4. **South Africa**

(105) It should first be recalled that both South African producers were found not to be dumping during the investigation period. An analysis of each company's pattern of production and trade has been made, together with an overall assessment of whether South African FeSiMn would be likely to enter the Community again in significant quantities at dumped and injurious price levels.

(106) It should be noted that, traditionally, around 80 % of the total South African production of FeSiMn is exported. As far as domestic sales are concerned, the analysis showed that the sales volumes of FeSiMn of both producers declined by 18 % between 1993 and the investigation period. However, during the investigation period, domestic sales volumes showed a recovery. It was also apparent from the data presented that between

1993 and the investigation period that the volume of the two companies' exports of FeSiMn to the Community declined progressively each year to such a low level that their market share became insignificant (i.e. from 3 % in 1993 to 0,4 % in the investigation period).

(107) At the same time, an increase of 11,3 % in the volume of South African FeSiMn exports to other (non-Community) markets occurred between 1993 and the investigation period. Accordingly, it is concluded that the declining volumes of FeSiMn previously sold on the South African domestic market and to the Community have been replaced by increased sales to other markets. As concerns selling prices, it was established that both companies' average sales prices on all markets increased overall between 1993 and the investigation period. Whilst the average sales prices showed a modest overall improvement on the South African domestic market, more significant price increases were observed for sales to the Community and other export markets. In some cases, the average price increase was over 50 % between 1993 and the investigation period. With regard to the investigation period only, it was also noted that the companies exported to non-Community markets at average price levels which were both profitable and higher than the sales price achieved for their FeSiMn exports to the Community.

(108) It was also found that the companies' capacity utilisation in the investigation period would leave only a relatively limited amount of spare capacity available for production of (potential) additional FeSiMn for sales to the Community.

In this regard, on the basis of a trade publication, EuroAlliages questioned the finding that the amount of spare capacity available to the two South African producers was relatively limited. It should, however, be noted that the capacity data provided was verified by the Commission and that the assessment made thereon was based on actual data for the investigation period.

(109) Taking into account all the abovementioned factors, it is considered unlikely that significant quantities of FeSiMn will be exported to the Community by these two South African companies at dumped and injurious price levels should the measures be removed. It is therefore concluded that there is no likelihood of recurrence of the injurious dumping by the two sole South African exporters if the measures imposed in the original investigation by the Community were to be removed.

5. **Ukraine**

(110) At the outset, it should be recalled that FeSiMn imports into the Community from Ukraine during the investigation period accounted for approximately 4 % of total consumption in the Community, a not insignificant market share. In addition, Ukrainian imports were made at dumped, although not injurious price levels, during the period when the anti-dumping measures were in force.

(111) Examination of the replies of the two cooperating Ukrainian companies to the Commission's questionnaire shows that together they have an annual production capacity of over 1 300 000 tonnes for FeSiMn and, at present production levels, an enormous spare capacity for FeSiMn production. Indeed, the data provided show that whilst the Ukrainian installed capacities remained relatively stable between 1993 and the investigation period, actual production declined from over 700 000 tonnes in 1993 to around 557 000 tonnes during the investigation period. Overall capacity utilisation in the Ukrairie is therefore at a very low level and, in the investigation period, stood at around 42 %.

(112) As concerns sales volumes, examination of the data provided by the two exporters shows that their domestic sales volumes declined by over 37 % between 1993 and the investigation period. Export sales volumes to the Community fell by nearly 60 % over the same period and sales to non-Community markets decreased by just over 17 %. The overall decline in sales on all markets (domestic and export) was approximately 23 %.

(113) Given this situation, there is an apparent need for the Ukrainian producers to bring their capacity utilisation back to former levels by considerably increasing their production and, consequently, their sales volumes. Given the slump in demand on their domestic market in recent years it would appear that the main avenue open to them is to further develop their export sales. Whilst it is possible that the Ukrainian exporters might increase their exports to other, non-Community markets (as was found to be the case with the Brazilian and South African producers), it is considered more likely that they would try to regain lost market share in the Community if there were no longer any anti-dumping measures in force against them. This conclusion is corroborated by both the geographic proximity of the Ukraine to the Community market and by the fact that the Community has been a traditional customer for Ukrainian FeSiMn.

(114) In view of all the above factors, it is concluded that there is a strong likelihood that injurious dumping would recur, if the measures currently in force were to be removed.

H. COMMUNITY INTEREST

1. Introduction

(115) As the new anti-dumping investigation and the review investigation both concern the same market, namely the Community market for FeSiMn, the examination of the Community interest issue was made jointly for both investigations. The purpose of this analysis was to determine the possible impact of measures and the consequences of not taking measures for all parties involved in both proceedings. Furthermore, it should be noted that, given the timing of the review investigation, any actual impact of the anti-dumping measures applicable since 1995 to imports originating in Brazil, South Africa, Russia and Ukraine could be established in the review investigation conditional upon cooperation from interested parties.

(116) It should be recalled in this respect that recitals 76 *et seq.* of the provisional Regulation contained an analysis of the various interests of all the different parties, including those of the Community industry, importers/traders and of the downstream user industries. On the basis of the information available at the time of the provisional Regulation, the Commission concluded that there was no compelling reason not to remedy the trade distorting effects of injurious dumping. In particular, it was concluded that any possible impact on the user industry could only be minimal.

2. Interest of the Community industry

(117) After the publication of the provisional Regulation no comments have been received from any interested parties which invalidate the conclusions reached therein.

3. Impact on users

(118) As cited in recital 81 of the provisional Regulation, the main downstream user industry of the product under consideration is the steel industry. Subsequent to the provisional Regulation, comments were received from two user associations and one user stating that the imposition of measures against the People's Republic of China would cause a significant increase in the cost of production of steel products. However, since these submissions were not substantiated, it was not possible to make a further, detailed analysis of the effects on users of taking, or not taking measures.

(119) The findings set out in the provisional Regulation, which established that for each 10 % dumping duty imposed, users' cost of production would increase by a limited amount of 0,1 % are confirmed for the purposes of the definitive measures.

(120) It was also argued, that the competitiveness of the Community stainless steel industry on the world market could be endangered by the imposition of definitive anti-dumping measures on FeSiMn. The Commission examined this allegation and arrived to the conclusion that the FeSiMn needed for export purposes can enter the Community without any duty under the inward processing regime. One user is in fact using this regime, importing FeSiMn from South Africa.

(121) One user claimed that it is against the Community interest to impose definitively anti-dumping duties on Chinese imports of FeSiMn due to the fact that the Community industry cannot supply the Community market with sufficient quantities.

As far as the competitive environment of the Community market is concerned, user industries and other economic operators have always enjoyed the presence of a wide range of sources of supply, supplementing the Community industry. Even after the imposition of definitive anti-dumping measures concerning imports of FeSiMn originating in China, third country sources of supply will continue to be available to Community users. In addition imports originating in China are not excluded from the Community market. The anti-dumping measures imposed would merely remove market distortions resulting from injurious dumping and would allow Community producers to compete at a fair level with these imports.

(122) On this basis, the Council confirms the conclusion that, overall, and in the absence of any substantiated submission by users, any impact on users would be negligible.

4. Conclusion

(123) In the light of the above, the preliminary determination reached at recital 85 of the provisional Regulation, that it is in the Community interest to adopt anti-dumping measures, is confirmed.

I. DEFINITIVE MEASURES

1. Injury elimination level

(124) For the purpose of establishing a level of duty which would be adequate to remove the injury to the Community industry, it is first necessary to establish a price level for the Community industry which enables it to recover its costs and achieve a reasonable profit (hereinafter referred to as the 'injury elimination level').

The determination of the injury elimination level was re-examined with regard to the provisional determination and it was found that, in addition to the weighted average cost of production of the Community industry, a profit rate of 5 % on turnover was considered to be reasonable for the purposes of the definitive determination, particularly in the light of the limited need for new investments, the comparative simplicity of the product and the reduced levels of research and development costs.

The injury elimination level, duly adjusted to take account of the differences in distribution channels, was then compared to the weighted-average export prices for FeSiMn from each of the exporting countries concerned on a cif Community frontier basis, duties paid.

(125) The result of the comparison expressed as a percentage of the export prices on a free-at-Community-frontier basis shows the following injury margins:

(a) *Ukraine*

The investigation has confirmed that, in view of the anti-dumping measures presently applicable, Ukrainian export prices are at a non-injurious level.

(b) *People's Republic of China*

The injury margin level thus established is 14,2 %.

(126) Having received no further comments in this respect, the above determination of the injury elimination level is confirmed by the Council.

2. Definitive duty

(a) *Ukraine*

(127) In view of the determination of the injury elimination level set out in recital 124, the minimum price laid down in the undertakings previously offered by the two cooperating Ukrainian exporters should remain unchanged and continue to be considered as operative. However, these undertakings only applied to FeSiMn produced, exported and invoiced directly by the two companies to the first unrelated customer in the Community. Exports to the Community of Ukrainian origin FeSiMn by another means would therefore be subject to the residual duty currently in force.

(128) As concerns this residual duty, in view of the non-cooperation (see recital 44 *et seq.*), the measure has to be maintained, but converted into a specific duty. It is considered that this form of measure will help market stability. On this basis, the residual measure for Ukraine will be a specific duty of ECU 150 per tonne of product.

(b) *People's Republic of China*

(129) Given that following the revision of the injury elimination level the injury margin is still lower than the revised dumping margin established (see recitals 64 and 127 of this Regulation), definitive anti-dumping duties should be imposed on the basis of the injury margin. As far as the form of the definitive duty is concerned, it is considered that the structure of a State-controlled economy gives the Chinese exporters considerable room for manoeuvre to decrease their export prices. Therefore, for the same reason as given above with regard to Ukraine, and also in order to diminish the risk of absorption of the duty by the Chinese exporters, a specific duty (namely a fixed amount per tonne) is considered to be more appropriate in this case than an ad valorem duty or a variable duty.

The amount of such a duty has been calculated on the basis of the injury margin mentioned above and is ECU 58,3 per tonne of product.

3. Undertakings

(130) The Ukrainian exporters were informed of the essential facts and considerations on the basis of which it was intended to recommend the continuation of definitive anti-dumping measures in respect of imports originating in Ukraine. As already found in Commission Decision 95/418/EC [1], it was also considered in the framework of

[1] OJ L 248, 14. 10. 1995, p. 56.

the review investigation that the terms of the undertaking applicable to Ukrainian exports, in particular the price level would still be appropriate pursuant to Article 8(1) of the Basic Regulation, as these undertakings would continue to eliminate the injurious effects of dumping. In view of the licensing system set up by the Ukrainian authorities, it is also considered that such undertakings can be monitored effectively.

(131) Accordingly, the Commission invited the two producer/exporters concerned to confirm whether they still wished to be bound by the terms of the existing undertakings. In this respect, both companies did indeed confirm that they wished to continue with their undertakings. Consequently, these undertakings should remain in force.

(132) At a late stage in the proceeding, a Hong Kong based company (Glory Profit) also enquired about the possibility of offering an undertaking. In this respect, it is considered that this company is not eligible to offer an undertaking since it is a trading company. The company was advised accordingly of this decision. In addition, offers of undertakings made by the Chinese producers related to Glory Profit could also not be accepted since they did not cooperate with the investigation.

J. CONCLUSION CONCERNING DEFINITIVE MEASURES

(133) The above factors clearly demonstrate that definitive measures, both for the People's Republic of China and Ukraine, are warranted. For the reasons given above, these measures, with the exception of the existing undertakings, should be in the form of a specific duty.

(134) As concerns Brazil, Russia and South Africa, the investigation has shown that measures are no longer necessary and that the proceeding should be terminated in respect of these countries. Nevertheless, in order to avoid any potential circumvention, the Commission will follow closely the development of the statistics relating to imports into the Community of FeSiMn originating in the countries concerned.

K. COLLECTION OF PROVISIONAL DUTY WITH REGARD TO THE PEOPLE'S REPUBLIC OF CHINA

(135) The Council considers it appropriate, in view of the magnitude of the dumping found for the exporting producers and in the light of the seriousness of the injury caused to the Community industry, to definitively collect the provisional anti-dumping duty imposed on the product imported from the People's Republic of China at a rate of ECU 58,3 per tonne of product, which is based on the injury margin established. Any amounts secured by way of the provisional anti-dumping measures which exceed this rate should be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty of ECU 58,3 per tonne of product is hereby imposed on imports of ferro-silico-manganese currently falling within CN code 7202 30 00 originating in the People's Republic of China.

2. The amounts secured by way of provisional anti-dumping duties imposed pursuant to Regulation (EC) No 1778/97 on imports of the product under consideration originating in the People's Republic of China shall definitively be collected at a rate of ECU 58,3 per tonne of product. Any amounts secured by way of the provisional anti-dumping measure which exceed this rate should be released.

Article 2

Regulation (EC) No 2413/95, is hereby amended as follows:

Article 1 shall be replaced by the following:

'Article 1

A definitive anti-dumping duty of ECU 150 per tonne of product is imposed on imports of ferro-silico-manganese currently falling within CN Code 7202 30 00 originating in Ukraine (TARIC additional code 8848).

This duty shall not apply to imports of the product as defined in this Article, produced and exported to the Community by the following companies: (Ukraine — TARIC additional code 8847):

— Nikopol Ferro Alloy Plant,

— Zaporozhye Ferro Alloy Plant.'

Article 3

The proceeding in respect of imports of the product under consideration originating in Brazil, South Africa and Russia is hereby terminated.

Article 4

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

Article 5

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

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

Done at Brussels, 23 February 1998.

For the Council

The President

R. COOK