COMMISSION REGULATION (EC) No 1802/1999

of 17 August 1999

imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes originating in Croatia and Ukraine

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 905/98 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 19 November 1998, the Commission announced, by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of certain seamless pipes and tubes originating in Croatia and Ukraine.

(2) The proceeding was initiated following a complaint lodged in October 1998 by the 'Defence Committee of the Seamless Steel Tube Industry of the European Union' on behalf of Community producers representing 100 % of the Community production of certain seamless pipes and tubes.

(3) The Commission officially advised the complainant Community producers, exporting producers and importers, suppliers and users known to be concerned as well as associations concerned and representatives of the exporting countries, of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(4) The Commission sent questionnaires to all parties known to be concerned. Replies were received from 11 Community producers, four exporting producers in the countries concerned and eight importers in the Community.

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

(a) *Community producers*
- Benteler AG, Paderborn, Germany,
- Dalmine SpA., Dalmine, Italy,
- ESW Röhrenwerke GmbH, Eschweiler, Germany,
- Ovako Steel AB Tube Division, Hofors, Sweden,
- Productos Tubulares SA, Valle de Trapaga, Spain,
- Timken Desford Ltd, Leicester, United Kingdom,
- Tubos Reunidos SA, Amurrio, Spain,
- Vallourec & Mannesmann Deutschland GmbH, Mülheim an der Ruhr, Germany,
- Vallourec & Mannesmann France SA, Boulogne Billancourt, France,
- Voest Alpine Kindberg GmbH, Austria.

(b) *Exporting producers*
- Zeljezara Sisak d.d., Sisak, Croatia.

(c) *Related importer in the Community*
- SEPCO GmbH, Krefeld, Germany.

(6) The dumping investigation covered the period from 1 November 1997 until 31 October 1998 (hereinafter referred to as the 'investigation period' or 'IP'). The examination of injury covered the period from January 1997 to the end of the IP (hereinafter referred to as 'the period considered').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(7) The product under consideration is: seamless pipes, of iron or non-alloy steel, of a kind used for oil and gas pipelines, of an external diameter not exceeding 406,4 mm (currently classifiable under CN codes 7304 10 10 and 7304 10 30); seamless tubes of circular cross-section, of iron or non-alloy steel, cold-drawn or cold-rolled (currently classifiable under CN code 7304 31 99); other tubes of circular cross-section, of iron or non-alloy steel, of an external diameter not exceeding 406,4 mm (currently classifiable under CN codes 7304 39 91 and 7304 39 93), hereinafter referred to as 'seamless tubes'.

(8) Although there are some technical differences (e.g. standards, steel grades) between the three categories of seamless tubes, these are not such as to establish clear dividing lines since seamless tubes classified under one category can be, and sometimes are, used for the same applications as seamless tubes classified under a different one. In addition, within each category, seamless tubes come in a wide range of specifications but are all considered to be similar or identical in their essential physical and technical characteristics and in their end uses.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 128, 30.4.1998, p. 18.
[3] OJ C 353, 19.11.1998, p. 13.

(9) The Ukrainian exporting producers argued that there were in fact two separate products — line pipes, and commodity tubes, the former being produced to higher standards and sold directly to end users rather than to traders. However, the Commission found that the basic physical and technical characteristics were the same. Also it was found that the alleged distinction was not observed in practice since line pipes are often sold as commodity tubes and that no clear dividing lines exist between these products.

(10) In line with the position previously adopted by the Council [1], therefore, the Commission found that all seamless tubes falling under the aforementioned CN codes are to be considered as one product for the purposes of this proceeding.

2. **Like product**

(11) The products exported to the Community from the two countries concerned, those manufactured and sold in the Community by the Community industry as well as those domestically sold on the Croatian market were found to have the same basic physical and technical characteristics and the same uses and are therefore to be considered as like products within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereinafter referred to as 'the basic Regulation').

(12) The Ukrainian exporting producers argued that the tubes they produced to GOST and TU standards, i.e. tubes of lower quality and needing fewer testing requirements, were different from the products produced by the Community industry which are produced to DIN or ASTM standards. The Commission rejected this assertion because quality standards as such cannot be taken into consideration in the determination of the like product. Furthermore the Commission found that these products had the same basic physical and technical characteristics and the same end use as the seamless tubes produced by the Community industry and exported by the other country concerned in the proceeding.

C. **DUMPING**

1. **Croatia**

a) *Normal value*

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

It was then examined whether, for each product type exported by the Croatian company, domestic sales of the corresponding product type constituted 5 % or more of the sales volume of the same type exported to the Community.

For those products meeting the 5 % test, it was established whether sufficient sales had been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation.

Where per product type, the volume of domestic sales above unit cost represented at least 80 % of sales, normal value was established on the basis of the weighted average prices actually paid for all domestic sales. Where, per product type, the volume of profitable transactions was lower than 80 %, but not lower than 10 % of sales, normal value was established on the basis of the weighted average prices actually paid for the remaining profitable sales.

For those product types where the volume of domestic sales was lower than 5 % of the volume exported to the Community, or where there were insufficient domestic sales made in the ordinary course of trade, normal value was constructed on the basis of the cost of manufacturing incurred by the exporting producer concerned for the exported product type in question plus a reasonable amount for selling, general and administrative (SG & A) costs and for profits in accordance with Article 2(3) and (6) of the basic Regulation. The SG & A costs were based on representative domestic sales and the profit margin was based on representative domestic sales made in the ordinary course of trade.

b) *Export price*

(14) The export prices were established on the basis of prices paid or payable for the product concerned when sold to the first independent customer in the Community in accordance with Article 2(8) of the basic Regulation.

c) *Comparison*

(15) For the purposes of a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences which were claimed, and demonstrated, to affect prices and price comparability. These adjustments were made, where appropriate, in accordance with Article 2(10) of the basic Regulation, in respect of level of trade, transport and credit costs.

(16) The adjustment in respect of level of trade was made because it was established that the export price (to traders) was at a different level of trade to normal value (traders and users), and that this difference had affected price comparability.

[1] OJ L 120, 15.5.1993, p. 42.

d) *Dumping margin*

(17) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin for the exporting producer concerned was established on the basis of a comparison of weighted average normal values with weighted average export prices.

(18) Expressed as a percentage of the cif Community frontier price, the provisional dumping margin for the only Croatian exporting producer is 40,8 %.

(19) Since the sole known exporting producer accounted for all Croatian exports of the product concerned to the Community, the Commission considers that the residual dumping margin should be set at the same level.

2. **Ukraine**

a) *Normal value*

(20) In the notice of initiation of the proceeding, the Commission proposed Brazil or the United States of America as an appropriate market economy third country for the purpose of establishing normal value. Objections to both countries were raised by the Ukrainian exporting producers within the time limit specified in the notice of initiation. With regard to Brazil, it was argued, *inter alia*, that the Brazilian market was dominated by one producer and that this had an impact on Brazilian prices. With regard to the United States of America, it was claimed that access to raw materials was poor, which raised the costs of domestic producers, and that the exports of the product concerned to the Community were not made in representative quantities, which signified a lack of competitiveness. Wages in the Ukraine and in the United States of America would not be comparable either. The Czech Republic was suggested as an alternative analogue country.

(21) It was concluded that the objections raised against the choice of Brazil were justified. As for the United States of America, it could not be used as an analogue country either since all eight exporters in the United States of America listed in the complaint refused to cooperate. The complainants then proposed using a privately compiled report containing information on the sales prices of the United States producers in order to establish normal value. This suggestion had to be rejected since the information was not verifiable.

(22) Three known Czech producers of pipes and tubes were then contacted in order to ask for their cooperation, a proposal they all turned down.

(23) Croatia, an exporting country also concerned by this investigation, was then proposed. The complainants as well as the Ukrainian exporting producers initially argued against Croatia on the grounds that Croatian production capacity was below 10 % of Ukrainian capacity and that the Croatian products did not fully cover the size range of the Ukrainian exports.

(24) The Commission however, after careful consideration of all relevant factors, came to the conclusion that Croatia could be used as a reasonable alternative. This was substantiated by the fact that the volume of Croatian domestic sales of the product concerned was representative of Ukrainian exports to the Community during the IP. Croatia is also importing the product concerned as well as exporting it. Finally, the capacity utilisation rate of the Croatian tube company is similar to the weighted average capacity utilisation rate of the three cooperating Ukrainian exporting producers.

(25) Parties to the investigation were informed that the Commission envisaged selecting Croatia and were given the opportunity to comment. No comments were received within the time limit set.

(26) Normal value was thus established on the basis of the prices and costs of the Croatian producer for products comparable to those sold by the Ukrainian exporting producers to the Community, using the methodology described at recital 13.

b) *Export price*

(27) For one exporting producer, after the on-the-spot verification at the premises of one of its related importers in the Community, the information submitted was found not to be reliable. The export sales of this exporting producer were therefore not taken into consideration for the determination of the export price. For the two other Ukrainian exporting producers, all exports were taken into consideration for the determination of the export price.

(28) The export price was then established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of the prices actually paid or payable by independent customers in the Community.

c) *Comparison*

(29) It was found that there was no domestic production of cold-drawn seamless tubes in Croatia. However, since Ukrainian exports of this category to the Community only represented 10 % of total Ukrainian exports in the IP, it was considered reasonable to exclude them from the calculations.

(30) For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences which were claimed, and demonstrated, to affect price comparability. These adjustments were made, where appropriate, in accordance with Article 2(10) of the basic Regulation, in respect of transport.

(31) Adjustments for physical characteristics were claimed by two Ukrainian exporting producers, to account for the difference between Ukrainian tubes produced in accordance with GOST and TU standards and standards such as DIN and ASTM, which are commonly used by the Community industry. GOST and TU standard tubes were alleged to be of lower quality and to be subjected to less rigorous testing which meant that they were sold at a discount on the Community market.

The Commission, however, considered that the arguments presented by the Ukrainian exporting producers were not substantiated and that further information on this claim was needed. The Commission has therefore rejected this claim for the purpose of the provisional determination.

d) *Dumping margin*

(32) On the basis of a comparison of weighted average normal values with weighted average export prices, a country-wide dumping margin was established in accordance with Article 2(11) and (12) of the basic Regulation.

(33) Expressed as a percentage of the cif Community frontier price, the provisional dumping margin for all Ukrainian companies is 123,7 %.

D. **INJURY**

1. **Definition of the Community industry**

a) *Community production*

(34) The output of all companies producing seamless tubes in the Community during-the IP has been taken into account for the determination of Community production. These companies are hereinafter referred to as 'Community producers'.

b) *Community industry*

(35) It is to be noted that the complaint was lodged on behalf of 12 Community producers of seamless tubes. These 12 producers accounted for the total Community production at the time of the investigation.

(36) Only 10 out of the 12 complaining Community producers responded to the Commission questionnaire. As concerns the remaining two producers, one did not reply to the questionnaire at all, while the other only replied in part. Both Community producers were therefore considered not to be cooperating in the framework of the present investigation.

(37) The remaining 10 Community producers are Voest Alpine Kindberg (Austria), Vallourec & Mannesmann France (France), Benteler AG (Germany), ESW Röhrenwerke GmbH (Germany), Vallourec & Mannesmann Deutschland GmbH (Germany), Dalmine SpA. (Italy), Productos Tubulares SA (Spain), Tubos Reunidos SA (Spain), Ovako Steel AB Tube Division (Sweden) and Timken Desford Steel Ltd (United Kingdom).

(38) These producers accounted for 94 % of total Community production in the IP and thus constituted a major proportion of Community production pursuant to Article 5(4) of the basic Regulation. These companies are hereinafter referred to as 'the Community industry'.

2. **Preliminary remarks**

(39) For the purposes of the injury and causation analysis, the Commission has taken into account the fact that a previous investigation concerning imports of seamless tubes from Croatia, the Czech Republic, Hungary, Poland, Romania, Russia and the Slovak Republic was concluded by Council Regulation (EC) No 2320/97 [1] which imposed anti-dumping measures on these countries.

(40) Since, for the period from 1995 to August 1996, the previous investigation had established that imports of seamless tubes originating in Croatia had not caused material injury to the Community industry, it was not considered appropriate to reanalyse the impact of imports from the countries concerned on the Community industry during this period.

(41) It was therefore concluded that for the purposes of analysing injury and causation in the present proceeding, the Commission would only consider data relating to the period January 1997 to October 1998 (i.e. the end of the IP).

(42) Furthermore, it is to be noted that the situation of the Community industry described below has been assessed in the light of an expected improvement in its situation following the imposition of the abovementioned anti-dumping measures.

3. **Community consumption**

(43) Community consumption was based on the questionnaire replies (volume of sales of the Community industry), Eurostat information (volume of imports) and the information available for non-cooperating Community producers' level of sales.

(44) On the above basis, the apparent Community consumption increased over the period going from 1 087 469 tonnes in 1997 to 1 195 329 tonnes in the IP, which represents an overall increase of 10 %.

[1] OJ L 322, 25.11.1997, p. 1.

4. **Imports into the Community from the countries concerned**

a) *Cumulation*

(45) The Commission examined whether imports of seamless tubes originating in Croatia and Ukraine should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.

(46) As stated above, the dumping margins found for Croatia and Ukraine were 40,8 % and 123,7 % respectively and therefore both are well above the *de minimis* level. Import volumes from Croatia and Ukraine are comparable in absolute terms and were found to be significant for both countries. Imports from Croatia amounted to 2,6 % of Community consumption in the IP while imports from Ukraine amounted to 11,2 % of Community consumption in the same period.

(47) As regards the conditions of competition, the investigation has found that during the IP seamless tubes imported from Croatia and Ukraine were alike in all their basic physical and technical characteristics. Furthermore seamless tubes from Croatia and Ukraine were marketed in the Community through comparable sales channels under similar commercial conditions. The imported seamless tubes were therefore considered to compete with each other and with the seamless tubes produced and sold in the Community.

(48) In the light of the above, the Commission considered that all the criteria set out in Article 3(4) of the basic Regulation were met. The imports from Croatia and Ukraine were therefore examined cumulatively.

b) *Volume and market share of dumped imports*

(49) Imports from Croatia and Ukraine increased significantly going from 83 783 tonnes in 1997 to 164 403 tonnes in the IP. The corresponding market share was 7,7 % in 1997 and 13,8 % in the IP.

c) *Prices of dumped imports*

i) Evolution of prices

(50) The average unit prices of the seamless tubes imported from Croatia and sold on the Community market (based on Eurostat), expressed in ECU/kg, were 0,50 in 1997 and 0,51 in the IP. The average unit prices of seamless tubes imported from the Ukraine and sold on the Community market (based on Eurostat), expressed in ECU/kg, were 0,37 in 1997 and 0,38 in the IP.

ii) Price undercutting

Croatia

(51) For the purpose of analysing price undercutting, in view of the wide range of seamless tubes investigated, the Commission classified the seamless tubes sold by the Community industry and those imported from Croatia according to two criteria: firstly, according to groups of outside diameter and wall thickness, and secondly according to three categories, i.e. line pipes, cold-drawn tubes and commercial tubes. A comparison was then made between the weighted average selling prices of Croatian seamless tubes per group and category, and the weighted average sales prices of the Community industry's seamless tubes in the same group and category. Price comparisons were made on the basis of the sales to the first independent customer in the Community. In order to ensure comparability, the prices of the Community industry and those of the imported products were free of all rebates and taxes and where appropriate, adjusted in terms of transport cost to ex-works or cif Community frontier level respectively. In addition, the import prices were adjusted to include customs clearance and post-importation costs based on information provided by the importers.

Ukraine

(52) As concerns the analysis of price undercutting regarding sales of Ukrainian tubes, it should be mentioned that the parties concerned did not provide information on outside diameter and wall thickness that was sufficient to allow the Commission to group the products in the same manner as in the case of imports originating in Croatia. In the absence of the abovementioned data the Commission conducted a price undercutting calculation on the basis of the information provided, i.e. by comparing the weighted average selling prices of Ukrainian seamless tubes per CN code with the weighted average sales prices of the Community industry's seamless tubes in the same CN code.

(53) The price comparisons concerning Ukrainian tubes were limited to sales to the first independent customer in the Community made by the two exporting producers whose sales were used for the establishment of the Ukrainian export price (see recital 27). The prices of the Community industry were free of all rebates and taxes and where appropriate, adjusted in terms of transport cost to ex-works level. The import prices were adjusted to include customs clearance and post-importation costs based on information provided by the importers.

(54) The results of the comparison showed margins of undercutting for both countries concerned. The weighted average price undercutting margins expressed as a percentage of the Community industry's prices were as follows:

— Croatia: 19,7 %,

— Ukraine: 32,7 %.

5. **Situation of the Community industry**

a) *Production, capacity and capacity utilisation*

(55) Production of the Community industry went from 971 019 tonnes in 1997 to 1 021 869 tonnes in the IP.

(56) Given that the machinery used in the production of the product concerned is the same as that used for the production of a wide variety of other seamless tubes not at issue in the current proceeding (e.g. precision tubes, stainless steel tubes and tubes exceeding 406,4 mm diameter), it was not considered possible to establish product specific capacity and capacity utilisation figures.

(57) The figures for capacity and utilisation have been calculated on the basis of the total capacity of the Community industry for all products produced on the same machinery and then allocated on the basis of the production of the product concerned. In this respect production capacity went from 1 329 450 tonnes in 1997 to 1 306 905 tonnes in the IP. The capacity utilisation rate went from 73 % in 1997 to 78 % in the IP.

b) *Stocks*

(58) It is to be noted that the Community industry generally produces the product concerned to order, consequently the level of stocks held by the Community industry was found not to be relevant in the assessment of the situation of the Community industry.

c) *Volume of sales and market share*

(59) Sales of the Community industry increased overall by 10 % going from 671 390 tonnes in 1997 to 739 142 tonnes in the IP.

(60) The market share held by the Community industry remained stable going from 61,7 % in 1997 to 61,8 % in the IP.

d) *Prices*

(61) On average, unit prices of the product concerned sold by the Community industry on the Community market, expressed in ECU/kg, were 0,62 in 1997 and 0,65 during the IP, corresponding to an increase of 4,8 %.

e) *Profitability*

(62) The Community industry experienced financial difficulties related to its sales of the like product during the period under consideration. In 1997 it incurred losses averaging – 2,4 %. In the IP the Community industry improved its profitability reaching the break-even point (+ 0,4 %). This level of profitability is nevertheless insufficient to generate the level of earnings that would be required by the Community industry to cover its costs, to make a reasonable profit, to recover from the losses incurred in previous years and to ensure its long-term viability.

f) *Investments*

(63) Investments (expressed in ECU thousand), increased going from 23 684 in 1997 to 25 020 in the IP. Investments were found mostly to be in replacement machinery.

g) *Employment*

(64) Employment in the Community industry fell from 4 012 employees in 1997 to 3 927 employees in the IP.

h) *Productivity*

(65) Productivity (volume produced per employee) of the Community industry increased over the period considered (an increase of 8 % was found between 1997 and the IP).

6. **Conclusion on injury**

(66) It is to be noted that from 1997 to the IP, although the Community industry saw an improvement in profitability, going from a loss-making situation in 1997 (– 2,4 %) to a situation of break-even in the IP (+ 0,4 %) this level of profitability was considered to be largely insufficient to enable the Community industry to ensure its long-term viability. Furthermore, the Community industry's market share remained stable, showing that it was unable to regain previously lost market share as had been expected given the imposition of anti-dumping measures on imports of the product concerned originating in the Czech Republic, Hungary, Poland, Romania, Russia and the Slovak Republic in November 1997.

(67) It is therefore provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

E. **CAUSATION**

1. **Effect of the dumped imports**

(68) It is to be noted that in a price sensitive market, such as is the case for seamless tubes, price undercutting of the magnitude found (between 19,7 and 32,7 %) has an immediate and significant impact. The high volume of imports from Croatia and Ukraine (164 403 tonnes in the IP) and the low prices of these imports (ECU/kg 0,40 on average in the IP) which significantly undercut those of the Community industry coincided with the Community industry's poor financial results and the lack of improvement in its market position.

(69) This should be seen in the light of the imposition of anti-dumping measures on imports of the product concerned originating in the Czech Republic, Hungary, Poland, Romania, Russia and the Slovak Republic, following which their cumulated market share decreased from 19 % in 1997 to 14,8 % in the IP and the value of these imports increased (going from ECU/kg 0,44 in 1997 to ECU/kg 0,47 in the IP). The Community industry was expected to benefit from this development by regaining some lost market share; however, its market share remained stable between 1997 and the IP.

2. **Effect of other factors**

a) *Other imports*

(70) As concerns the imports from the Czech Republic, Hungary, Poland, Romania, Russia and the Slovak Republic, after the imposition of anti-dumping measures in November 1997 their imports decreased significantly (from a market share of 19 % in 1997 to 14,8 % in the IP) and the unit value of these imports increased in the same period (from ECU/kg 0,44 in 1997 to ECU/kg 0,47 in the IP). As regards these imports, it should be noted that anti-dumping measures have been in force since November 1997.

(71) Imports from other third countries neither covered by the previous investigation nor the present one were found to have decreased their market share from 6,4 % in 1997 to 4,5 % in the IP. The unit value of these imports (based on Eurostat) was found to be significantly higher than both the imports from Croatia or Ukraine.

b) *Product substitution*

(72) Certain exporting producers argued that products other than those concerned by the current proceeding, in particular welded tubes, were being used as substitutes for seamless tubes. Consequently, it was argued that any injury suffered by the Community industry was attributable to a reduction in demand for seamless tubes.

(73) In this respect the Commission did not find any application where seamless tubes had been substituted for welded tubes. Furthermore, the investigation has shown that the market for seamless tubes did not decrease, on the contrary an increase of 11 % over the period investigated was found.

3. **Conclusion on causation**

On the basis of the above, it was concluded that the imports from the two countries concerned have caused material injury to the Community industry. Indeed, imports from Croatia and Ukraine have impeded the full recovery of the injurious situation of the Community industry, found in the context of the previous anti-dumping proceeding concerning this product. This conclusion is reached in particular in view of the analysis of the effect of other third country imports of the product concerned. Data relating to such imports does not suggest that their market impact is such as to break the causal link between imports originating in Croatia and the Ukraine and the situation of the Community industry.

F. **COMMUNITY INTEREST**

1. **Preliminary remarks**

(74) The Commission provisionally examined, on the basis of the information submitted, whether, despite the dumping and injury findings, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to impose measures in the present case.

For this purpose, the Commission has considered the impact of measures for all parties involved in the proceeding.

It is recalled that Regulation (EC) No 2320/97 had concluded that no reasons existed not to impose measures on grounds of Community interest.

2. **Collection of Community interest data**

(75) In order to assess the impact of the imposition of measures, the Commission requested information from all interested parties known, including the Community producers, importers/traders and users. It should be noted that no replies were received from the user industries. On the basis of the information received from the cooperating parties, the Commission reached the following conclusions.

3. **Impact of measures on the Community industry**

(76) It is to be noted that further to the imposition of measures in November 1997, the Community industry's situation improved slightly, showing that measures in this sector were effective, although, as has been explained above, the Community industry was impeded from fully benefiting from the existing measures due to the dumped imports from Croatia and Ukraine.

(77) Given that the Community industry had not been able to fully recover from its financial difficulties, the Commission considers that the imposition of measures would be effective in affording the industry the opportunity to recover from the injury suffered. In particular given the high volume of imported seamless tubes from the countries concerned, the imposition of measures is likely to allow the Community industry to regain lost market share and consequently to improve profitability.

4. **Impact of measures on importers/traders**

(78) It is to be recalled that Regulation (EC) No 2320/97 had foreseen that the imposition of anti-dumping measures would not have more than a minimal impact on the overall situation of the importers/traders of seamless tubes given the wide diversity of products in which they trade.

(79) The Commission has provisionally also concluded in the present investigation that given that seamless tubes represent only a small part in the diverse range of the products commercialised by the importers/traders, and the fact that a number of alternative sources of supply of seamless tubes exist that are not subject to anti-dumping measures, including seamless tubes produced by the Community industry, it is unlikely that the imposition of measures would have a significant impact on the situation of these importers/traders.

5. **Impact of measures on users**

(80) It is to be recalled that Regulation (EC) No 2320/97 had foreseen that the imposition of anti-dumping measures would only have a negligible impact on the situation of the user industries of seamless tubes, (including the chemical and petrochemical industries, power stations, the automobile and construction industries), given that the seamless tubes represent only a small element in the overall costs of these industries. It is to be noted that there exists a substantial number of companies in the Community producing tubes (12) and that there are a high number of exporters in other countries having an important share of the Community market. The existence of a multitude of alternative sources of supply guarantees effective competition on the market to the benefit of the user industries.

(81) Given that no representations have been made contradicting the previous findings and in view of the lack of cooperation of users in the present investigation, it is expected that any price effect resulting from anti-dumping measures would be negligible with respect to downstream industrial users.

6. **Conclusion on Community interest**

(82) Given the increased volume of imports from both Croatia and Ukraine, in particular following the imposition of anti-dumping measures in November 1997, and the exporting producers' behaviour on the Community market in significantly undercutting the prices of the Community industry, there is a likelihood that, in the absence of measures, this trend in imports will continue not only preventing the Community industry from benefiting from the imposition of measures in the previous case but also further aggravating the injurious situation of the Community industry.

(83) Given the sharp increase in volume of dumped imports from Croatia and Ukraine following Regulation (EC) No 2320/97, it is expected that the imposition of measures on imports from these countries would be effective in addressing the material injury caused by these imports. It is therefore considered to be in the interest of the Community industry to impose measures.

As regards both the importers/traders and the user industries, any impact on prices of seamless tubes is expected only to be marginal.

The Commission has therefore concluded that, in these circumstances, there are no compelling reasons not to impose measures on grounds of Community interest.

G. **PROVISIONAL ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(84) Having established that the dumped imports under consideration have caused material injury to the Community industry and that there are no compelling reasons not to take action, the measures envisaged should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margins found.

(85) The removal of such injury requires that the industry should be put in a position where the prices of imports of the product concerned originating in the countries concerned should be increased to a non-injurious level.

(86) For the purposes of calculating the necessary price increase, i.e. the injury margin, the Commission considered that the prices of the dumped imports had to be compared with actual sales prices of the Community industry plus a reasonable level of profit which the industry might be expected to make in the absence of injurious dumping from the countries under investigation.

(87) On this basis, the weighted average export prices for those products used in the determination of price undercutting were compared, on a cif Community frontier level, adjusted to take account of customs duty paid and an allowance in respect of post-importation costs, with the actual weighted average selling prices charged by the Community industry, increased, where appropriate, to reach a reasonable profit margin, in this case established at 5 %. This profit margin, which is the same as the one used in the previous investigation concerning the Czech Republic, Hungary, Poland, Romania, Russia and the Slovak Republic, was considered, for the purpose of a provisional determination, to be the minimum profit level that industry might be expected to achieve in the absence of injurious dumping from the countries under investigation.

This comparison showed the following injury margins:

— Croatia: 31,2 %,

— Ukraine: 56,5 %.

2. **Provisional measures**

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

(89) Since the dumping margins found are higher than the injury elimination margins, the anti-dumping duties should be based at the provisional stage on the injury elimination margins.

3. **Final provision**

(90) In the interest of sound administration, a period should be fixed within which the interested parties 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 measures —

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on the following imports originating in Croatia and Ukraine:

— seamless pipes, of iron or non-alloy steel, of a kind used for oil and gas pipelines, of an external diameter not exceeding 406,4 mm falling within CN codes 7304 10 10 and 7304 10 30,

— seamless tubes of circular cross-section, of iron or non-alloy steel, cold-drawn or cold-rolled falling within CN code 7304 31 99,

— other tubes of circular cross-section, of iron or non-alloy steel, of an external diameter not exceeding 406,4 mm falling within CN codes 7304 39 91 and 7304 39 93.

The rate of duty applicable to the net free-at-Community-frontier price of imports of the product concerned originating in Croatia shall be 31,2 %, and it shall be 56,5 % for imports of the product concerned originating in Ukraine.

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

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

Article 2

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

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties which made themselves known within the time limit specified in the notice of initiation may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

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

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

Done at Brussels, 17 August 1999.

For the Commission

Karel VAN MIERT

Member of the Commission